



INTERIOR BOARD OF INDIAN APPEALS

Raymond Torres, et al.; and Elmer Torres, et al.  
v. Acting Albuquerque Area Director, Bureau of Indian Affairs

28 IBIA 229 (10/23/1995)

Related Board cases:

21 IBIA 178

23 IBIA 291

Reconsideration denied:

24 IBIA 32



# United States Department of the Interior

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

RAYMOND GONZALES ET AL.  
ELMER TORRES ET AL.

v.

ACTING ALBUQUERQUE AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 95-10-A, 95-37-A

Decided October 23, 1995

Appeals from decisions concerning the recognition of the Governor and Tribal Council of the San Ildefonso Pueblo.

Dismissed in part; affirmed in part; and reversed and remanded in part.

1. Indians: Tribal Government: Elections--Indians: Tribal Government: Judicial System--Indians: Tribal Powers: Tribal Sovereignty

Where the results of a tribal election have been certified by a properly constituted and authorized tribal body, the Bureau of Indian Affairs should recognize the election results on at least an interim basis, pending resolution of any election disputes in a tribal forum.

2. Board of Indian Appeals: Generally--Indians: Tribal Government: Judicial System--Indians: Tribal Powers: Tribal Sovereignty

In a case where exhaustion of tribal remedies is required, appellants before the Board of Indian Appeals cannot avoid the requirement simply by alleging that the tribal court would be biased against them.

APPEARANCES: Richard W. Hughes, Esq., Santa Fe, New Mexico, for appellants Raymond Gonzales et al.; Peter C. Chestnut, Esq., and Arm Berkeley Rodgers, Esq., Albuquerque, New Mexico, for appellants Elmer Torres et al.; Robert C. Eaton, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Area Director.

## OPINION BY ADMINISTRATIVE JUDGE VOGT

These are appeals from September 16 and 22, 1994, decisions issued by the Acting Albuquerque Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning recognition of the Governor and the Tribal Council of the Pueblo of San Ildefonso (Pueblo). In his September 16,

1994, decision, the Area Director declined to recognize the election of Elmer Torres as Governor until such time as a tribal forum determined that the election was conducted in accordance with the Pueblo's 1958 Agreement. In the same decision, he recognized the Tribal Council as having been selected in accordance with tribal law. In his September 22, 1994, decision, the Area Director recognized Elmer Torres as the individual designated by the Tribal Council to represent the Pueblo in communications with BIA concerning the day-to-day business of the Pueblo.

Appellants Raymond Gonzales and the South Side Kiva of the Pueblo (Gonzales) challenge both decisions. Appellants Elmer Torres and the Pueblo (Torres) challenge the portion of the September 16, 1994, decision in which the Area Director declined to recognize Torres as the duly elected Governor of the Pueblo.

For the reasons discussed below, the Board dismisses as moot Gonzales' appeal from the Area Director's September 22, 1994, decision and affirms in part and reverses in part the Area Director's September 16, 1994, decision. The matter is remanded to the Area Director for further action as described below.

#### Background

This is the third time that the Pueblo's internal disputes have resulted in appeals to the Board. In Aguilar v. Acting Albuquerque Area Director, 21 IBIA 178 (1992), the appellants sought review of BIA's recognition of an interim Tribal Council. They withdrew their appeal prior to briefing, however, stating that subsequent events had rendered the issues moot. In Naranjo v. Albuquerque Area Director, 23 IBIA 291, recon. denied, 24 IBIA 32 (1993), the appellants challenged a BIA decision declining to recognize a separate tribal government for the South Side Kiva of the Pueblo. The Board affirmed the Area Director's decision.

As discussed in Naranjo, the Pueblo has for many years been divided into two groups, called the "North" and "South" sides, kivas, parties, or factions. The Pueblo has no written constitution. However, since 1958, it has been governed pursuant to an Agreement dated January 28, 1958, which sets out the manner in which the Governor and Tribal Council are to be selected. The Agreement is supplemented by a Summary of the Agreement, also dated January 28, 1958; and an Amendment, dated December 17, 1962. The three documents--the Agreement, the Summary, and the Amendment--together constitute, in essence, the Pueblo's organic document.

