



INTERIOR BOARD OF INDIAN APPEALS

Lovelock Paiute Tribe v. Acting Phoenix Area Director,
Bureau of Indian Affairs

18 IBIA 249 (04/16/1990)

Related Board case:
17 IBIA 223



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

LOVELOCK PAIUTE TRIBE

v.

ACTING PHOENIX AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-80-A

Decided April 16, 1990

Appeal from a denial of a Core Management grant application.

Affirmed.

1. Indians: Financial Matters: Financial Assistance

Core Management grants are made available to small tribes to assist them in establishing and maintaining sound management practices and fiscal control systems.

APPEARANCES: Timothy Meehan, Esq., Carson City, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Lovelock Paiute Tribe seeks review of a June 15, 1989, decision of the Acting Phoenix Area Director, Bureau of Indian Affairs (Area Director; BIA), denying its application for a FY 1989 Core Management grant. For the reasons discussed below, the Board affirms the Area Director's decision.

Background

The Phoenix Area Office was allocated \$385,000 in funding for the FY 1989 Core Management grant program. Twenty-four tribes submitted FY 1989 grant applications to the Area Office, requesting a total of \$1,311,623.

Appellant had been awarded a Core Management grant in FY 1988. It applied for a new grant under the FY 1989 program in the amount of \$35,526.53. Appellant's application received a score of 71 after being reviewed at the agency and area office levels. This score placed it twelfth among the 24 applicants.

By letter dated June 15, 1989, the Area Director informed appellant that its FY 1989 application had been denied. The Area Director stated in part:

You are presently administering a Core Management grant that will expire on June 30, 1989. This grant contains basically the

same grant objectives as those being proposed. There is no information that provides a clear distinction on what the differences are or will be. The Superintendent's assessment did not indicate whether past goals and objectives were completed and if this was an immediate need of the tribe.

Goal and objective no. 4 is not eligible under this program.

[While] the Phoenix Area Office Core Management guidelines and the regulations in 25 CFR [Part] 278 allow for continuation of approval for multi-year grant program, we must ensure there is evidence that progress is being made. We must avoid funding of ongoing programs when there is no progress being made. Awarding of continuation of multi-year grant programs [is] contingent upon (1) a grantee's satisfactory performance (objectives are being completed) and, (2) the availability of funds.

* * * * *

Your program is not an approved multi-year program and therefore, did not meet the priority one ranking. While it met the priority two ranking, which would have enabled the application to be funded, the problems identified above, plus a number of other eligible priority one applications prohibited the approval of your application. Priority was also given to first time applicants showing immediate need.

The Board received appellant's notice of appeal from this denial on August 14, 1989. Appellant stated that it received the Area Director's decision on July 5, 1989; its notice of appeal was postmarked August 10, 1989. The Board therefore dismissed the appeal as untimely. 17 IBIA 223. 1/

On September 7, 1989, the Board received notice from the Superintendent, Western Nevada Agency, BIA, that agency staff had incorrectly advised appellant to file its notice of appeal with the Area Director rather than the Board and that appellant had filed a timely notice of appeal with the Area Director. On September 11, the Board received a petition for reconsideration from appellant. The Board reinstated the appeal on September 11, upon finding that the erroneous information provided by agency staff had caused appellant to file its appeal incorrectly.

1/ The Board's regulation at 43 CFR 4.332(a) provides that "[a] notice of appeal shall be * * * filed with the Board * * * within 30 days after receipt by the appellant of the decision from which the appeal is taken. A notice of appeal not timely filed shall be dismissed for lack of jurisdiction." The Area Director's decision correctly informed appellant that its notice of appeal must be mailed to the Board within 30 days of its receipt of the decision.

By letter dated September 26, 1989, the Area Director informed appellant that additional funding had become available and that appellant's application would be funded in the amount of \$17,681. 2/

Appellant filed a brief on appeal, stating that it had decided to continue its appeal because the funding it received was only approximately one-half of the amount it had requested. The Area Director did not file a brief .

Discussion and Conclusions

Appellant argues that (1) the Area Director applied incorrect legal standards in making his decision; (2) he was arbitrary and capricious; (3) his decision is not supported by substantial evidence; and (4) he failed to follow the governing regulations.

[1] Appellant contends that the Area Director applied incorrect legal standards in holding that one of the goals and objectives described in appellant's application, *i.e.*, "To complete total assessment of tribal constitution and bylaws revision by end of award period," was "not eligible under this program." Appellant argues that the purposes for which Core Management grants may be sought, as identified in 25 CFR 278.21, are broad enough to encompass appellant's stated goal.

