



INTERIOR BOARD OF INDIAN APPEALS

Phyllis Harden v. Acting Pacific Regional Director, Bureau of Indian Affairs

39 IBIA 220 (01/02/2004)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

PHYLLIS HARDEN,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 04-28-A
ACTING PACIFIC REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	January 2, 2004

Appellant Phyllis Harden, who identifies herself as the Acting Chairperson, Upper Lake Band of Pomo Indians (Tribe), seeks review of a November 26, 2003, letter written by the Acting Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning information provided by the Department of the Interior to the United States District Court for the Northern District of California in connection with litigation in Upper Lake Pomo Association v. United States, Case No. C-75-0181 PJH. The information and Appellant's present appeal relate to the possible holding of a Secretarial election for the Tribe. For the reasons discussed below, the Board of Indian Appeals (Board) docketed but dismisses this appeal.

The Regional Director's letter states that no decision has been made in regard to the holding of a Secretarial election. Instead, he notes, the entire matter is still under the jurisdiction of the court. Although the Regional Director cites the name of the pending District Court case as Harden v. U.S., the Board finds that it makes no difference whether the two court cases mentioned are the same matter or whether there are two separate cases pending. In either case, this matter is pending before a Federal court.

In her notice of appeal, Appellant does not contend that the Regional Director erred in stating that no decision had been made to hold a Secretarial election, or in contending that this matter is pending in Federal court. Instead, she states:

I'm opposed to any BIA Memoranda or any documents being filed with the Court that gives any recognition or validity of tribal leadership to a small group of malcontent individuals, who are less than 20% of the tribal membership and have never been elected to tribal office.

The Upper Lake Pomo Association is not the Tribe! This group is but only a small number of disgruntles who are trying to disenfranchise its own brothers and sisters for selfishness and greed.

To participating in such a deception, offense the heritage of our Tribe, the Upper Lake Band of Pomo Indians and denies us our Native American birthrights.

Notice of Appeal at 1. Appellant thus makes it clear that her objection is to the information provided to the court.

The Board is not a court of general jurisdiction, but instead has only that authority delegated to it by the Secretary of the Interior. See, e.g., Doney v. Carrywater, 39 IBIA 165 (2003); Estate of Donna Gottschalk, 39 IBIA 162 (2003); Shawnee Tribe v. Assistant Secretary - Indian Affairs, 39 IBIA 4 (2003). Specifically, the Board has not been delegated authority to make litigation decisions for the Department. Rather, that authority has been delegated to the Office of the Solicitor. See, e.g., Simmons v. Northwest Regional Director, 38 IBIA 252 (2002); Johnson v. Acting Billings Area Director, 27 IBIA 241 (1995).

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 docketed but dismissed for lack of authority to grant the relief requested.

//original signed
Kathryn A. Lynn
Administrative Judge

//original signed
Kathleen R. Supernaw
Acting Administrative Judge