



INTERIOR BOARD OF INDIAN APPEALS

Washoe Tribe of Nevada & California v. Phoenix Area Director,
Bureau of Indian Affairs

19 IBIA 190 (02/05/1991)



United States Department of the Interior

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

WASHOE TRIBE OF NEVADA AND CALIFORNIA

v.

ACTING PHOENIX AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 90-104-A

Decided February 5, 1991

Appeal from a denial of a Core Management grant application.

Affirmed.

1. Board of Indian Appeals: Jurisdiction--Indians: Financial Matters:
Financial Assistance

Decisions concerning whether a tribe's application for a Core Management grant should be funded are committed to the discretion of the Bureau of Indian Affairs. In reviewing such decisions, it is not the function of the Board of Indian Appeals to substitute its judgment for that of the Bureau. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion.

2. Indians: Financial Matters: Financial Assistance

Bureau of Indian Affairs technical assistance provides applicants for Core Management grants with an opportunity to receive an advance indication of potential problems with their applications and with guidance in correcting those problems but does not guarantee that applicants who receive assistance will be funded.

3. Indians: Financial Matters: Financial Assistance

In reviewing applications for Core Management grants, the Bureau of Indian Affairs should strive to minimize the effect of the personal judgments of individual reviewers.

APPEARANCES: Vernon Wyatt, Chairman, Washoe Tribe of Nevada and California, and Rodney Clarke, Esq., Gardnerville, Nevada, for appellant; Merle Eugene Zunigha, Acting Phoenix Area Director, Bureau of Indian Affairs, for appellee.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Washoe Tribe of Nevada and California seeks review of an April 27, 1990, decision of the Acting Phoenix Area Director, Bureau of Indian Affairs (Area Director; BIA), denying its application for a FY 1990 Core Management grant. For the reasons discussed below, the Board affirms the Area Director's decision.

Background

The Phoenix Area Office was allocated \$235,000 in funding for the FY 1990 Core Management grant program. Twenty-five tribes submitted FY 1990 grant applications to the Area Office, requesting a total of \$1,125,612. After reviewing and ranking the applications based upon the scores given by a panel of reviewers for each of eight criteria, the Area Director awarded grants to the seven highest ranking applicants.

Appellant's score of 62.5 placed it twenty-fourth on the list. By letter of April 27, 1990, the Area Director informed appellant that its application did not receive a high enough score to be funded.

Appellant's notice of appeal from this decision was received by the Board on June 7, 1990. Appellant was granted two extensions of time for filing its opening brief; the Area Director was granted one extension.

Discussion and Conclusions

[1] In Lower Elwha Tribe v. Portland Area Director, 18 IBIA 50, 51 (1989), the Board discussed its role in reviewing BIA decisions concerning whether a particular Core Management grant application should be funded. These decisions, the Board held, are committed to the discretion of BIA. The Board stated: "In reviewing such decisions it is not the Board's function to substitute its judgment for that of BIA. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion." Accord, e.g., Caddo Indian Tribe of Oklahoma v. Acting Anadarko Area Director, 18 IBIA 63 (1989); Stillaguamish Tribe v. Portland Area Director, 18 IBIA 89 (1989).

Appellant contends that (1) it received inadequate technical assistance in the preparation of its application; (2) the reviewers were prejudiced by the belief of the Area Self-Determination Officer, who served as Chairman of the Area Core Management Review Committee, that appellant did not meet the basic eligibility criteria; (3) the Superintendent's conclusion that appellant met eligibility requirements should have been final; (4) appellant was denied due process because it was not given notice and opportunity to be heard concerning its eligibility prior to rating; and (5) the Self-Determination Officer was biased against appellant because of past conflicts.

[2] Appellant's argument that it received inadequate technical assistance is refuted by its own filings in this appeal. Appellant submits affidavits from four tribal members or employees stating that they

attended a workshop conducted by the Western Nevada Agency for the purpose of providing technical assistance in the preparation of Core Management grant applications. Appellant does not contend that the workshop was unhelpful; nor does it identify what further technical assistance it expected but did not receive. The Area Director contends that, in addition to the workshop training, appellant received further technical assistance through the agency's preliminary review of its application, during which the application was found to be incomplete and returned to the tribe for completion prior to submission to the Area Office. The Board finds that appellant has not shown that BIA's technical assistance was inadequate. Cf. Nambé Pueblo v. Deputy Assistant Secretary--Indian Affairs (Operations), 13 IBIA 53, 56 (1984), concerning grants under the Indian Child Welfare Act, in which the Board noted that BIA technical assistance "provides an opportunity for the applicant to receive an advance indication of any potential problems with its application and guidance in attempting to correct those problems" but "does not guarantee that the application will be accepted."

Appellant's remaining arguments involve the issues of its threshold eligibility for a Core Management grant and its relations with the Self-Determination Officer.

Under 25 CFR 278.22(a)(1), in order "[t]o be eligible for a grant as a small tribe, a tribe must have a population of at least 400 and not more than 1500 Indian people living on or near the reservation." At the time of its application, appellant's membership roll listed 1,715 members. Its Core Management grant application included a March 1, 1990, certification from its Secretary-Treasurer stating: "Given the number of individuals who have relinquished tribal membership through death or choice, I am certain that when said individuals are removed from the roll, our total will meet the Core Management eligibility standards of 1500 tribal members or less." The Superintendent's memorandum transmitting the application to the Area Office stated that appellant met all eligibility criteria.

