



## INTERIOR BOARD OF INDIAN APPEALS

John Wessman v. Pacific Regional Director, Bureau of Indian Affairs

41 IBIA 238 (09/28/2005)



# 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

JOHN WESSMAN,  
Appellant,  
  
v.  
  
PACIFIC REGIONAL DIRECTOR,  
BUREAU OF INDIAN AFFAIRS,  
Appellee.

: Order Vacating and  
: Remanding Decision  
:  
:  
: Docket No. IBIA 03-53-A  
:  
:  
: September 28, 2005

This is an appeal from a December 20, 2002 decision of the Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA), establishing the new minimum annual rental for two business leases. For the reasons discussed below, the Board vacates the Regional Director's decision and remands the case to him to issue a new minimum annual rental in the amount shown below.

## Background

Appellant Wessman is the lessee of two business leases identified as PSL-202 and PSL-203. Lease PSL-202 involves an allotment of approximately five acres on the Agua Caliente Reservation in Palm Springs, California, owned in 1976 by lessors Jean Marie Chormicle Balzano, Robert Frank Urton, Michael Dean Chormicle, James W. Chormicle and Richard Wayne Chormicle. <sup>1/</sup> Lease PSL-203 involves an adjacent allotment, also of approximately five acres, owned in 1976 by lessor Genevieve Pierce St. Marie. <sup>2/</sup> Appellant

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<sup>1/</sup> The Director of the BIA Palm Springs Field Office (PSFO Director) signed the lease as lessor on behalf of Michael Dean Chormicle, James W. Chormicle and Richard Wayne Chormicle.

<sup>2/</sup> The lessor interests under PSL-202 and PSL-203 have changed somewhat since the inception of these leases. As of approximately August 2002, the lessor interests in PSL-202 appear to be owned by Michael Dean Chormicle, Robert F. Urton, Sr., James Chormicle, Richard Chormicle, Giovanni Balzano, and Michele Balzano. The lessor interests in PSL-203 are under the same ownership. Although advised of their right to do so, none of the lessors have participated in the briefing of this case.



In two substantially identical letters dated November 16, 2001, the Acting PSFO Director announced to Appellant that the new minimum annual rental for each lease would be \$49,615.24 per year. <sup>5/</sup> Appellant began paying monthly installments in accordance with the announced increase in the minimum annual rental. Then, in two letters dated July 12, 2002, the PSFO Director again contacted Appellant and informed him that BIA had miscalculated the new minimum annual rental for the leases, and that the correct annual figure should have been \$56,571.87. The PSFO Director asked Appellant to make up the shortfall, and to pay interest on the overdue portion of each previous month's payment.

An employee of Appellant, Martha Higgins, subsequently telephoned BIA to dispute the PSFO Director's revised minimum annual rental calculations. In a letter dated August 7, 2002, the PSFO Director reaffirmed the minimum annual rental calculation of \$56,571.87 for both leases, and notified Appellant that his decision could be appealed to the Regional Director, as provided in 25 C.F.R. Part 2.

Appellant appealed to the Regional Director. In a letter dated December 20, 2002, the Regional Director modified the PSFO Director's decision, concluding that the annual rental for each of the leases should be \$54,754.00.

In support of his decision, the Regional Director first took up the Appellant's argument that the PSFO Director had improperly "compounded" a series of 25 single-year increases in the Consumer Price Index (CPI) to arrive at a new minimum annual rental. The Regional Director concluded that the decision to compound was a matter of discretion, saying:

Nowhere in the lease does it show a specific formula to use to determine the rental increase. See *Richard Gossett v. Portland Area Director*, 28 IBIA 72 (1995), wherein it states: "The Bureau of Indian Affairs has discretion on a case-by-case basis to determine what methodology should be used to determine fair annual rental in making adjustments ... No decision of the Board of Indian Appeals requires that a particular methodology be used." The lease is silent as to what methodology to use when figuring the rental increase, i.e., whether compounding is allowed.

Regional Director's Decision at 3.

The Regional Director then determined that, based on what he viewed as common with respect to other long-term leases, it would be reasonable to add together the annual percentage

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<sup>5/</sup> BIA did not send these new minimum annual rental calculations to Appellant before the Sept. 9, 2001 adjustment date because the Consumer Price Index (CPI) figures for the month of September had not yet been published.

increases in the CPI in five year blocks for the 25 year period of each lease, then compound the resulting percentages to calculate a new minimum annual rental. In this manner, he arrived at a compounded result like the PSFO Director, but a somewhat lower minimum annual rental by compounding less often. To reach his result, the Regional Director relied upon the following CPI figures for the years in question:

1976 = 170.7	1985 = 317.7	1994 = 435.2
1977 = 181.6	1986 = 326.8	1995 = 441.2
1978 = 196.9	1987 = 340.4	1996 = 451.2
1979 = 223	1988 = 355.5	1997 = 457.2
1980 = 252	1989 = 373.8	1998 = 461.4
1981 = 282.9	1990 = 394.9	1999 = 474.8
1982 = 291.7	1991 = 408.5	2000 = 491.5
1983 = 296.7	1992 = 421.9	2001 = 528.1
1984 = 304.2	1993 = 428.5	

Appellant disagrees with the Regional Director's interpretation of the leases and his calculation of the new minimum annual rental, and has appealed the December 20, 2002 decision.

#### Discussion

Appellant would have the Board overturn the Regional Director's \$54,754.00 calculation of the new minimum annual rental due for each lease, and reinstate the PSFO Director's original calculation of \$49,615.24. Appellant makes essentially five arguments in support of his appeal, all but one seeking to demonstrate that the Regional Director has incorrectly interpreted the lease escalation clauses.

Appellant first argues that the manner in which BIA's original calculation of \$49,615.24 was reached is consistent with the manner in which Appellant and lessors under similar leases, namely PSL-183 and PSL-184, have calculated the increase in minimum annual rental. See Appellant's Opening Brief at 2-5. Appellant stresses that in the case of at least one of these calculations, the PSFO Director was notified of Appellant's method of calculation and never objected. Id. at 2-3.

Second, Appellant argues that the leases say nothing about "compounding" annual increases in the CPI, and that compounding is therefore impermissible. Id. at 3-4, 6, 9-10.

Third, Appellant argues that another commercial lease involving Appellant, PSL-239, has incorporated sample minimum annual rental calculations that support Appellant's view of how the escalation clauses in PSL-202 and PSL-203 ought to be construed, i.e., without compounding. Id. at 4. Appellant submits that since PSL-239 contains an escalation clause

practically identical to those found in the leases involved in our case, the sample calculations demonstrate that the PSFO Director himself interpreted the escalation clause to preclude compounding. Id.

Fourth, Appellant argues that the PSFO Director's initial minimum annual rental calculation of \$49,615.24 is final, and can no longer be appealed or revised by BIA. Id. at 5 n.5.

Finally, Appellant argues that the escalation clauses in PSL-202 and PSL-203 set the maximum increase of minimum annual rental at 75%, allowing for a new minimum annual rental of no more than \$52,500.00. Appellant suggests that the only way to increase the minimum annual rental beyond 75% would be to disregard the 3% annual cap specified in the escalation clauses. Id. at 6.

BIA is bound by the terms of a lease it has approved, at least to the extent that the lease provision in question does not conflict with governing law. See, e.g., Kearny Street Real Estate Co., L.P. v. Sacramento Area Director, 28 IBIA 4, 17 (1995); American Indian Land Development Corp. v. Sacramento Area Director, 23 IBIA 208, 214 (1993). Appellant's fundamental challenge to the Regional Director's December 20, 2002 decision is that he did not adhere to the terms of PSL-202 and PSL-203 when calculating a new minimum annual rental, and that no law permitted or required him to disregard operative lease provisions. We agree. But since we do not agree with the result that Appellant believes to follow from that conclusion, we will go into some detail to explain our result.

It will be helpful in this case to maintain a clear understanding of what the CPI is, and what it is designed to do.

The CPI "is a statistical measure of fluctuations in urban consumers' costs of living widely used to measure the dollar's purchasing power. The United States Bureau of Labor Statistics computes the index by calculating percentage price changes of a sample 'market basket' of goods and services in major expenditure groups, then weighs the percentage price changes in accordance with the relative importance of each item. The index is the average of these weighted percentage price changes."

The H. N. & Frances C. Berger Foundation v. City of Escondido, 25 Cal. Rptr. 3d 19, 21 n.2 (2005) (quoting from Oceanside Mobilehome Park Owners' Ass'n v. City of Oceanside, 204 Cal. Rptr. 239, 249 n.5 (1984)). See also Trautman v. Hill, 775 P.2d, 651, 654 (Idaho Ct. App. 1989) (further describing the history of the CPI since its inception during World War I, and important changes to the CPI starting in 1978); Troy Hills Village v. Township Council of Parsippany-Troy Hills, 350 A.2d. 34, 49 n.11 (N.J. 1975); Albigese v. City of Jersey City, 316 A.2d 483, 492 (N.J. Super. Ct. Law Div. 1974).

