



INTERIOR BOARD OF INDIAN APPEALS

Jessica Jackson, Rufina Wall, Laurie Jobe, Daniel Jackson,
Eric Enriques, Erica Canion-Vanegas, and Martha Knight
v. Pacific Regional Director, Bureau of Indian Affairs

39 IBIA 234 (02/23/2004)

Related Board cases:

39 IBIA 239

39 IBIA 240



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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JESSICA JACKSON, RUFINA WALL, : Order Affirming Decision
LAURIE JOBE, DANIEL JACKSON, :
ERIC ENRIQUES, ERICA CANION- :
VANEGAS, and MARTHA KNIGHT, :
Appellants :
v. : Docket No. IBIA 03-141-A
PACIFIC REGIONAL DIRECTOR, :
BUREAU OF INDIAN AFFAIRS, :
Appellee : February 23, 2004

Appellants Jessica Jackson, Rufina Wall, Laurie Jobe, Daniel Jackson, Eric Enriques, Erica Canion-Vanegas, and Martha Knight ^{1/} seek review of an August 21, 2003, decision issued by the Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA), recognizing the results of a June 21, 2003, Special Election for members of the Tribal Council for the Pinoleville Band of Pomo Indians of California (Tribe). For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Members of this Tribe have previously been before the Board in regard to other Tribal election disputes. See Pinoleville Indian Community Governing Council v. Sacramento Area Director, 22 IBIA 176 (1992); Villegas v. Sacramento Area Director, 24 IBIA 150 (1993); and Jackson v. Pacific Regional Director, 38 IBIA 130 (2002). In Pinoleville Indian Community, the Board reviewed the history of the Tribe's termination under the California Rancheria Act of August 18, 1958, Pub. Law No. 85-671, 72 Stat. 619, as amended by the Act of August 11, 1964, Pub. Law No. 88-419, 78 Stat. 390 (Rancheria Act); and its subsequent restoration to Federal recognition under Hardwick v. United States, Civil No. C 79-1710 SW (N.D. Calif. Dec. 22, 1983). Although that history is important to an understanding of the

^{1/} Because Appellant Jessica Jackson clearly has standing to bring this appeal and because of the disposition of this appeal, the standing of other individual Appellants is not addressed. This opinion should therefore not be construed as holding that each Appellant has standing in his or her own right.

situation in which the Tribe presently exists, the Board finds that it is not necessary to repeat the history here.

From assertions made in this appeal, the Tribe voted in June 1935 to accept the application of the Indian Reorganization Act, 25 U.S.C. §§ 461, et seq. (IRA). According to the parties, however, reorganization was not completed prior to the Tribe's termination in 1966. Since its restoration, the Tribe's members have apparently adopted at least two constitutions, one in 1985 and another in the 1990s. BIA has not approved either constitution. Based on information presented in this appeal, it appears that BIA believes the Tribe is operating under the 1985 Constitution.

Pinoleville Indian Community raised questions in regard to elections held in 1990 and 1991. At that time, BIA informed the Tribe that it was unable to determine the validity of the various elections because of problems with the lack of an approved constitution, and urged the Tribe's members to meet under a general council concept and redraft the constitution and election ordinance. BIA offered to provide technical assistance in this endeavor. The Board noted that the Tribe's governmental problems seemed to be long-standing and to stem from the fact that there was a sharp division within the tribal membership.

The present situation within the Tribe has resulted in the filing of four appeals with the Board. In addition to this appeal, the Board has appeals under consideration in Williams v. Pacific Regional Director, Docket No. IBIA 03-61-A; Williams v. Superintendent, Central California Agency, Docket No. IBIA 03-75-A, and Williams v. Director, California Area Office, Indian Health Service, Docket No. IBIA 03-91-A. Each of these appeals is decided today.

This appeal and Docket No. IBIA 03-61-A make it apparent that the Tribe has not resolved the problems with its governing documents and that there is still a sharp division within the Tribal membership. The appeals further clarify that the division within the Tribe results from a dispute over who is properly a Tribal member. The Regional Director's decision at issue in Docket No. IBIA 03-61-A remanded the matter to the Superintendent, Central California Agency, BIA, with instructions to provide assistance to the Tribal membership in resolving the membership issues. The Board authorized BIA to continue with the Regional Director's remand during the pendency of the appeal in Docket No. IBIA 03-61-A. The election at issue here resulted from that remand.

Normally, tribal membership issues are a matter for tribal determination. 25 C.F.R. Part 62; Cahto Tribe of the Laytonville Rancheria v. Pacific Regional Director, 38 IBIA 244 (2002); Wadena v. Acting Minneapolis Area Director, 30 IBIA 130 (1996), recon. denied, 32 IBIA 16 (1998). However, there are exceptional circumstances under which the Department has some responsibility for addressing tribal membership disputes. At first glance, two of those circumstances might appear to apply here.