Under the terms of the Agreement, as amended in 1962, an election for Governor of the Pueblo was due to take place at the end of December 1993. On December 14, 1993, the Tribal Council enacted Resolution No. SI-93-034, establishing election procedures. On December 28, 1993, the Superintendent, Northern Pueblos Agency, BIA, wrote to Agapito (Pete) Martinez, the incumbent Governor of the Pueblo, and Martin Aguilar, the Traditional Leader of the South Side. He stated:

As you are aware, I have serious concerns over the current political dispute between the North and South Kivas, which threatens to tear apart the very fabric of San Ildefonso, Pueblo. \* \* \*

As the time for election of the Pueblo's government for the next two years draws near, I am hopeful that the principles of the 1958 Agreement between the Kivas (as amended in 1962) will be respected and followed. Please be informed that, in light of the continuing dispute between the two Kivas and continuing allegations of election irregularities and abuses of governmental power, I may not be able to recognize the results of the upcoming election unless the two Kivas provide me written confirmation that both acknowledge the election results. Failure to provide such confirmation may cause me to reconsider the continuation of the day-to-day relationship between the Northern Pueblos Agency and the Pueblo and may affect the maintenance of existing contracts between the Bureau of Indian Affairs and the Pueblo.

Governor Martinez responded on December 29, 1993, stating in part: “[T]he Pueblo would now be setting a precedent by having both Kivas confirming the election results. This I consider the BIA's intrusion of the Pueblo's sovereignty.”

Also on December 29, 1993, representatives of the South Side delivered to Head Principale 1/ Adam Martinez a notice stating: "This is a formal notification that the Southside Kiva have meet on the evening of December 29, 1993 and have selected Mr. Raymond Gonzales as Governor for the 1993-1995 term." (Emphasis in original.) 2/

On the same day, a special bulletin was issued. It stated:

SPECIAL BULLETIN  
TO THE COMMUNITY !!

WEDNESDAY DECEMBER, 29, 1993

THE CANDIDATE FOR THE POSITION OF GOVERNOR FOR THE  
PUEBLO OF SAN ILDEFONSO IS AS FOLLOWS:

ELMER TORRES

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1/ The Principales, or Principallys, are, according to Recital 2 of the 1958 Agreement, ex-Governors of the Pueblo. See note 3, infra.

2/ The meaning of this notice and the substance of an ensuing conversation are vigorously disputed by Gonzales and Torres. In brief, Gonzales contends that South Side representatives advised the Head Principale that they were nominating Gonzales as a candidate for Governor. Torres contends that South Side representatives stated that the South Side already had a Governor (Gonzales) and Council and did not intend to participate in the election.

ELECTIONS WILL TAKE PLACE ON THURSDAY, DECEMBER 30, 1993, FROM 12:00 NOON TO 8:00 PM. AT THE TRIBAL CONFERENCE ROOM-ADMINISTRATION BUILDING. ALL TRIBAL LAW ENFORCEMENT OFFICERS WILL BE ON DUTY. [Capitals in original.]

On December 30, 1993, Governor Martinez issued a bulletin stating that the election had been postponed until the following week, and that another special bulletin would be issued to announce the new date.

On January 5, 1994, another special bulletin was issued, again stating that Elmer Torres was the candidate for Governor, and announcing that the election would be held on January 7, 1994.

An election was held on January 7, 1994, and Elmer Torres was certified to be the winner.

On January 10, 1994, Aguilar and Gonzales wrote to the Superintendent, alleging irregularities in the election. They requested that the Superintendent refuse to recognize the results of the election and that he take a number of other steps, including suspension of the Pueblo's contracts and grants and appointment of an outside receiver to take control of all Pueblo programs and funds.

On January 12, 1994, Governor Martinez wrote to the Superintendent, stating: "At a duly called General Meeting on Tuesday, January 11, 1994, the newly elected Governor and selected Tribal Council [3/] were installed according to tribal tradition. The Head Principale and his fellow principale members performed the ceremonies." On the same day, a special bulletin was issued, announcing the new Governor and Tribal Council members.