The CPI is used as a convenient and logical national barometer to measure inflation, or changes in the cost of living, and it is refined to apply to different sections of the country. Albigese, 316 A.2d at 492. It is therefore frequently used as a means of establishing future rental adjustments in long term leases, such as in PSL-202 and PSL-203. By first adopting the CPI as a reliable way to review the relative purchasing power of the lessor's compensation over time, the parties may then negotiate the extent to which rent should be adjusted so that the lessor's rent remains satisfactory.

With this fundamental understanding, we turn now to Appellant's arguments. First, Appellant argues that other minimum annual rental adjustment calculations, for other leases, show the correct means of making the calculations for PSL-202 and PSL-203. To the extent Appellant suggests that these other calculations show us the *intent* of the parties to the leases now under review, we will consider the argument together with Appellant's third argument, discussed below. See infra, 41 IBIA 246-249. But if Appellant means to say that an erroneous method of calculation can, through repetition, become binding upon BIA, we reject the argument. When BIA becomes aware of an error in its prior interpretation of law, it has not only the authority but the responsibility to correct its interpretation. See, e.g., Quinault Indian Nation v. Portland Area Director, 33 IBIA 6, 18-19 (1998); Naegele Outdoor Advertising Co. v. Acting Sacramento Area Director, 24 IBIA 169, 180 (1993); Hartman v. Anadarko Area Director, 23 IBIA 122, 127-128 (1992); Noyo River Indian Community v. Acting Sacramento Area Director, 19 IBIA 63, 67 n.10 (1990). The same is true with respect to BIA's interpretation of a lease provision.

Appellant's second argument, concerning whether or not lease provisions contemplate "compounding" of annual percentage changes in CPI figures, is founded upon a mistaken notion. Appellant believes that compounding percentage increases from year to year is somehow foreign to the concept or use of the CPI:

Without the limitation established in the clause beginning "provided, however", the minimum annual rent would have exceeded \$90,000 after the [cost of living] adjustment, even without compounding which, if implemented, would have produced some astronomical number which we have not bothered to compute.

Appellant's Opening Brief at 9 (emphasis in original). Appellant's figure of \$90,000 is apparently based upon his observation that the beginning CPI figure for September 1976 used by the Regional Director was 170.7, whereas the CPI figure for September 2001 was 528.1. Using these figures, without considering the limitations language in the lease escalation clauses, the parties would multiply the minimum annual rental applicable before September 9, 2001

(\$30,000.00) by approximately 309%, to arrive at a new minimum annual rental of \$92,811.95. <sup>6/</sup>

Appellant is therefore correct in his assumption that the limitations language of lease subparagraphs 4(a)(5) keeps the new minimum annual rental for each lease from being over \$90,000. What Appellant gets wrong is his belief that this number, which reflects a proper use of CPI tables, does not involve compounding.

Appellant submits that the correct way to adjust the minimum annual rental under the language of subparagraphs 4(a)(5) is to look at each annual percentage change in the CPI independently, reduce all percentage changes that are above 3% to 3% exactly, then *add* them together to determine the overall percentage increase for the time period in question. Multiplying this percentage by the starting minimum annual rental of \$30,000, then adding that number to the starting minimum annual rental of \$30,000, provides the new minimum annual rental. <sup>7/</sup> Appellant refers to this approach as the “Higgins method” of calculating the new minimum annual rental. *See, e.g.*, Appellant’s Opening Brief at 4. Appellant notes that the “Higgins method” does not compound annual percentage increases in the CPI.

What Appellant fails to see is that by merely adding together annual percentage increases in the CPI, the “Higgins method” is an altogether improper use of CPI information. Compounding is built into the CPI tables themselves. The “Higgins method” removes compounding from the tables, thereby severely distorting the use of CPI figures as a measurement of anything. The relationship between the September 1976 CPI figure of 170.7

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<sup>6/</sup> To determine the number one would use to multiply by the starting minimum annual rental, divide the 2001 CPI figure (528.1) by the 1976 CPI figure (170.7), thus:

$$528.1 \div 170.7 = 3.09, \text{ or } 309\%$$

To determine just the percentage *increase* of the 2001 CPI figure over the 1976 CPI figure, which is more in keeping with the actual language of lease subparagraphs 4(a)(5), subtract the earlier CPI figure (170.7) from the latest CPI figure (528.1), and divide the resulting number by the earlier CPI figure (170.7), thus:

$$(528.1 - 170.7) \div 170.7 = 2.09, \text{ or } 209\%$$

Either method can be used to determine the new minimum annual rental. That is because multiplying the starting minimum annual rental by 309% (*i.e.*, \$30,000 x 3.09 = \$92,811.95) is the same thing as increasing the starting minimum annual rental by 209% (*i.e.*, \$30,000 + (\$30,000 x 2.09) = \$92,811.95). *See Capital Equity, Ltd. v. Metromedia Steakhouses, Inc.*, No. 92AP-1498, 1993 Ohio App. LEXIS 1870, at \*1, \*7-11 (Ohio Ct. App. Mar. 30, 1993) (extensive discussion of the mathematics of calculating an escalation clause based upon the “percentage of increase” of CPI).

<sup>7/</sup> *See* Mar. 27, 2003 Declaration of Martha Higgins.

and the September 2001 CPI figure of 528.1 is not equal to a series of one-year CPI percentage increases, added together. Those numbers are related through the compounding of percentage increases from one year to the next.

To demonstrate this, let us repeat part of the CPI figures quoted from the Regional Director's decision: 1976 = 170.7; 1977 = 181.6; 1978 = 196.9; 1979 = 223; 1980 = 252; and 1981 = 282.9. Calculating the percentage change from year to year, we see that the change from 1976 to 1977 was approximately 6.39%; from 1977 to 1978, approximately 8.43%; from 1978 to 1979, approximately 13.26%; from 1979 to 1980, approximately 13.00%; and from 1980 to 1981, approximately 12.26%.

To see whether we are using annual CPI percentage increases properly, we should be able to take the 1976 figure of 170.7, increase it in some manner using the annual percentage increases for each year through 1981, and predict the actual, known 1981 CPI figure of 282.9. Ignoring for a moment the limitations language from the lease escalation clauses, the "Higgins method" would have us add together the annual percentage increases over the intervening years, multiply them by the 1976 CPI figure of 170.7, and add the result to the starting CPI figure of 170.7. That procedure, which does not compound annual percentage rate increases, supposes a total percentage increase from 1976 to 1981 of 53.34% 8/ and arrives at this answer:

$$\begin{aligned}
 &170.7 + (170.7 \times (0.0639 + 0.0843 + 0.1326 + 0.1300 + 0.1226)) \\
 &= \\
 &170.7 + (170.7 \times 0.5334) \\
 &= \\
 &261.75
 \end{aligned}$$

Clearly, 261.75 is not the actual CPI figure for 1981, which is 282.9.

Now let us try compounding annual percentage rate increases. To do this, we must take the original 1976 CPI figure, 170.7, and multiply it repeatedly by 100% *plus* the percentage increase in the CPI for each year in question. This method arrives at an overall percentage increase from 1976 to 1981 of 65.74%, and arrives at this answer:

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8/ 6.39% + 8.43% + 13.26% + 13.00% + 12.26% = 53.34%.

$$\begin{aligned}
&170.7 \times (1.0639 \times 1.0843 \times 1.1326 \times 1.1300 \times 1.1226) \\
&= \\
&170.7 \times 1.6574 \\
&= \\
&282.92 \text{ } \underline{9/}
\end{aligned}$$

Compounding annual percentage rate increases yields the actual 1981 CPI figure from which the percentage changes were derived. 10/ It is therefore evident that annual CPI entries represent compounded results from previous years, not the addition of annual percentage increases, as is the assumption under the “Higgins method.” A much longer proof, demonstrating the same principle, would result if we were to take *all* of the CPI figures used by the Regional Director, determined the annual percentage increases for each year, and sequentially compounded them. Starting from the 1976 number of 170.7, we would arrive at the 2001 number, 528.1. But we would come nowhere near the actual 2001 number following Appellant’s approach, which ignores compounding.

It is therefore wrong for Appellant to say that a cost of living adjustment based on unrestrained use of the CPI would result in a new minimum annual rental of over \$90,000 “without compounding,” or that compounding would produce some unknown “astronomical number.” See Appellant’s Opening Brief at 9. Compounding is the *reason* that a straight CPI escalation clause would result in a new minimum annual rental of over \$90,000. Conversely, adding together annual percentage increases between CPI entries (as is done in the so-called “Higgins method”) is a misuse of, and distorts, CPI information.

The Board finds that provisions in the escalation clauses of PSL-202 and PSL-203 did not need to refer to “compounding” annual percentage rate increases, since that is the way the CPI works.

