



## INTERIOR BOARD OF INDIAN APPEALS

Robert Edwards and 56 Unnamed Individuals v. Pacific Regional Director,  
Bureau of Indian Affairs

45 IBIA 121 (07/20/2007)

Related Board cases:

41 IBIA 194

42 IBIA 40

45 IBIA 42



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ARLINGTON, VA 22203

ROBERT EDWARDS and ) Order Dismissing Appeal and Referring  
56 UNNAMED INDIVIDUALS, ) Matter to the Assistant Secretary –  
Appellants, ) Indian Affairs  
)  
v. )  
) Docket No. IBIA 05-81-A  
PACIFIC REGIONAL DIRECTOR, )  
BUREAU OF INDIAN AFFAIRS, )  
Appellee. ) July 20, 2007

Robert Edwards, “individually and as an elected representative of the Indians of Enterprise Number 1, and the Indians of Enterprise Number 1,<sup>[1]</sup> a group consisting of fifty-six (56) individual members” (Appellants), seek review of a May 18, 2005, decision of the Pacific Regional Director, BIA (Regional Director), declining to intervene in a tribal membership dispute within the Enterprise Rancheria of Maidu Indians of California (Tribe) pending exhaustion of tribal remedies. We dismiss this appeal for lack of jurisdiction because this is, in substance, an enrollment dispute. We refer it to the Assistant Secretary – Indian Affairs for consideration, as may be appropriate.

### Background

Appellants are each persons who apparently have been disenrolled by the Tribe. In September 2003, Appellants “received notification [from the Tribe] that they were subject

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<sup>1</sup> In *Edwards v. Pacific Regional Director*, 45 IBIA 42 (2007), Edwards contended that the Bureau of Indian Affairs (BIA) originally recognized two tribal entities in Enterprise, California: Enterprise Rancheria No. 1 and Enterprise Rancheria No. 2. Edwards argued that only Enterprise Rancheria No. 1 remained as a Federally recognized tribal entity after Enterprise Rancheria No. 2 was terminated in 1964 and that BIA mistakenly recognized the tribal entity that was terminated, rather than recognizing the tribal entity that remained and remains Federally recognized (Enterprise Rancheria No. 1). The Board of Indian Appeals (Board) rejected Edwards’s claims and affirmed BIA’s determination that no tribal entity had been terminated at Enterprise and that the two rancherias had been recognized as one reservation and one tribal entity since at least 1935. *Id.* at 50-53.

to disenrollment.” Opening Brief at 3.<sup>2</sup> The notice set forth the grounds alleged for disenrollment, and advised that a hearing would be held on November 13, 2003, at which a “final decision” on the proposed disenrollment would be made by the General Council. The notice also informed each individual that all tribal membership rights were suspended immediately, including the right to vote in tribal elections. For Appellant Edwards, suspension of his tribal rights also included suspension from his position as Tribal vice chairman. Appellants contend that the disenrollment action was instigated by certain Tribal council members who were the subject of a recall petition signed by 70 members who were subsequently subjected to disenrollment. The recall election apparently was scheduled to take place September 27, 2003. Appellants allege that, as a result of the suspension of tribal rights for the members subject to disenrollment and tribal efforts to discourage participation, the recall election was not held because a quorum could not be established.<sup>3</sup>

On November 13, 2003, the disenrollment hearing was held and the General Council — minus those 70 members whose rights were suspended — voted to oust all 70 persons who had signed the recall petition, including Appellants.<sup>4</sup> Appellant Edwards states that he was given three minutes at the hearing to read the allegations against him and give his response to the allegations. On or shortly after November 13, Appellants learned that they were formally disenrolled.<sup>5</sup> Thereafter, on November 19, 2003, Appellant Edwards submitted a “letter [of] Appeal of the Disenrollment of seventy members of Enterprise Rancheria” to the Superintendent, Central California Agency, BIA (Superintendent). Appellant Edwards and unknown others also appealed their disenrollment to the Tribe.<sup>6</sup>

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<sup>2</sup> Appellant Edwards’s notification is dated September 9, 2003.

<sup>3</sup> The disenrolled members apparently purported to conduct the recall election on January 15, 2005, but the Regional Director declined to recognize it as valid. Appellant Edwards filed an appeal with the Board, but it was dismissed as untimely. *Edwards v. Pacific Regional Director*, 42 IBIA 40 (2005) (*Edwards I*).

<sup>4</sup> Sometime later, two additional members were subjected to disenrollment, allegedly because they opposed the manner in which the 70 members were disenrolled.