On January 14, 1994, the Superintendent wrote to Torres, stating in part:

To reiterate a comment contained in my letter dated December 28, 1993, I want to be absolutely certain that the most recent election was conducted with adherence to the principles of the 1958 Agreement (as amended) \* \* \*. In this regard, it would be most appropriate if you would address my concerns about the election. Pending your response to this letter, I intend to withhold any decision regarding the recent election results.

The Superintendent's letter also requested that Torres respond to the allegations made in Aguilar and Gonzales' January 10, 1994, letter, with

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3/ The 1958 Agreement places responsibility for selection of the Tribal Council on the Principales. Recital 2 of the Agreement provides:

"Upon the election of the governor under said agreement he shall turn the matter over to the principallys (meaning ex-governors of the Pueblo) and they in turn shall select officers to serve as council-members along with the governor to act as the governing body of San Ildefonso Pueblo."

respect to the election. Torres responded on February 7, 1994, providing a chronological description of events and stating that the election had been conducted in accordance with the 1958 Agreement.

During February and March 1994, the Superintendent met with representatives of the North and South Sides in an attempt to persuade them to enter into at least a temporary agreement for resolution of their differences, so that the Pueblo's Federal contracts and grants would not be threatened. These efforts proved unsuccessful.

On March 31, 1994, Torres wrote to the Superintendent, stating that the Council was "not presently in a position to make an agreement." He requested that the Superintendent formally recognize himself (Torres) and the Tribal Council as the properly constituted government of the Pueblo.

The Superintendent responded on the same day, stating that BIA could not "recognize either political faction as the official tribal government." He also stated that, because the Pueblo's Indian Self-Determination Act contract would expire at midnight that day, BIA intended to begin providing direct services to the Pueblo.

On April 7, 1994, Torres sent the Superintendent a copy of Pueblo Resolution No. SI-R94-004, adopted by the Tribal Council on March 25, 1994. The resolution "direct[ed] the Bureau of Indian Affairs to recognize Elmer C. Torres as the duly elected Governor and the duly selected Tribal Council for the 1994-95 term."

In response to the April 7, 1994, letter, the Superintendent requested Torres to supply additional information, specifically:

- \* A list of eligible voters at San Ildefonso for the January 7, 1994 election. Please designate the respective faction (north or south) with whom each voter's affiliation is recognized.
- \* A list of those persons actually voting, including any who may have cast ballots utilizing the absentee process.
- \* The approved election procedures under which the election was conducted.

(Superintendent's Apr. 18, 1994, Letter to Torres). Torres responded on April 26, 1994, enclosing a number of documents related to the election. He declined to identify eligible voters by kiva affiliation, stating that, although most Pueblo members were identified with one or the other, some participated in both, and others in neither.

On May 2, 1994, Gonzales and Aguilar wrote to the Superintendent, requesting that the Superintendent continue to decline to recognize the results of the election. They also repeated their earlier request for certain other actions, including the appointment of a receiver to take control of all Pueblo programs and funds.

On May 6, 1994, the Superintendent sent a copy of Torres' April 26, 1994, letter and enclosures to Gonzales, requesting comments. Gonzales responded on May 17, 1994.

On June 2, 1994, the Superintendent issued a decision in which he declined to recognize the results of the January 7, 1994, election. He gave as reasons: (1) Of two lists furnished by Torres, the list of male Pueblo members of voting age contained 185 names whereas the list of eligible voters for the 1994 election contained only 163 names, with no explanation given for the discrepancy; (2) the December 29, 1993, and January 5, 1994, special bulletins announcing the elections contained the name of only one candidate and were not issued one week in advance of the scheduled elections, thus putting them in conflict with Agreement 2 of the Summary; 4/ (3) Torres had provided no explanation for the absence of Gonzales' name from the ballot; (4) only three individuals were formally appointed as poll judges, although four signed the certification of election, and there was no indication of their kiva affiliation, as required by Agreement 3 of the Summary; 5/ and (5) the certification of election stated that the election took place on December 30, 1993, rather than January 7, 1994.