Evidently, however, the Self-Determination Officer expressed uncertainty about appellant's eligibility. Upon learning of his concern, the Secretary-Treasurer submitted a second certification, dated April 23, 1990, stating:

There are 1,715 members total listed on the Washoe Tribal enrollment list. This morning a count of all deceased and relinquished tribal members listed on our roll was conducted. Two hundred and twenty-four (224) individuals were counted. Accordingly, our preliminary count of total tribal enrollment is 1,491.

In addition, I have been advised that the standards for Core management eligibility include those who live on or near the reservation only. Accordingly, I can certify with absolute certainty that our "on or near" reservation count of tribal members is not even near a total of 1,500.

Appellant contends that the Self-Determination Officer's doubts concerning its eligibility improperly influenced the reviewers who rated its application.

On April 19 and 20, 1990, appellant's application was rated by two reviewers, one of whom gave appellant a score of 56.5 and the other a score of 68.5. ^{1/} The reviewer who gave appellant the lower score wrote on the first page of the rating form: "Does the tribe meet the eligibility standard of 1500 tribal members or less. Check statement on page 8 [Secretary-Treasurer's March 1, 1990, certification] - 'I am certain that when said individuals are removed from the roll etc.' [appellant] will meet eligibility standard." This same reviewer gave appellant a score of zero for the criterion "Eligibility," ^{2/} which was one of eight criteria on which the applications were rated, and commented: "Tribe did not submit criteria or application being reviewed is incomplete." Appellant submits a copy of this completed rating form in support of its argument concerning improper influence.

Appellant also contends that the Self-Determination Officer was biased against it. In support of this allegation, appellant submits an affidavit from its attorney, who is also its tribal manager, concerning a telephone conversation between the Acting Superintendent and the Self-Determination Officer, in which appellant's eligibility was discussed. Further, appellant submits an affidavit from its Tribal Chairman Elect, who states that he was aware of friction between the Self-Determination Officer and appellant's

^{1/} The names of these reviewers are not included in the record. Appellant unsuccessfully sought their names through a Freedom of Information Act request. In this appeal, appellant argues that the Area Director's refusal to release the names of the reviewers allows for an inference that the Self-Determination Officer was involved in the ratings.

^{2/} This criterion, as described on the rating form, is actually more concerned with an applicant's need for a grant than with its eligibility, as is apparent from the factors listed under it:

- "- A lack of financial resources for all other sources to meet its core administrative or management needs. (4 PTS)
- "- Audit reports indicate serious financial management problems. (3 PTS)
- "- Largely dependent on federal grants or contracts for programs, services, income and job opportunities. (2.5 PTS)
- "- Inability to plan and develop identifiable reservation resources. (2 PTS)
- "- Inability to develop acceptable grant or contract applications. (1.5 PTS)
- "- Problems in achieving current or past contract or grant program goals and objectives. (1 PT)
- "- Delinquency in making progress or financial status reports. (0-5 PT)
- "- Failure to close out program grants or contracts which are no longer in operation. (0.5 PT)"

former Tribal chairman during the time the Self-Determination Officer was employed at the Western Nevada Agency, at which time he (the Tribal Chairman Elect) was serving as Tribal Vice-Chairman.

The Area Director argues that appellant was deemed eligible for a Core Management grant and that its application would not have been rated at all if appellant had been considered ineligible. He states that the Self-Determination Officer was not one of the two reviewers who rated appellant's application. He disputes the Tribal Chairman Elect's affidavit, denying that the Self-Determination Officer was employed at the Western Nevada Agency at the time the Tribal Chairman Elect was serving on the Tribal Council.

There are factual issues raised in this appeal which cannot be resolved on the present record. The Board finds, however, that it is not necessary to resolve these issues in order to decide the appeal. Giving appellant the benefit of any doubt that is raised by the rating form completed by the reviewer who gave appellant a score of 56.5, the Board will assume, for purposes of this decision, that the reviewer was influenced by the Self-Determination Officer's opinion about appellant's eligibility. 3/ There is no evidence at all, however, that the second reviewer was so influenced. The second reviewer gave appellant 68.5 points overall and 9.5 points, out of a possible 15, for eligibility. If the first reviewer's score is disregarded, and only the second reviewer's score considered, that score is still far below the 82.75 score of the lowest-ranking tribe to be funded. 4/ In fact, a score of 68.5 would have moved appellant up only two places, into a tie with the tribe which ranked twenty-second. Given the substantial difference between appellant's score and the minimum score required to be funded, the Board concludes that appellant would not have been funded even if another reviewer had been substituted for the reviewer who gave appellant a score of 56.5. Therefore, the Board affirms the Area Director's decision.

[3] Even though it affirms the Area Director's decision, however, the Board notes that the record in this case indicates that the Area Office procedures were not as conducive as they might have been to the control of

3/ As noted above, this reviewer expressed a question about appellant's threshold eligibility and gave appellant a score of zero for eligibility. The Board recognizes that the reviewer may well have raised the question of appellant's threshold eligibility entirely on his/her own initiative, given the equivocal language of appellant's initial certification, which was included in the materials reviewed. It appears further that the reviewer recognized the distinction between threshold eligibility and the eligibility criterion described on the rating form.

4/ In connection with this appeal, appellant states that it requested two non-tribal members, experienced in grant applications, to rate the 25 applications, using the checklist employed by BIA. Both rated appellant's application second among the 25 applications. Affidavits from these individuals are included with appellant's brief. Although one of appellant's reviewers does not state the score he gave appellant, the other states that she gave appellant a score of 82.