A review of this section makes it apparent that Core Management grants are intended to bolster the managerial and financial capabilities of small tribes. 3/ In initiating the core Management program in 1983, BIA stated:

2/ Because this appeal was before the Board on Sept. 26, 1989, the Area Director should have consulted the Board before issuing his decision to fund appellant. It is possible that he was unaware the appeal had been reinstated after having been dismissed. In any event, since his action was favorable to appellant, it constituted harmless error.

3/ 25 CFR 278.21 provides:

"(a) Purposes of grants under this subpart are:

"(1) To supplement the resources of small tribes in order to permit them to address basic or core tribal management needs such as an administrator, bookkeeper and clerical support.

"(2) Through such assistance, enable small tribes to overcome problems associated with governmental operations and the administration of tribal and Federal programs with particular emphasis being placed in financial accountability.

"(3) Contribute to the stability of tribal governments and set a climate for community and economic development and other activity designed to reduce tribal dependency and promote small tribes exercise of self-determination.

"(b) In order to accomplish the purpose of the grants under this subpart, applicants may request assistance to meet their respective management needs in a variety of ways. Some examples of how applicants may use core management grants are as follows:

In order for Indian tribes to properly administer tribal affairs, including Federal programs which they have contracted, they must have competent managerial staff and a sound administrative and fiscal control system. Accordingly [Part 278] also includes Core Management Grants to Small Tribes (populations of 1500 Indian persons or less living on or near their reservation) which will enable such tribes to establish and maintain sound management practices. Tribes of this size have demonstrated the greatest needs in this area and this program is confined to them.

48 FR 32006, 32007 (July 13, 1983). The purposes reflected in 25 CFR 278.21 and the Federal Register preamble to Part 278 are reasonably interpreted as excluding activities such as revision of tribal constitutions and bylaws, which are more political than managerial in nature. Appellant's first argument is therefore rejected.

Appellant's second argument is that the Area Director acted in an arbitrary and capricious manner by establishing funding priorities in his program guidelines, because 25 CFR 278.22 does not authorize him to attach greater significance to some criteria than to others. It also argues that he was arbitrary and capricious in failing to publish the guidelines. The Board addressed these arguments in Yomba Tribal Council v. Acting Phoenix Area Director, 18 IBIA 243, 246-47 (1990), and rejected them. They are also rejected here.

Appellant next argues that the Area Director's decision is not supported by substantial evidence because, contrary to the Area Director's conclusion, appellant's FY 1989 goals and objectives are not "basically the same" as its FY 1988 goals and objectives. Appellant notes that the Superintendent's transmittal of appellant's application states: "Although the objectives appear to be similar they do differ from last years grant and the continuity of the program is definitely needed." The Board finds

fn. 3 (continued)

"(1) Employ an overall programs administrator and necessary support staff if applicant operates several Federal programs and lacks financial resources to employ such personnel.

"(2) Employ a bookkeeper when a multi-tribal organization which operates several Federal programs experiences problems because of untrained bookkeeping staff .

"(3) Hire a 'circuit rider' accountant to establish and maintain a financial management system for each member tribe of a multi-tribal organization. A large multi-tribal organization may establish a 'circuit rider office' staffed by an accountant and necessary support staff.

"(4) Employ a tribal planner or economic development specialist if the tribe has substantial, identifiable undeveloped resources and does not have funds to plan for the development of such resources.

"(5) Employ staff to address specific and/or identifiable managerial problems under a one time only grant.

"(6) Retain an accountant to perform annual independent audits."

that the two lists are similar and that the Area Director was not unreasonable in concluding that they were "basically the same." 4/

Appellant's final argument is that the Area Director violated 25 CFR 278.25(b)(2) by failing to act on its application within 15 working days of the date the last staff reviewer signed appellant's rating sheet. The Board addressed and rejected this argument in Yomba Tribal Council, 18 IBIA at 245-46.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Phoenix Area Director's June 15, 1989, decision is affirmed.

//original signed
Anita Vogt
Administrative Judge

I concur:

//original signed
Kathryn A. Lynn
Chief Administrative Judge

4/ Appellant contends that the Area Director's Sept. 26, 1989, decision to award appellant partial funding was an admission of error with respect to appellant's first three arguments. It does not appear from the record, however, that the Area Director's decision to fund appellant was related to this appeal. Rather, his decision appears to have reflected primarily his awareness of appellant's need for the grant. Another tribe whose application had initially been denied was also granted funding in September after the additional funds became available.