With respect to recognition of the Tribal Council, the Superintendent stated that he did not have sufficient information to allow him to make a decision. He requested further information:

1. a list of the principlallys who selected the current council;
2. a certification, signed by the principlallys, that the men who were selected were from both parties and interwoven into a council of thirteen members; and,
3. any other information you deem relevant to your request that I recognize the current council.

(Superintendent's June 2, 1994, Decision at 3).

4/ Agreement 2 of the Summary provides:

“[I]t shall be the duty of the governor to turn the matter of selecting candidates for governor and council-members over to the principlallys three weeks prior to election date; and announcement of principlallys' candidates for governor should be made known to the people one week before election date.

“In selecting officers for the council, the principlallys must whenever possible select members from both parties, north and south side, and interweave them until a council of thirteen men has been appointed.

“The principlallys also retains the right by virtue of authority to invest in the traditional manner the governor and council, and to act as advisors to the governor and council whenever is deem necessary.”

5/ Agreement 3 of the Summary provides: “[D]irection of time and place of election shall rest upon the council. Two members of each party shall be appointed to take care of counting and voting procedures.”

Torres responded in letters dated June 7, June 17, and June 23, 1994. His June 23, 1994, letter provided some of the information requested; stated that other information could not be disclosed because of the Pueblo's traditions; and requested reconsideration of the June 2, 1994, decision.

On June 24, 1994, the Superintendent declined to reconsider his earlier decision. Torres appealed to the Area Director.

The Area Director issued a decision on September 16, 1994. He noted that the Superintendent had not decided the question of recognition of the Tribal Council. He found, however, that he could render a decision on the question despite the lack of a decision from the Superintendent. He continued:

The only guidance on record regarding the composition and selection of the Tribal Council is in the 1958 Agreement (which includes [the Agreement, Summary, and Amendment]) and in the June 23, 1994, letter from Torres to the Superintendent. The 1958 Agreement prescribes that the Principallys are to interweave a council of 13 men from the North and South Sides whenever possible. [6/] The information contained in the June 23, 1994, letter indicates that council member selection is a tribal tradition that would be compromised if disclosed to outsiders. However, the letter also states that a council member must be qualified, in good standing to serve his community and willing to serve. In addition, the letter states that there are current members of the Tribal Council who are from the South Side. The breakdown of the council member's affiliation with either the North or South Side has not been provided. Without any further information than that presented, I have determined that the Tribal Council has been properly selected.

\* \* \* The request that Torres be recognized as Governor turns upon the 1994 election procedure. The Superintendent formulated his decision on a strict interpretation of the Pueblo's 1958 Agreement which lays out the process for electing a Governor. \* \* \*

I am persuaded by Goodface v. Grassrope, 708 F.2d 335 (8th Cir. 1983), that the recognition of Torres as Governor must be preceded by a tribal interpretation of conformance of the 1994 election with the procedures set forth in the 1958 Agreement. I am not convinced by the South Side's argument that the tribal court is a "bizarre" forum for resolving this issue. I am convinced by the North Side's argument that tribal fora are available and have not yet been used by the Superintendent. An intrinsic aspect of tribal self-government is the right to make an initial interpretation of its own governing documents in resolving internal disputes. I believe the Superintendent has

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6/ See Agreement 2 of the Summary, quoted in note 4, supra.

usurped this authority by not allowing or directing the parties to pursue their available tribal remedies. In addition, the Superintendent compounded this intrusion by applying a strict interpretation of the 1958 Agreement. An analysis of the spirit of the document, rather than a strict interpretation of the traditionally driven agreement would have been a more appropriate approach. A tribal forum is better suited to provide such an interpretation. After the appropriate tribal forum has determined whether the 1994 election was conducted in conformance with the 1958 Agreement, I will consider in light of that determination a renewed request for recognition of the Governor of the Pueblo.

