



INTERIOR BOARD OF INDIAN APPEALS

Johannes Wanatee, et al. v. Acting Minneapolis Area Director,
Bureau of Indian Affairs

31 IBIA 93 (07/30/1997)



United States Department of the Interior

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

JOHANNES WANATEE, SR.,
Appellant

v.

ACTING MINNEAPOLIS AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Dismissing Appeal

:

:

:

: Docket No. IBIA 96-96-A

:

:

: July 30, 1997

This is an appeal from a June 26, 1996, decision of the Acting Minneapolis Area Director, Bureau of Indian Affairs (Area Director; BIA), recognizing the removal of Johannes Wanatee, Sr., as Chief of the Sac and Fox Tribe of the Mississippi in Iowa (Tribe), as well as his recall from the Tribal Council. For the reasons discussed below, the Board dismisses this appeal for failure to exhaust tribal remedies.

At some point prior to April 1996, the Tribe's seven-member Tribal Council became divided, apparently over issues concerning the Tribe's gaming enterprise. The split was such that Appellant and the Assistant Chief were on one side of the dispute, and the remaining five members on the other. 1/

On April 11, 1996, Appellant conducted a public meeting of the Tribe, attended by 97 tribal members. At that meeting, the tribal members in attendance voted to recall Appellant's five opponents from their positions on the Tribal Council. Appellant advised the Area Director of the results of the meeting. In an April 17, 1996, letter to Appellant, the Area Director declined to recognize the recall, finding that it had not been conducted in accordance with the Tribe's Constitution.

On April 10, 1996, the Tribal Council voted to remove Appellant from his office as Chief. 2/ By letter of April 19, 1996, the Area Director declined to recognize the removal. On April 23, 1996, the Tribal Council asked the Area Director to reconsider the April 19, 1996, letter.

1/ Under Art. II, sec. 2, of the Tribe's Bylaws, five members of the Tribal Council constitute a quorum.

2/ This action was initially understood by the Area Director as an attempt to remove Appellant from the Tribal Council entirely, as well as from his position as Chief.

Before the Area Director issued a decision on reconsideration, an effort to recall Appellant from his position on the Tribal Council was undertaken. The organizers collected 246 signatures on a recall petition and submitted the petition to the Tribal Council, which found the petition valid and scheduled a recall election. At the recall election, held on June 14, 1996, the vote was 139-25 in favor of Appellant's recall. By letter of June 18, 1996, the Tribal Council notified the Area Director that Appellant had been recalled.

On June 26, 1996, the Area Director issued the decision on appeal here. He stated:

This Office has been requested to reconsider the recognition decision * * * dated April 19, 1996. We believe it is both timely and appropriate to do so based on the receipt of additional information regarding [Appellant's] removal and subsequent tribal action recalling him from office.

Good cause exists to withdraw the letter of April 19, 1996, because the Area Office's letter was issued based on incomplete information. Upon review of further information we recognize that [Appellant] was validly removed as Chief * * * of the * * * Tribal Council. The basis of the decision to not recognize the removal of [Appellant] (expressed in the April 19, letter) rested upon the mistaken assumption [Appellant] was removed from the Tribal Council. We did not understand at that time that he was only removed from his position as an officer of the council.

In the absence of written procedures governing the removal of tribal council members from a position as an officer the BIA must refer to the council's past practices. Based on our review of prior council action and the knowledge and experience of the former BIA Sac and Fox Field Representative, it has been the practice of the [Tribe] to remove an officer of the Tribal Council from office by a vote within the council. This practice seems reasonable since the Constitution * * *, Article VIII, Section 1 provides that officers be elected to their positions by a vote within the council. It is logical that they be removed by the same procedure by which they were appointed.

Secondly, this office recognizes the action to remove [Appellant] from the Tribal Council by recall election under the Constitution * * *. Article XII, Recall and Referendum, Section 1, reads, "Upon a petition signed by not less than thirty percent of the eligible voters of the tribe, enumerated at the last general election, the Tribal Council shall call a special election to ratify or reject any action by the Tribal Council or **to recall any member of the Tribal Council**" (emphasis added [by the Area Director]).