<sup>5</sup> The Board was not provided with a copy of any written notification of tribal disenrollment.

<sup>6</sup> The Board has not been provided with a copy of any appellant’s appeal to the Tribe, but apparently Appellant Edwards submitted his appeal to the Tribe sometime prior to February 4, 2004. See Letter from Superintendent to Appellant Edwards, Feb. 13, 2004.

During the year that followed Appellant Edwards's appeal to BIA, the record reflects that the Superintendent met with the Tribal Council to discuss the disenrollment and there was an exchange of correspondence between the Superintendent and the Tribe on the matter. The Superintendent also acknowledged Appellant Edwards's appeal to him, but encouraged him to pursue his tribal remedies.

By letter dated October 8, 2004, Appellants demanded that the Superintendent respond to Appellant Edwards's November 19, 2003, appeal. Appellants sought a decision on their claims that "[t]he [disenrollment a]ctions of the Tribal Council and Enrollment Committee . . . [v]iolate [t]ribal [l]aw and the Indian Civil Rights Act [ICRA]," 25 U.S.C. § 1302. Letter from Appellants to Superintendent, Oct. 8, 1994, at 4. Specifically, Appellants claimed the Tribe violated subsections 1302(1) and (8), i.e., their rights to freedom of speech, to petition for redress of grievances, to equal protection and to due process. In their October 8 letter, Appellants also claimed that "the [a]ctions of the Tribal Council and Enrollment Committee [h]ave [c]reated a [d]ispute in [t]ribal [l]eadership" because an election to recall certain tribal leaders did not take place, because a new tribal constitution was unlawfully adopted, and because the allegedly unlawful disenrollment of 72 tribal members renders unlawful any action by the General Council. *Id.* at 6.

On November 30, 2004, the Superintendent responded. The Superintendent informed Appellants that "[f]or the last year the [BIA] has repeatedly stated . . . that tribal remedy was the proper forum for any resolution surrounding issues [you] may have with this or other tribal actions." Letter from Superintendent to Appellants, Nov. 30, 2004, at 1. The Superintendent observed that the Tribe had begun to schedule hearings before the Tribe's General Council on appeals filed by those who were disenrolled. The Superintendent quoted from his letter of April 30, 2004, to Appellant Edwards in which he stated, "[i]n deference to tribal sovereignty and consistent with the Federal government's current policy of Tribal Self-determination, [BIA] must insist that persons aggrieved by Tribal Government actions pursue and exhaust existing appeal processes internal to the Tribe, prior to requesting [BIA] review." He then concluded that it was premature for BIA to intrude into any disenrollment matters while the tribal appeal process remained ongoing.<sup>7</sup>

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<sup>7</sup> Appellant Edwards maintains that while several tribal members have received hearings on their disenrollment appeals, resulting in the reinstatement of some but not all persons who were disenrolled, Appellant Edwards had not yet received a hearing as of October 28, 2005, when he submitted his reply brief to the Board.

By letter dated December 24, 2004, Appellants appealed the Superintendent's decision to the Regional Director. In their appeal to the Regional Director, Appellants challenged the Superintendent's decision "to take no action upon the request of the disenrolled members." Notice of Appeal to Regional Director at 1. Appellants requested the Regional Director to order the Superintendent to intervene in the disenrollment dispute. *Id.* at 17.

On May 18, 2005, the Regional Director issued the decision that is the subject of the current appeal. The Regional Director reviewed the tribal law applicable to the disenrollment actions as well as BIA policy with respect to tribal enrollment matters. The Regional Director explained that

enrollment (including disenrollment) as a member of a federally recognized Indian tribe . . . is a matter between the individual and the tribe. Until such time as the Congress authorizes the Secretary of the Interior (or [his] designated representatives) to become involved in the matter of tribal enrollment, and/or disenrollment, Indian tribes have . . . complete authority and control over their own membership determinations.

Regional Director's Decision at 8. He concluded that the Superintendent had not acted arbitrarily or capriciously and stated it was "premature for [BIA] to be a forum for further review for tribal actions that affected Appellants' membership status" while the tribal appeal process remained ongoing. *Id.*

This appeal to the Board followed. Appellants maintain that BIA has a duty to "take action in response to or "intervene" in their disenrollment dispute. Opening Brief at 13. Appellants do not identify the "duty" they refer to nor do they identify the specific "action" that BIA is allegedly required to take. Appellants also contend that their illegal disenrollment has resulted in "invalidat[ing] the leadership of the [Tribe] and all official actions taken [since] by the Tribal Council and the General Council." Appellants' Opening Brief at 18. Appellants and the Tribe have submitted briefs; the Regional Director has not appeared in this appeal.