\* \* \* \* \*

Therefore, I decline at this time to recognize Elmer C. Torres as Governor of the Pueblo, as the decision to recognize a Governor must be based upon a determination that the 1994 election was conducted in conformance with the 1958 Agreement, and that determination must be rendered by the appropriate tribal forum. However, I find that the information presently available to me indicates that the Tribal Council was selected in accordance with tribal law, and I therefore recognize it as the legitimate governing body of the Pueblo. In addition, in order to facilitate the government-to-government relationship between the Pueblo and the United States, I request that the Tribal Council designate an individual with whom the Bureau of Indian Affairs can communicate on a day-to-day basis.

(Area Director's Sept. 16, 1994, Decision at 2-3).

The Tribal Council informed the Area Director that it had designated Torres as its representative. On September 22, 1994, the Area Director recognized Torres as the Pueblo's designated representative.

The Board received Gonzales' appeal on September 27, 1994, and Torres' appeal on October 18, 1994. On October 17, 1994, the Board issued an order placing the Area Director's September 16 and 22, 1994, decisions into immediate effect.

The appeals were docketed and consolidated on November 7, 1994. Briefs were filed by Gonzales, Torres, and the Area Director.

#### Mootness

On March 30, 1995, Gonzales submitted a notice of changed circumstances. He attached a copy of Tribal Council Resolution No. SI-R95-007, dated February 8, 1995. The resolution stated that the Principales had selected a Tribal Council for 1995. It also listed the 1995 Tribal Council members. Further, it stated:

The Bureau of Indian Affairs shall direct all matters involving tribal government affairs of San Ildefonso Pueblo to the following line of authority set by this Resolution:

Randy Sanchez, First Lt. Governor  
Gary Roybal, Second Lt. Governor  
Sherman Martinez, Head War Captain

The First Lt. Governor shall immediately take the role of the officially recognized, and duly authorized Acting Governor of the Pueblo of San Ildefonso.

The resolution makes no mention of Torres. It was signed by Sanchez, as First Lt. Governor. In his notice of changed circumstances, Gonzales contended that the resolution indicated that Torres had been removed as the Pueblo's designated representative.

The Board normally does not consider moot appeals, particularly where the appeal concerns an internal tribal dispute. E.g., Villegas v. Sacramento Area Director, 24 IBIA 150 (1993), and cases cited therein. Because it appeared possible that these appeals might be moot, at least in part, the Board ordered briefing on the question. Gonzales and Torres filed briefs. Both contend that the appeals are not moot.

Torres submits a July 27, 1995, letter signed by himself as Governor and by Sanchez as First Lt. Governor and "authorized representative of tribal council." The signatures are attested by the Second Lt. Governor and the Head War Captain, Z/ who are members of the Tribal Council. The letter states: "Governor Torres has not been removed as Governor and he continues to serve and fulfill the traditional responsibilities of that office." With respect to the Tribal Council appointments, the letter states that the Principales appoint tribal councils on an annual basis although they traditionally appoint all or most of the same individuals for the second year of a Governor's term as served during the first year. The letter continues: "This Tribal Council considers that a new tribal council is installed only when a new Governor is installed. This Tribal Council, however, recognizes the authority of the principalls to change tribal council membership. In our memory, there has never been a wholesale change in Tribal Council membership during the second year of a Governor's term at San Ildefonso."

Torres does not dispute Gonzales' contention that Torres is no longer the designated representative of the Pueblo. In fact, the signature of Sanchez on the July 27, 1995, letter as "authorized representative of tribal council" appears to lend support to Gonzales' contention, as does the language of Resolution No. SI-R95-007.

Accordingly, the Board dismisses as moot Gonzales' appeal from the Area Director's September 22, 1994, decision, recognizing Torres as the designated representative of the Pueblo.

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Z/ An Assistant War Captain signed the letter for the Head War Captain.

In light of the Tribal Council's letter, the Board finds that these appeals are not moot insofar as they seek review of the September 16, 1994, decision.

#### Discussion and Conclusions

The Area Director declined to recognize the election of Torres as Governor until an appropriate tribal forum determines that the election was conducted in accordance with the 1958 Agreement. Gonzales seeks affirmance of this part of the Area Director's decision insofar as it declined to recognize the election of Torres. He contends, however, that the Superintendent's June 2, 1994, decision, declining outright to recognize the election, should be reinstated because, inter alia, the Superintendent's decision "was founded upon a correct examination of the applicable legal precedents, and was plainly factually warranted" (Gonzales' Opening Brief at 17).