In Alan-Wilson v. Sacramento Area Director, 30 IBIA 241, recon. denied, 31 IBIA 4 (1997), the Board considered a leadership dispute within the Cloverdale Rancheria of Pomo Indians, another rancheria terminated under the Rancheria Act, and restored to Federal recognition by the Hardwick decision. The Board held that the Department had a responsibility to ensure that the restored Rancheria was organized by individuals entitled to do so. The determination of who was entitled to participate in the restoration was based upon the list of distributees and dependent lineal descendants published in the Federal Register when the Rancheria was terminated.

In Rosales v. Sacramento Area Director, 32 IBIA 158, 166 (1998) (Rosales I), after noting that the Jamul Indian Village (Village) did not have an up-to-date membership list, the Board stated:

A determination of who is a tribal member must * * * precede any determination of who is a tribal leader. Without knowing who is a tribal member, neither the Village nor the Department is in a position to know whether a tribal election was conducted in accordance with the constitution; i.e., whether only tribal members voted in that election * * * and whether only tribal members were elected to office * * *.

The Village's membership problems resulted in significant part from the facts that it was originally organized under the IRA as a community of half-bloods and that there was no evidence that BIA had verified that all of the individuals it allowed to organize the Village actually possessed at least 1/2 Indian blood quantum. The Village's membership disputes continued after the issuance of Rosales I. In Rosales v. Pacific Regional Director, 39 IBIA 12 (2003), the Board found that BIA had properly taken action to correct its apparent failure to verify the blood quantum of the individuals allowed to organize the Village through the financing of a genealogical study of those individuals and their descendants.

Here, although a restored rancheria is involved, as was the case in Alan-Wilson, no party has alleged that the Tribe was organized by individuals who were not Rancheria Act distributees or their lineal descendants. Instead, this dispute is about present membership. The Board's holding in Alan-Wilson therefore does not provide a basis for greater BIA involvement in the Tribe's membership dispute.

Furthermore, BIA did not have any responsibility for verifying the blood quantum of any person organizing this Tribe. Therefore, the Board's holdings in the Rosales cases do not provide a basis for greater than normal BIA involvement in a Tribal membership dispute.

Based on these findings, the Board holds that the normal rules relating to tribal determination of its own membership apply here.

As discussed above, BIA has been working with the Tribe's members in an attempt to assist the Tribe in developing an up-to-date membership list. It appears that some individuals may have construed this involvement to mean that BIA was determining the Tribal membership. Under the circumstances of this Tribe, BIA had no responsibility or authority to determine Tribal membership. Furthermore, after reviewing the administrative record, the Board finds that BIA did not overstep its limited authority, but instead assisted the Tribe in determining its own membership by providing, essentially, clerical services. The record shows that BIA gathered membership lists from the two main factions within the Tribe, compared those lists, and returned information to the Tribe about alleged membership. The Tribe's members then voted on April 19, 2003, to adopt the membership list compiled for them by BIA. That membership list was used to determine who could vote in the June 21, 2003, Special Election.

Appellants' main objection to the June 21, 2003, election is that the voting list for the election was inaccurate. They contend that the administrative record which BIA provided to the Board does not contain all of the membership lists that were given to BIA and does not contain family trees and other genealogical information. In particular, Appellants allege that some individuals on the list were deceased and that some were not eligible to be members based on the membership provisions in the 1985 constitution. They also allege that some individuals were improperly omitted, including one Appellant whom they state was a Rancheria Act distributee.

The Board does not take these allegations lightly, and neither should the Tribal members. However, it is not for the Board or BIA to determine the Tribe's membership. BIA provided assistance to the Tribe in compiling a membership list and, in the exercise of its sovereignty, the Tribe adopted that list. The list is a statement by the Tribe as to those persons whom it presently considers to be Tribal members. Any necessary refinement of the list, like its initial adoption, is a Tribal function. If Appellants believe that the list is not correct, their recourse is to work through the Tribe to improve it. In this regard, if the Tribe wishes, the Department of the Interior may be able to offer additional assistance in refining the membership list, perhaps through some form of alternative dispute resolution, such as formal mediation. If the Tribe wishes to pursue this possibility, it should contact either the Board or the Department's Office of Collaborative Action and Dispute Resolution.

In regard to this appeal, however, the Board finds that the Regional Director did not err in using the membership list adopted by the Tribe on April 19, 2003, as the basis for upholding the voting in the June 21, 2003, Special Election.