We conclude that we lack jurisdiction over this appeal because it is, in substance, an enrollment dispute. We therefore dismiss the appeal but refer this matter to the Assistant Secretary – Indian Affairs for his consideration, as may be appropriate. To the extent that Appellants contend that their unlawful disenrollments have created a tribal leadership dispute — an issue that might otherwise be subject to Board review — we conclude that

Appellants' claims are dependent on their unlawful disenrollment claim and therefore either cannot be adjudicated separately or are simply not ripe.<sup>8</sup>

### Discussion

The Board's jurisdiction is set forth in plain terms at 43 C.F.R. § 4.330, which specifically provides that "[e]xcept as otherwise permitted by the Secretary or the Assistant Secretary – Indian Affairs . . . , the Board *shall not adjudicate*: (1) Tribal enrollment disputes." 43 C.F.R. § 4.330(b)(1) (emphasis added); *see also Vedolla v. Acting Pacific Regional Director*, 43 IBIA 151, 154 (2006), and cases cited therein.

Appellants contend that the issue is not only one of disenrollment but also of the violation of Federal and tribal law that led to their disenrollment. Specifically, Appellants argue that several provisions of the ICRA, 25 U.S.C. § 1302, were violated along with various provisions of the Tribe's Constitution. But, the Board cannot review alleged violations of law in a vacuum or independent of their consequences because it is the harm or injury that flows from the violation that gives rise to Appellants' claim. Therefore, the alleged injury for which Appellants seek redress is their disenrollment from the Tribe, which they claim was caused by actions taken in violation of ICRA and the Tribe's Constitution. In addition, Appellants claim that BIA's refusal to intervene to resolve the enrollment dispute is further injury. Regardless of the merits of their claim that BIA erred in declining to become involved,<sup>9</sup> Appellants do not identify any source of authority for the *Board* to adjudicate what is, in essence, an enrollment dispute.<sup>10</sup> While ICRA and the Tribe's Constitution may be relevant to involvement by BIA and the Assistant Secretary, neither

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<sup>8</sup> In their brief, Appellants referred to Edwards's appeal in *Edwards I* concerning the January 15, 2005, recall election and suggested that the two appeals be considered together. Opening Brief at 4 n.2. As noted above at footnote 3, that appeal was dismissed as untimely. Although we do not read Appellants' briefs in this appeal to raise, as a separate matter, the 2005 recall election issue, any such review would be barred by principles of *res judicata*. *See Racine v. Rocky Mountain Regional Director*, 36 IBIA 274, 277 (2001).

<sup>9</sup> We note that the record does contain evidence of several contacts between BIA and the Tribe concerning the enrollment dispute, including letters and at least one meeting.

<sup>10</sup> We do not read Appellants' appeal as limited to a determination of whether BIA erred in declining to intervene based on a finding that such involvement would be premature. Instead, Appellants seek a determination from the Board on the merits of the enrollment dispute.

provides a basis for the Board to ignore regulatory constraints on its own jurisdiction. *See Vedolla*, 43 IBIA at 154-56.

Thus, the Board may not review the merits of this appeal and we express no opinion thereon.<sup>11</sup> We do, however, refer this matter to the Assistant Secretary – Indian Affairs for his consideration.

### Conclusion

We dismiss Appellants’ appeal of their tribal disenrollment for lack of jurisdiction and refer the matter to the Assistant Secretary. To the extent Appellants seek review of the Regional Director’s decision with respect to actions taken since Appellants’ disenrollment, we conclude that Appellants’ claims are dependent upon adjudication of the enrollment dispute and thus are not ripe for Board review.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dismisses this appeal for lack of jurisdiction and refers the matter to the Assistant Secretary – Indian Affairs for consideration, as may be appropriate.

I concur:

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// original signed  
Debora G. Luther  
Administrative Judge

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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<sup>11</sup> We observe that the Regional Director’s decision advised Appellants that they could appeal from his decision to the Board. The mere inclusion of appeal rights cannot, of course, confer jurisdiction on the Board where none exists. *See, e.g., Chemehuevi Indian Tribe v. Acting Western Regional Director*, 45 IBIA 81, 86 (2007) (parties may not stipulate to Board’s jurisdiction).