Torres appeals from this part of the Area Director's decision. He contends that the Area Director erred in concluding that there had not yet been a determination concerning the validity of the election by an appropriate tribal forum, because both the Principales and the Tribal Council have made such a determination. Further, Torres contends, the Area Director erred in placing the burden on him and/or the Pueblo to seek a further declaration of validity in a tribal forum. Rather, he counters, the burden to pursue the matter further in a tribal forum should fall upon those protesting the election.

The Area Director contends:

His [the Area Director's] decision respected tribal sovereignty and tribal institutions, while requiring assurance from the appropriate tribal form that Mr. Torres had been elected in conformance with tribal law. His decision struck the proper balance between competing concerns. Doing less would have been irresponsible, an abrogation of the federal trust responsibility; doing more would have impinged upon tribal sovereignty and jurisdiction.

(Area Director's Brief at 18).

In Goodface v. Grassrope, the case cited in the Area Director's decision, a disputed tribal election had resulted in claims by two competing groups, the 1980 council and the 1982 council, that they were entitled to recognition as the valid tribal government of the Lower Brule Sioux Tribe. BIA declined to recognize either group, stating that it would deal with both on a de facto basis as necessary to maintain basic services. The district court found that the 1982 council was entitled to recognition. The United States Court of Appeals for the Eighth Circuit held that the district court had exceeded its authority. It stated:

The final BIA action subject to judicial review is its decision to recognize both tribal councils only on a de facto

basis. Such a recognition of both councils amounts to a recognition of neither. Thus, the district court correctly found that the BIA acted arbitrarily and capriciously by effectively creating a hiatus in tribal government \* \* \*. The BIA, in its responsibility for carrying on government relations with the Tribe, is obligated to recognize and deal with some tribal governing body in the interim before resolution of the election dispute. We commend the BIA for its reluctance to intervene in the election dispute, but it was an abuse of discretion for the BIA to refuse to recognize one council or the other until such time as Indian contestants could resolve the dispute themselves. We conclude that, for the time being, the BIA should be required to deal with the 1982 council as the certified and sworn winner of the tribal election.

Although we agree with the district court that the BIA should recognize the 1982 council, at least on an interim basis, the district court should not have addressed the merits of the election dispute in reaching that decision. We recognize that the district court faced a practical problem. The BIA's action effectively recognized a two-headed administration with no real power to govern. Although it was necessary to remedy the situation by ordering the BIA to recognize one governing body, the district court overstepped the boundaries of its jurisdiction in interpreting the tribal constitution and bylaws and addressing the merits of the election dispute.

\* \* \* \* \*

We conclude that the district court possessed jurisdiction only to order the BIA to recognize, conditionally, either the new or old council so as to permit the BIA to deal with a single tribal government. That recognition should continue only so long as the dispute remains unresolved by a tribal court. Moreover, the district court in deciding which council to recognize as a preliminary matter could, by applying equitable principles, determine that the newly elected council, whose successful election received certification from the tribal election board, should govern in the interim period until the dispute reaches initial resolution by a tribal court.

(708 F.2d at 338-39).

See also, e.g., Wheeler v. U.S. Department of the Interior, 811 F.2d 549 (10th Cir. 1987); Smalley v. Eastern Area Director, 18 IBIA 459 (1990) (Where a tribal forum exists for the resolution of election disputes, BIA has no authority to take action contrary to the tribal resolution of such disputes).

The Area Director recognized that the election dispute in this case should be resolved in a tribal forum. However, his decision not to recognize the election of Torres was premised upon an assumption that no

appropriate tribal forum had yet determined the validity of the election. In fact both the Principales, in installing Torres as Governor, and the Tribal Council, in enacting Resolution No. SI-R94-004, had made determinations that the election was valid. Although the Area Director did not specify what further action he expected to be taken in a tribal forum, his decision clearly put the burden on Torres to initiate the action. Given that the Area Director did not find the actions of the Principales or the Tribal Council adequate in this regard, it appears likely that he expected Torres to take the matter to tribal court, presumably to seek something in the nature of a declaratory judgment concerning the validity of the election.