We are in possession of a facsimile from [Appellant] dated June 05, 1996, in which he submitted the letter addressed to [Appellant] giving notice to [Appellant] of the Petition to put to

the voters his recall. There is also evidence of the required percentage of eligible voters and the conduct of a special election held on June 14. We are satisfied substantial compliance with the Constitution was made in this regard.

Area Director's June 26, 1996, Decision at 1-2.

Appellant appealed this decision to the Board. Briefs were filed by Appellant, the Area Director, and the Tribe.

In Bucktooth v. Acting Eastern Area Director, 29 IBIA 144, 149 (1996), the Board stated:

It is a well-established principle of Federal law that intra-tribal disputes should be resolved in tribal forums. This rule applies with particular force to intra-tribal disputes concerning the proper composition of a tribe's governing body. E.g., Bowen v. Doyle, 880 F. Supp. [99,] 123 [(W.D.N.Y. 1995)]; Howe v. Acting Billings Area Director, 28 IBIA 142, 143-44 (1995); Johnson v. Acting Minneapolis Area Director, 28 IBIA 104, 107 (1995). Where an intra-tribal dispute of this nature has been resolved in a valid tribal forum, the results are binding on BIA and the Board. Wheeler v. U.S. Department of the Interior, 811 F.2d 549 (10th Cir. 1987); Smalley v. Eastern Area Director, 18 IBIA 459 (1990).

The Board also recognized in Bucktooth that BIA cannot always await final resolution of disputes in a tribal forum before deciding whether or not to recognize the results of a tribal election or recall election. This is so because BIA must know which individuals it will deal with in its government-to-government relationship with the Tribe. However, when BIA must act prior to resolution of disputes in a tribal forum, the BIA decision is necessarily interim in nature, subject to revision should the tribal forum reach a different result. Id. Thus it is clear that the BIA decision is secondary to the decision of the tribal forum. E.g., Johnson, 28 IBIA at 107.

With this relation between BIA and tribal forums in mind, and in furtherance of the Federal policy of respect for tribal self-government, the Board routinely requires that tribal remedies be exhausted before a tribal member may challenge a tribal election before the Board. E.g., Gonzales v. Acting Albuquerque Area Director, 28 IBIA 229 (1995); Howe, supra; Johnson, supra.

Neither the administrative record nor Appellant's filings in this case indicate that tribal remedies have been exhausted or, for that matter, that Appellant has even attempted to utilize a tribal forum to challenge either his removal from the office of Chief or his recall from the Tribal Council. Rather, it appears that Appellant expects this Board to serve as the initial forum for his challenge to the tribal actions.

The record indicates that the Tribe has no written procedures, other than the Constitutional provisions, concerning recall of Tribal Council members or removal of officers. Thus it is not clear to the Board what

tribal procedures exist for challenging such actions or what tribal forum has jurisdiction over the challenges. However, even if the Tribe has no tribal court or other standing forum with jurisdiction over disputes of this nature, it can still provide a forum of some sort. In appropriate circumstances, even a general tribal meeting)) such as those authorized by Article III of the Tribe's Bylaws)) may serve as a forum for the resolution of election disputes. Smalley v. Eastern Area Director, 18 IBIA 459 (1990). As the Supreme Court has stated, "[n]onjudicial tribal bodies have * * * been recognized as competent law-applying bodies." Santa Clara Pueblo v. Martinez, 436 U.S. 49, 66 (1978).

Even if it were possible and appropriate for it to do so, the Board finds it unnecessary to determine what the proper tribal forum would be in this case. The burden was on Appellant to show that he has exhausted his tribal remedies. Gonzales, 28 IBIA at 241. In failing even to allege an attempt to resort to a tribal forum, Appellant has failed to carry his burden here.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is dismissed for failure to exhaust tribal remedies.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge