



INTERIOR BOARD OF INDIAN APPEALS

Wallace Wells, Jr., et al. v. Aberdeen Area Director, Bureau of Indian Affairs

24 IBIA 142 (08/19/1993)

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

WALLACE W. WELLS, JR., RANDY SHIELDS, & LEONARD PEASE, JR.

v.

ACTING ABERDEEN AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 93-32-A

Decided August 19, 1993

Appeal from a decision concerning actions of the Crow Creek Sioux Tribal Council.

Affirmed.

1. Indians: Tribal Government: Constitutions, Bylaws, and Ordinances

Tribal legislation is not subject to review or approval by the Bureau of Indian Affairs unless a Federal statute or the tribal constitution so provides.

2. Indians: Tribal Government: Constitutions, Bylaws, and Ordinances

Even where Bureau of Indian Affairs involvement in tribal matters is required by Federal or tribal law, or is necessary to implement the government-to-government relationship, the Bureau must act in such a way as to avoid unnecessary interference with tribal self-government.

3. Indians: Tribal Government: Constitutions, Bylaws, and Ordinances--
Indians: Tribal Government: Judicial System

Intra-tribal controversies concerning the validity of tribal council actions are properly resolved in tribal courts or other tribal forums.

APPEARANCES: James D. Taylor, Esq., Mitchell, South Dakota, for appellants; Jean W. Sutton, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Twin Cities, Minnesota, for the Acting Area Director.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellants Wallace W. Wells, Jr., Randy Shields, and Leonard Pease, Jr., seek review of an October 28, 1992, decision of the Acting Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to declare certain resolutions of the Crow Creek Sioux Tribal Council (Council)

null and void. For the reasons discussed below, the Board affirms the Area Director's decision.

Background

Appellants are former members of the Council. They were removed from office on April 9, 1991, by Council action. They challenged their removal in the Crow Creek Sioux Tribal court, which found that they had been removed from office without just cause. Wells v. Blaine, Civ. 91-42 (Crow Creek Sioux Tribal Court, Aug. 14, 1991). Following affirmance of the tribal court decision by the Northern Plains Intertribal Court of Appeals (Wells v. Blaine, CV-05-05-91, Sept. 25, 1991), appellants were reinstated in their Council positions. They are no longer members of the Council, however, because a new Council was elected on April 16, 1992.

On January 20, 1992, Wells filed suit in Federal district court against the Department of the Interior, the Crow Creek Sioux Tribe, and four members of the Council. He sought a declaration that certain Council actions taken during the period appellants had been removed from office were invalid. The court dismissed the complaint against the Department for failure to exhaust administrative remedies and dismissed the complaint against the tribal defendants for lack of subject matter jurisdiction. Wells v. United States Department of the Interior, Civ. 92-3003 (D.S.D. Aug. 28, 1992). 2/

On September 14, 1992, appellants submitted a document entitled "Notice of Appeal - 25 CFR 2.8" to the Crow Creek Agency, BIA. The document was addressed to the Area Director and was therefore transmitted to him by the agency. 3/ On October 28, 1992, the Area Director issued the decision on appeal here. His decision states:

My understanding of your letter is that you are requesting that this office declare all of the resolutions passed during that time period [April 4, 1991 through September 25, 1991] null and void. You allege that the actions were taken during the period of time in which [appellants] were removed from the council or during council meetings at which a quorum was not present.

1/ The court stated:

"According to Wells' complaint, the actions he seeks to have set aside include, but are not limited to, discharge and hiring of tribal employees, entry into loan agreements on behalf of the tribe, and adoption of various resolutions relative to tribal government, business and affairs." (Slip Opinion at 2 n. 2).

2/ An earlier suit filed in Federal court by all three appellants was dismissed with appellants' agreement. Wells v. Lujan, Civ. 91-3018 (D.S.D. Oct. 11, 1991).

3/ On Oct. 14, 1992, appellants filed a notice of appeal with the Board, alleging that the Area Director had failed to respond to their appeal to him. The Board dismissed the appeal as premature. Wells v. Aberdeen Area Director, 23 IBIA 7 (1992).

This office is not going to declare those actions null and void. The issue of whether those actions were properly or improperly taken is moot, that is to say that the issue no longer has any practical effect, the issue has ceased to exist.

A new tribal council and a new chairman were elected last spring at Crow Creek. That council had and continues to have the authority to revoke, rescind, modify or reaffirm any of the actions taken during that time if they are dissatisfied with those actions or if they believe that the actions were taken improperly. That new council, the elected representatives of the people of the Crow Creek Reservation, have not chosen to take any of the actions. Therefore, it appears that the elected tribal leadership chooses to abide by the decisions and resolutions passed by the council during the period of time at issue.

Additionally, a tribal court forum is available to you or any other tribal member who believes that actions taken by this council or preceding councils were improper or invalid. This office is not in a position to declare the actions taken by a tribal council over a period of almost six months invalid.

(Oct. 28, 1992, Decision at 1-2).

Appellant's notice of appeal from this decision was received by the Board on November 30, 1992. Both appellants and the Area Director filed briefs. 4/

Discussion and Conclusions

In their opening brief, "[a]ppellants urge that all actions undertaken and Tribal Council resolutions adopted from April 9 through November 27, 1991, be reviewed and declared void from their inception" (Appellants' Opening Brief at 6). They contend that they have been unable to obtain relief in tribal court because "the Tribal Court system was at a stop, having had eleven (11) judges in eleven (11) months, and Appellants were wholly unable to obtain even a date for an initial hearing in their matter, much less any opportunity for actual redress of their grievances." Id. Further, they contend that their appeal has not been made moot by the election of a new Council because "[t]he mere passage of time and a 'changing of the guard' does not make what was incorrect, improper, and ineffective initially correct, proper, and effective." Id.

4/ Appellants did not file a reply brief with the Board, although they filed a statement certifying that they had served a reply brief on the other parties. Appellants' attorney was advised by telephone that the Board did not receive the reply brief. Although counsel stated that he would send the Board a copy of the brief, no copy has been received by the Board.

Appellants do not specify the authority under which they would have the Area Director undertake an across-the-board review of Council actions. They do not contend that any of the enactments are subject to BIA approval either by Federal statute or under the tribal constitution. Rather, they appear to assume that BIA has some inherent authority to review Council actions and enactments. The Board is not aware of any such authority

[1] Tribal ordinances and resolutions are not subject to BIA review as a matter of course. See Kerr-McGee Corp. v. Navajo Tribe, 471 U.S. 195 (1985). Further, because BIA review of tribal enactments, even when required by statute or a tribal constitution, is an intrusion into tribal self-government, that review must be undertaken in such a way as to avoid unnecessary interference with the tribe's right to self-government. Ute Indian Tribe of the Uintah and Ouray Reservation v. Phoenix Area Director, 21 IBIA 24, 28 (1991), citing Wheeler v. U.S. Department of the Interior, 811 F.2d 549, 553 (10th Cir. 1987). The wholesale review sought by appellants would appear to be a particularly egregious intrusion, especially in light of the apparent lack of any authority whatsoever for such an undertaking.

[2] Both the Federal courts and the Board have recognized that there are times when, despite the lack of specific statutory authority, BIA must make determinations concerning intra-tribal disputes, most often those disputes involving tribal elections or the removal of tribal officials from office. BIA's authority to make these determinations derives from its responsibility to carry out the government-to-government relationship and its concomitant need to know whether a tribal governing body is properly constituted and therefore qualified to represent the tribe in dealings with BIA. E.g., Goodface v. Grassrope, 708 F.2d 335 (8th Cir. 1983); Greendeer v. Minneapolis Area Director, 22 IBIA 91 (1992). Even in these circumstances, however, BIA must avoid unnecessary intrusions into tribal self-government. It must, for instance, defer to a resolution of an election dispute reached in a tribal forum. Wheeler, supra; Smalley v. Eastern Area Director, 18 IBIA 459 (1990).

In Decorah v. Minneapolis Area Director, 22 IBIA 98, 102 (1992), the Board stated that where

the government-to-government relationship does not require that BIA render a particular decision, for which an interpretation of tribal law must be made, BIA should exercise restraint in undertaking to interpret tribal law, in order to avoid conflict with the well-established Federal policy encouraging tribal self-determination and respecting the rights of tribes to interpret their own laws.

Appellants do not show that BIA's ability to carry out the government-to-government relationship is hampered in any way by the fact that it has not reviewed the actions and resolutions at issue here. If BIA were to undertake a review for the purpose appellants urge, i.e., to determine the

validity of the Council actions, it would not only have to discover some authority for the review, but would also be required to interpret tribal law. Under the principles discussed in Board cases, BIA must refrain from interpreting tribal law in circumstances such as are present here.

[3] Moreover, appellants have a tribal forum. Although they now allege that they face obstacles in making use of the tribal court system, they appear to have had no problem at all when they litigated their earlier case in the trial and appellate levels of that system. Turnover in tribal judges and/or difficulty in securing a court date might result in a delayed tribal court decision, but appellants can hardly complain of delay when they themselves have caused substantial delay by taking their case to two inappropriate forums, first to Federal court and then to BIA and this Board, rather than to the tribal court. ^{5/}

"Respect for tribal courts is a well-recognized aspect of the Federal Government's commitment to tribal self-determination." Martin v. Billings Area Director, 19 IBIA 279, 291, 98 I.D. 200, 206 (1991). See also cases cited in Martin. BIA would be in derogation of this solemn commitment were it to purport to exercise jurisdiction over a matter which belongs in a tribal forum.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's October 28, 1992, decision is affirmed.

//original signed

Anita Vogt
Administrative Judge

I concur:

//original signed

Kathryn A. Lynn
Chief Administrative Judge

^{5/} It is possible that appellants attempted to bypass the tribal court because of a stipulation signed by Wells in what appears to have been further proceedings in appellants' earlier tribal court litigation. The stipulation is dated Nov. 18, 1991, and states, inter alia, "All parties are hereby barred from bringing or introducing any legal action arising out of any Tribal Council decision from January 1, 1991 to November 22, 1991." The case was dismissed on Nov. 18, 1991, in an order which refers to the stipulation. The effect of the stipulation on any further litigation initiated by appellants is a matter for the tribal court to decide.