



INTERIOR BOARD OF INDIAN APPEALS

Interim Executive Council of the United Auburn Indian Community
of the Auburn Indian Rancheria v. Acting Sacramento Area Director,
Bureau of Indian Affairs

28 IBIA 197 (09/19/1995)



United States Department of the Interior

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

INTERIM EXECUTIVE COUNCIL	:	Order Docketing and Dismissing
OF THE UNITED AUBURN INDIAN	:	Appeal
COMMUNITY OF THE AUBURN	:	
INDIAN RANCHERIA,	:	
Appellant	:	
v.	:	Docket No. IBIA 95-161-A
	:	
ACTING SACRAMENTO AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	September 19, 1995

On September 15, 1995, the Board of Indian Appeals (Board) received a notice of appeal from the Interim Executive Council of the United Auburn Indian Community of the Auburn Indian Rancheria (appellant), through counsel, Dennis G. Chappabitty, Esq., Sacramento, California. Appellant seeks review of an August 15, 1995, decision of the Acting Sacramento Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning a tribal recall election conducted on March 15, 1995.

The Area Director's decision remanded the matter to the Superintendent, Central California Agency, BIA, for further consideration of 25 U.S.C. § 13001-4, part of the Auburn Indian Restoration Act, Title II, P.L. 103-434, 108 Stat. 4533 (Oct. 31, 1994). The decision states: "Both the appellant or appellee shall have 30 days from the date of receipt within which to respond to this decision. This office will render a final decision 60 days from the date of receipt of this letter." No appeal information was given.

Appellant concedes that the Area Director did not issue a final decision, but argues that, because the individual who appealed the Superintendent's decision to the Area Director lacked standing,

[a]n immediate determination on this threshold jurisdictional issue by this Board is in order. Otherwise, the delay of time inherent in disposing of this fundamental matter of "standing", via the appeals processes afforded by 25 CFR Part 2 and 43 CFR Part 4 provisions, will cause grave and irreparable injury to the federally-recognized Tribe and its Interim Executive Council. Furthermore, invocation of this Board's jurisdiction to take the matter of "standing" under immediate advisement is proper, even in the absence of a final decision by the Area Director: it will prevent waste and needless expenditure of the Tribe's and Council's extremely limited resources in addressing other issues of alleged relevance that might be extensively briefed on appeal,

such as an interpretation of P.L. 103-434, when this case should, under legal precedent, be disposed of on the basis of lack of standing.

(Notice of Appeal at 2).

Appellant clearly seeks an interlocutory appeal. The Board has only that authority given to it by the Secretary of the Interior through regulation or special delegation. 43 CFR 4.331 allows "[a]ny interested party affected by a final administrative action or decision of [a BIA] official" to appeal to the Board (emphasis added). The Board has held that it lacks authority to review non-final, e.g., interlocutory or interim, decisions issued by BIA Area Directors. In Navajo Nation v. Navajo Area Director, 20 IBIA 118 (1991), while noting that 43 CFR 4.28 gives it authority to review interlocutory rulings entered by Administrative Law Judges, the Board concluded that no similar regulation authorizes it to review interlocutory rulings of BIA officials.

The Board has dismissed appeals as premature when the Area Director's decision involved a remand to a Superintendent for further consideration. See, e.g., Saupitty v. Anadarko Area Director, 26 IBIA 167 (1994) (in which the Board noted that it had not determined that the appellant had standing to appeal a BIA decision concerning a tribal election); LaPlante v. Billings Area Director, 19 IBIA 261 (1991).

In the absence of regulatory authority to review the Area Director's remand order, the Board must dismiss this appeal.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Acting Sacramento Area Director's August 15, 1995, decision remanding this matter to the Central California Agency Superintendent is docketed and dismissed without prejudice as premature. 1/

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge

1/ All motions are hereby denied.