Although most of the Pueblo's laws are unwritten, and the specific provisions of those laws are unknown to the BIA and this Board, there is no reason to believe that Pueblo law places the burden of proving the validity of an election on the successful candidate rather than on a person who seeks to challenge the election. To the contrary, the sequence of events in this case indicates that the Pueblo follows the common practice of accepting, *prima facie*, the initial determination of validity made by the appropriate tribal body--in this case the Principales--and placing the burden on would-be challengers to bring their challenges in the appropriate tribal forum. In the absence of a showing that Pueblo law imposes the burden of proving the validity of an election upon the successful candidate, the Board finds that it was error for the Area Director to impose such a burden on Torres.

[1] The Area Director found the selection of the Tribal Council valid. Clearly, then, he has recognized the Tribal Council as the Pueblo's properly constituted governing body. By implication, he has also recognized the status and authority of the Principales, because it was the Principales who made the selection the Area Director found valid. This is not a case, therefore, where BIA questions the legitimacy of a tribal body which vouches for the validity of an election.

It is evident that, under Pueblo law, the Principales are responsible for making an initial determination that an election is valid. <sup>8/</sup> Further, the Tribal Council, as the Pueblo's legitimate governing body, must be deemed to have authority to speak for the Pueblo. The Board finds that the Area Director should have recognized the Principales' acceptance of the election results and the Tribal Council's statement in Resolution No. SI-R94-004 as appropriate determinations of validity of the election, at least on an interim basis, pending resolution of any election disputes in

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<sup>8/</sup> Resolution No. SI-93-034, concerning election procedures, provides that the Principales are responsible for certifying election results. The Board finds no written certification by the Principales in the record for this appeal. Whether or not the Principales formally certified the election results, it is clear that, by installing the Governor under their authority "to invest in the traditional manner the governor and council" (see Article 2 of the Summary, *supra*, note 4), the Principales recognized his election as valid.

an appropriate tribal forum. This approach is the one approved in Goodface v. Grassrope. Moreover, it places the burden of going forward with an election dispute where it appears to belong under Pueblo law, *i.e.*, on those who wish to challenge the election.

The Board finds that, in this case, the burden was on Gonzales to challenge the January 7, 1994, election in a tribal forum. <sup>9/</sup> Where an appellant before the Board seeks to challenge a tribal election, he or she must first show that tribal remedies have been exhausted. Howe v. Acting Billings Area Director, 28 IBIA 142 (1995); Johnson v. Acting Minneapolis Area Director, 28 IBIA 104 (1995).

Gonzales makes no such showing in this case. Although acknowledging that the Pueblo has a tribal court, Gonzales contends that “there is no tribal judicial forum competent to make any such determination [*i.e.*, a determination of the validity of the January 7, 1994, election] and \* \* \* the BIA must do it itself” (Gonzales’ Opening Brief at 31). Expanding on this contention, he alleges that the tribal court “has never done anything more than handle minor criminal matters and minor civil disputes among members” (Gonzales’ Reply Brief at 3) <sup>10/</sup> and that “[t]here is no evidence that such a court, which is completely under the control of the North Side Tribal Council, could entertain a challenge to the legitimacy of the Governor and the Tribal Council of the Pueblo.” Id.

To the extent Gonzales is contending that the tribal court lacks jurisdiction over election disputes such as this one, the Board declines to consider the contention, in deference to the tribal court's authority to determine its own jurisdiction. Gonzales cannot avoid the requirement that he exhaust tribal remedies simply by alleging that the tribal court lacks jurisdiction over the dispute. See Mosay v. Minneapolis Area Director, 27 IBIA 126 (1995). <sup>11/</sup>

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<sup>9/</sup> Gonzales cannot be entirely faulted for his failure to pursue tribal remedies in this case. Unfortunately, the Superintendent undertook to act as a forum for resolution of this election dispute, even to the extent of announcing his intent to do so prior to the election. Thus, Gonzales was encouraged by the Superintendent's actions to take his case to the Superintendent, rather than to a tribal forum.

