



INTERIOR BOARD OF INDIAN APPEALS

Ute Mountain Ute Tribe v. Albuquerque Area Director, Bureau of Indian Affairs

31 IBIA 124 (09/04/1997)



United States Department of the Interior

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

UTE MOUNTAIN UTE TRIBE, Appellant	: Order Docketing and Dismissing : Appeal : :
v.	: :
ALBUQUERQUE AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	: Docket No. IBIA 97-171-A : : : September 4, 1997

The Ute Mountain Ute Tribe (Tribe) seeks review of a July 31, 1997, letter from the Albuquerque Area Director, Bureau of Indian Affairs (Area Director; BIA). The Area Director's letter was written in response to a Tribal Resolution asking for the removal of the C.F.R. Court Magistrate serving the Tribe. The letter states:

With the submission of the Tribe's resolution and your request to address this matter, I can assure you that this matter is considered a top priority. However, I have decided that [the Magistrate] will continue to serve at the Ute Mountain Ute CFR Court until a final decision is reached on whether or not he will be retained as the Magistrate at Ute Mountain Ute. To abruptly suspend court proceedings would not address the needs of the Tribe.

The Tribe's Notice of Appeal states at page 1: "[I]t is clear from the Area Director's letter * * * that he had in fact made a decision on the matter. * * * There is no need to 'abruptly suspend court proceedings' as the Area Director fears. The [BIA] can appoint an interim Magistrate until a new, permanent Magistrate is selected." The Tribe further states that it acted properly under 25 C.F.R. § 11.202, which provides: "Any magistrate of a [C.F.R. Court] may be suspended, dismissed or removed by the Assistant Secretary - Indian Affairs, or his or her designee, for cause, upon the written recommendation of the tribal governing body."

Contrary to the Tribe's contention, it is clear that the Area Director has not yet made a decision on the removal of the Magistrate. Rather, the Area Director has concluded only that he will not summarily suspend the Magistrate before he has an opportunity to investigate the allegations and determine whether there is "cause" for removing the Magistrate. The Board has every confidence that the Area Director will address this matter expeditiously and will fully consider the Tribe's arguments in deciding whether or not to remove the Magistrate from his position.

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 from the Area Director's July 31, 1997, letter is docketed and dismissed without prejudice as premature.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge