



INTERIOR BOARD OF INDIAN APPEALS

James Greendeer v. Minneapolis Area Director, Bureau of Indian Affairs

22 IBIA 91 (06/10/1992)

Related Board cases:

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United States Department of the Interior

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

JAMES C. GREENDEER

v.

MINNEAPOLIS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 91-101-A

Decided June 10, 1992

Appeal from a decision declining to recognize the removal from office of three members of the Wisconsin Winnebago Business Committee.

Affirmed.

1. Indians: Tribal Government: Constitutions, Bylaws, and Ordinances--Indians: Tribal Powers: Tribal Sovereignty

In furthering the doctrines of tribal sovereignty and self-determination, the Department of the Interior has recognized the right of Indian tribes initially to interpret their own governing documents and to resolve their own internal disputes, and, in administering the government-to-government relationship with a tribe, has given deference to that tribe's reasonable interpretation of its own laws.

2. Indians: Civil Rights: Indian Civil Rights Act of 1968--Indians: Tribal Government: Constitutions, Bylaws, and Ordinances

A tribal action which deprives an individual of procedural rights set out in the tribal constitution violates the due process requirement of the Indian Civil Rights Act, 25 U.S.C. § 1302 (1988).

3. Indians: Civil Rights: Indian Civil Rights Act of 1968--Indians: Tribal Government: Officers

In discharging its government-to-government relationship with an Indian tribe, the Bureau of Indian Affairs has the authority and the responsibility to decline to recognize a removal of tribal officials when the removal action was tainted by a violation of the Indian Civil Rights Act, 25 U.S.C. § 1302 (1988).

APPEARANCES: Jeff Scott Olson, Esq., Madison, Wisconsin, for appellant; Mark A. Anderson, Esq., Office of the Field Solicitor, U.S. Department

of the Interior, Twin Cities, Minnesota, for the Area Director; Kurt V. BlueDog, Esq., and Andrew M. Small, Esq., Bloomington, Minnesota, for John Mann, Parmenton Decorah, and Dwight Steele.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant James C. Greendeer, a member of the Wisconsin Winnebago Business Committee (WWBC), seeks review of an April 25, 1991, decision of the Minneapolis Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to recognize the validity of a Wisconsin Winnebago General Council action purporting to remove from office three members of the WWBC, John Mann, Parmenton Decorah, and Dwight Steele. ^{1/} For the reasons discussed below, the Board affirms the Area Director's decision.

Background

Article VI of the Wisconsin Winnebago tribal constitution, concerning removal from office, provides:

Section 1. (a) The [WWBC] by a two-thirds (2/3) vote may remove any member of the [WWBC] from office for malfeasance, for dereliction or neglect of duty, for unexcused failure to attend three regular meetings in succession, for conviction of a felony in any county, State or Federal court while in office or for any willful and persistent misconduct reflecting on the dignity and integrity of the [WWBC] or tribe or failure to comply with any provisions of the constitution and bylaws. Notice in writing stating the charges shall be served upon the accused by the [WWBC] and he shall have 30 days to answer said charges in person or in writing.

(b) Any member of the tribe may prefer charges by written notice stating any of the reasons for removal in Section 1(a) of this article against any member or members of the [WWBC] supported by the signatures of at least 20 percent of the eligible voters of the [Tribe]. The notice must be submitted to the [WWBC]. The [WWBC] shall consider such written notice and take the following action: The accused shall be given thirty (30) days from the delivery of notice stating the charges within which to answer the notice and to request a hearing before the [WWBC] or before a special meeting of the tribe in general council called

^{1/} The WWBC is designated as the governing body of the Wisconsin Winnebago Tribe (Tribe) in Article IV, section 1, of the tribal constitution. The General Council apparently consists of all voting members of the Tribe. It is given specific powers in matters concerning removal of individuals from tribal membership, Article II, section 3, and removal of WWBC members from office, Article VI, section 1(b).

This is one of three appeals to the Board which concern conflicts within the Tribe. See also Decorah v. Minneapolis Area Director, 22 IBIA 98 (1992); Decorah v. Minneapolis Area Director, 22 IBIA 32 (1992).

for the purpose of the hearing. The hearing will be held before the [WWBC] or the general council within thirty (30) days from date of receipt of request for a hearing. The decision of the [WWBC] or the general council whichever is hearing the case shall be final. When the [WWBC] does not act a general council shall be called for final decision.

Sec. 2. When a special meeting of the general council is not initiated by the [WWBC], the call shall be by written notice (petition) which states the charges against any member of the [WWBC] supported by the signatures of no less than 20 percent of the eligible voters of the [Tribe]. The call shall specify the time and place of the hearing, and it shall be mandatory on the [WWBC] to issue the call at the time and place specified in the petition.

Sec. 3. In the event the [WWBC] fails to call a special general council meeting as required by Section 2 of this article, the membership may by petition supported by the signatures of no less than 20 percent of the eligible voters of the [Tribe] request the Secretary of the Interior or his authorized representative to call a special general council meeting for the purpose of a hearing. The Superintendent shall certify that the persons signing the petition are qualified voters of the tribe.

Prior to October 3, 1990, a petition requesting a special meeting of the General Council for the purpose of removing Mann, Decorah, and Steele from the WWBC was signed by 499 Wisconsin Winnebago tribal members. The petition stated that the special meeting was requested under Article VI, section 2, of the constitution and specified a time and place for the meeting. Appellant states that the petitioners presented the signed petition to the Tribal Chairman, who intended to present it at a meeting of the WWBC scheduled for October 13, 1990. However, the October 13 meeting failed to reach a quorum and no action could be taken. The Tribal Chairman called a special General Council meeting for November 3, 1990. At the November 3 meeting, the General Council voted, 294 to 2, to remove Mann, Decorah, and Steele from office.

The removal action followed a period of several months of increasing turmoil within the Tribe, during which the divisions within the WWBC reached the point where business could no longer be transacted. On November 21, 1990, Mann and Decorah wrote to the Superintendent, stating: "We are the [WWBC] and we request that you, immediately, make a decision regarding the 'removal issue' within the [Tribe] as we explained to you at our meeting in your office on Monday. The issue cannot be avoided any longer. Please respond to this request as soon as possible."

The Superintendent responded on November 30, 1990, in a letter to the Tribal Chairman:

In conducting our review of the information available to us, we have concluded certain improper actions have been taken

by both tribal factions involved with this dispute. The immediate issue that needs resolution is the question of the membership on the [WWBC] of Parmenton Decorah, John Mann and Dwight Steele. These three men were removed from office as the result of a "petition" for their removal. However, in our view the content of that document does not comport with the requirements of Article VI of the Wisconsin Winnebago Tribal Constitution.

The petitioners failed to recognize the necessity for invoking Article VI Section 1(b) prior to invoking Section 2 of that Article. As we stated in our letter of October 26, 1990 . . . "all efforts should be exhausted, in accordance with Article VI, section 1 of the Tribe's Constitution, before applying Section 2 or 3 in resolution of your concerns."

The petition deviates from the requirements of Article VI, Section 1(b). By doing so the petition ignored the rights of the accused. * * *

To have invoked Section 2 would have first required the [WWBC] not to act on the petition. However, the petition called first for the General Council to convene, thereby attempting to bypass the due process protections of section 1(b). The procedures under this section were not allowed to work. The November 3, 1990 meeting may have been properly called, but the business before it is invalid on the same basis as the above. Therefore we determine that Parmenton Decorah, John Mann and Dwight Steele were not removed and because of that they are recognized as still being members of the [WWBC].

In the same letter, the Superintendent also discussed the removal of another WWBC member under a different set of circumstances. No appeal was filed from the Superintendent's conclusion concerning that member.

Tracy Thundercloud, a member of the WWBC, filed a notice of appeal from the Superintendent's letter as it concerned the removal of Mann, Decorah, and Steele. Later, a statement of reasons was filed by an attorney on behalf of "a group of Wisconsin Winnebago members known as the Ho-Chunk Voice for Fair Government" (Statement of Reasons before the Area Director at 1).

On April 25, 1991, the Area Director affirmed the Superintendent's decision.

Appellant's appeal from the Area Director's decision was received by the Board on June 3, 1991. Briefs were filed by appellant; the Area Director; and Mann, Decorah, and Steele.

Discussion and Conclusions

[1] Resolution of this appeal requires interpretation of Article VI of the Tribe's constitution. On a number of occasions, the Board has

stated that, in resolving internal disputes, a tribe has the right initially to interpret its own governing documents and that the Department must give deference to a tribe's reasonable interpretation of its own laws. The Board has also stated, however, that the Department has both the authority and the responsibility to interpret tribal law when necessary to carry out the government-to-government relationship with the tribe. See, e.g., Reese v. Minneapolis Area Director, 17 IBIA 169, 173 (1989), and cases cited therein.

In this case, no tribal interpretation of Article VI appears in the record. Nor has any party argued that such an interpretation exists. The present members of the Tribe's governing body are split on the matter. Appellant represents one of two factions into which the WWBC has become divided; Mann, Decorah and Steele represent the other. They put forth diametrically opposed interpretations of Article VI. The Board concludes that there is at this time no tribal interpretation of Article VI to which the Department can give deference.

Further, it is apparent that this is a case where some BIA action was required in order to carry out the government-to-government relationship with the Tribe. BIA must know whether a tribal governing body is properly constituted in order to know whether the actions of the body are valid--whether, for instance, it has the authority to enter into P.L. 93-638 contracts with BIA. In this case, determination of whether the tribal governing body was properly constituted required a decision as to whether Mann, Decorah, and Steele had properly been removed from office as WWBC members. This in turn required an interpretation of Article VI of the Tribe's constitution.

The dispute as to Article VI concerns the extent to which the procedures in section 1 (b) must be complied with prior to proceeding to the procedures in section 2. The Area Director and Mann, Decorah, and Steele contend that the petitioners improperly bypassed the procedures in section 1 (b). As described by the Area Director, the procedures required when a removal is initiated by petition are:

Following submission of the notice and the supporting petition to the [WWBC], the [WWBC] must give notice to the accused. The member threatened with removal then has thirty (30) days from receipt of the notice to: (1) answer and (2) request a hearing before either the [WWBC] or a General Council. No matter which hearing forum is chosen, the hearing is to be held within thirty (30) days of the request for a hearing.

Next, in the event an accused has asked for a hearing before the General Council and the [WWBC] has not called a General Council into session for the hearing, then pursuant to Article VI, Section 2, the petitioners have the opportunity to mandate the [WWBC] to call the General council session at a specific time and place. (Failure of the [WWBC] to act after a hearing before it also can trigger the Section 2 petitioning process.) This constitutional provision protects both the accused who has

requested a hearing and the petitioners who have initiated the removal process but are stymied by inaction.

Finally, if the [WWBC] fails to obey the mandate to call a General Council for the hearing, then section 3 of Article VI allows the qualified voters of the tribe to petition the Secretary to call a specific General Council meeting for the purpose of a hearing.

(Area Director's Brief at 2-3).

Mann, Decorah, and Steele agree with this description of the procedures required by Article VI. They emphasize in particular that, under section 1 (b), the choice of a forum for the hearing is given to the accused. They contend that they were given neither proper notice nor a proper hearing.

Appellant contends that proper procedures were followed--that Mann, Decorah, and Steele were served with notice of the petition on October 3, 1990, 30 days prior to the General Council meeting; and that the petition was presented to the Tribal Chairman, who made a good faith effort to present the matter to the WWBC for action but was prevented from doing so by the lack of a quorum. Appellant further contends that Article VI, section 2, was intended to cover circumstances such as were present in this case, when the WWBC is unable to take any action at all because of a failure to obtain a quorum.

It is apparent from the language of the petition itself that the petitioners fully intended to bypass Article VI, section 1 (b), and invoke only Article VI, section 2. Appellant contends that the wording of the petition is not critical as long as correct procedures were followed. The Board agrees that, if correct procedures were followed, a defect in the language of the petition might well be cured. It appears, however, that the intent reflected in the language of the petition was realized in the course of events that actually took place. The WWBC was in fact bypassed, as were all the procedures set out in section 1 (b), in particular, the procedures concerning the rights of an accused WWBC member.

Although appellant contends that Mann, Decorah, and Steele were given notice of the petition on October 3, 1990, he presents no proof whatsoever that such notice was given. Further, it is questionable whether service of the petition itself, even if proved, would comply with the notice requirements of section 1 (b), inasmuch as the petition failed to provide notice of the section 1 (b) procedures. The Board need not determine, however, whether notice of the petition alone would have been adequate. The burden was on appellant to show error in the Area Director's decision by showing, *inter alia*, that proper notice was given. By failing even to show that the petition itself was served on Mann, Decorah, and Steele, appellant has clearly failed to carry his burden.

[2, 3] Appellant appears to contend that, where section 2 is invoked the rights of accused individuals established under section 1 (b) may be

dispensed with. The Board is unable to accept such a result. Whatever accommodations must be made to arrive at a viable interpretation of the constitutional language, a short-circuiting of the rights of individuals cannot be one of them. As a matter of Federal law, *i.e.*, the Indian Civil Rights Act (ICRA), 25 U.S.C. § 1302 (1988), Indian tribes are required to afford their members due process of law. Where, as here, a tribal member is deprived of procedural rights set out in the tribal constitution, he is also deprived of due process of law within the meaning of ICRA. BIA has the authority and the responsibility to decline to recognize the results of tribal actions when those results are tainted by a violation of ICRA. Cf. United Keetoowah Band of Cherokee Indians v. Muskogee Area Director, 22 IBIA 75 (1992).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1. the Minneapolis Area Director's April 25, 1991, decision is affirmed.

//original signed
Anita Vogt
Administrative Judge

I concur:

//original signed
Kathryn A. Lynn
Chief Administrative Judge