The Board agrees with the Area Director that the Superintendent exceeded his authority in this case.

<sup>10/</sup> Despite this contention, two exhibits attached to Gonzales' opening brief indicate that the tribal court has dealt with tribal government issues. Exhibit H is a restraining order issued by the tribal court on Mar. 13, 1991, which prohibited eight individuals from interfering in Pueblo government and its relationships with outside entities. Exhibit AA is Torres' June 23, 1994, letter to the Superintendent, which states at page 2 that the tribal court had ordered a former Governor to return the Governor's cane after leaving office in 1989.

<sup>11/</sup> The Board has assumed that the tribal court is the forum which would hear election disputes because that is the forum discussed by the parties. Even if another tribal body is the proper forum to hear this dispute, the

[2] Gonzales also appears to allege that the tribal court would be biased against him. However, he does not support this allegation with any evidence whatsoever. The Board finds that Gonzales' bare allegation of bias does not relieve him of his obligation to exhaust tribal remedies.

Gonzales contends that BIA and Board involvement is required here because the January 7, 1994, election was tainted by violations of the Indian Civil Rights Act (ICRA), 25 U.S.C. § 1302 (1994). The Board addressed a similar contention in Mosay, 27 IBIA at 131:

Appellants contend that exhaustion of tribal remedies is not necessary here because they have alleged violations of ICRA. They cite Board decisions holding that, in furthering its government-to-government relationship with an Indian tribe, BIA must decline to recognize the results of a tribal election tainted by violations of ICRA. See, e.g., Naylor v. Sacramento Area Director, 23 IBIA 76 (1992); Greendeer v. Minneapolis Area Director, 22 IBIA 91 (1992); United Keetoowah Band of Cherokee Indians v. Muskogee Area Director, 22 IBIA 75 (1992). The fact that BIA bears this responsibility, however, does not relieve tribal members of their obligation to exhaust their tribal remedies before seeking relief from BIA.

Although it is not entirely clear what tribal forum has jurisdiction over civil rights complaints, 12/ Gonzales makes no allegation that he has attempted to bring his complaints before any tribal forum. Therefore, the Board finds that his allegations of ICRA violations cannot be considered in this appeal because Gonzales has not exhausted his tribal remedies.

The Board has found that the Area Director should have recognized the results of the January 7, 1994, election pending any contrary resolution of this election dispute in an appropriate tribal forum. It has also found that Gonzales' arguments cannot be considered at this time because he did not exhaust tribal remedies.

Therefore, the Board reverses that portion of the Area Director's decision in which he declined to recognize the election of Torres as Governor.

Gonzales also challenges the Area Director's recognition of the Tribal Council. In light of the discussion above, it is clear that this is also a dispute which Gonzales must take to a tribal forum before seeking relief from the Board. In the absence of a decision from a tribal forum holding that the Tribal Council was improperly selected, the Area Director was correct in recognizing the Principales' selection of the Tribal Council.

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fn. 11 (continued)

exhaustion requirement would not be altered. See, e.g., Santa Clara Pueblo v. Martinez, 436 U.S. 49, 66 (1978): "Nonjudicial tribal institutions have also been recognized as competent law-applying bodies."

12/ Torres contends that ICRA complaints should be taken before the Pueblo Civil Rights Commission. Gonzales contends that no such body exists.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Gonzales' appeal from the Area Director's September 22, 1994, decision is dismissed as moot; and the Area Director's September 16, 1994, decision is affirmed insofar as it recognized the Tribal Council and reversed insofar as it declined to recognize the election of Elmer Torres as Governor. This matter is remanded to the Area Director with instructions to recognize Elmer Torres as Governor.

\_\_\_\_\_  
//original signed  
Anita Vogt  
Administrative Judge

I concur:

\_\_\_\_\_  
//original signed  
Kathryn A. Lynn  
Chief Administrative Judge