Appellant’s third argument is that PSL-239 provides evidence of the way the parties meant to interpret subparagraphs 4(a)(5) of the leases involved in our case, PSL-202 and PSL-203. We consider this argument together with Appellant’s assertion that the minimum annual rental increases for leases PSL-183 and PSL-184 were calculated by the “Higgins method,” and that they too should be viewed as evidence of the intention of the parties to leases PSL-202 and PSL-203. See March 27, 2003 Declaration of Martha Higgins. 11/

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9/ Another way to state these last two lines would be to say that  $170.7 + (170.7 \times 0.6574) = 282.92$ . Yet another way would be to say that  $170.7 + (170.7 \times 65.74\%) = 282.92$ .

10/ The difference of 0.02 is attributable to rounding off numbers during calculations.

11/ We assume for the sake of this discussion that the escalation provisions in PSL-183 and PSL-184 are virtually identical to those in PSL-202 and PSL-203. See Appellant’s Opening Brief at 1-2. The Board has not been provided with copies of those leases, however.

Before we explore extrinsic evidence to help us interpret subparagraphs 4(a)(5), however, we must first inquire whether such evidence is needed to understand those provisions. After all, leases are contracts, and the principles of contract construction apply to ascertain their meaning. See 49 Am. Jur. 2d Landlord and Tenant § 43 (1995); Pinoleville Indian Community v. Acting Sacramento Area Director, 26 IBIA 292, 295 (1994); Nevaco, Inc. v. Acting Phoenix Area Director, 24 IBIA 157, 164 (1993). The best evidence of the parties' intent in a lease is the language of the lease itself. Swinomish Tribal Community and Shelter Bay Company v. Portland Area Director, 30 IBIA 13, 22 (1996); Pinoleville, 26 IBIA at 295; Nevaco, Inc., 24 IBIA at 164. In the absence of an ambiguity in the terms of a lease, no judicial construction is required or permitted. 49 Am. Jur. 2d Landlord and Tenant § 44 (1995). See also Capital Equity, Ltd., 1993 Ohio App. LEXIS 1870, at \*8. We must therefore assume Appellant would argue that subparagraphs 4(a)(5) are in some manner ambiguous, and that the Board should use extrinsic evidence to interpret the intention of the parties.

As already noted, subparagraphs 4(a)(5) in leases PSL-202 and PSL-203 contain a limitation on the otherwise straightforward application of a CPI escalation provision. It is the limitations language that has caused the disagreement in this case, not the CPI escalation provision itself. The leases say that the increase in the minimum annual rental is to equal the percentage increase of the CPI from 1976 to 2001, "provided, however, that in no event shall the increase be more than three (3%) percent per annum for each year so that the maximum increase shall be seventy-five (75%) percent."

If there is an ambiguity in this language, it is in the use of the word "increase," mentioned twice in the quoted language, because the immediately preceding clause refers to both an increase in the minimum annual rental and an increase in the CPI. Thus, each use of the word "increase" in the quoted language could be a limitation on the increase of the minimum annual rental from \$30,000 to whatever the new minimum annual rental ought to be, or each could refer to increases in the CPI between the years 1976 and 2001.

Appellant (and for that matter, the Regional Director) has viewed the language referring to an "increase" of 3% per year as a reference to the annual percentage increase between one CPI entry and another. See Appellant's Opening Brief at 2, 6. In other words, as discussed above, 41 IBIA at 244, Appellant believes this language requires the parties to examine CPI entries for each year between 1976 and 2001, and limit any annual percentage increase of more than 3% to 3% exactly. Appellant would then add together all of these annual percentage increases to determine the overall percentage by which the minimum annual rental should increase. Implicit in this "Higgins method" of calculating the new minimum annual rental is that it somehow preserves useful CPI information in a limited manner that the parties understood when they signed the leases.

But as already noted, isolating annual CPI percentage increases and adding them together, as opposed to compounding them, quickly distorts the cost of living information the CPI was designed to provide. Moreover, *changing* some of the annual percentage increases reflected by CPI entries, whether or not one sequentially compounds the resulting percentages, negates the use of CPI figures as an estimate of anything. If the “increase” of 3% per year were intended to refer to the CPI, as Appellant argues, we would have to conclude that in 1976 the parties intended to craft an escalation clause that uses CPI entries, but ruins the cost of living information the CPI contains. Even if Appellant can show that, as lessee, he had such an intent, he has produced no evidence that the lessors had such an intent when they signed the leases.

Furthermore, the structure of the critical phrase — “in no event shall the increase be more than three (3%) percent per annum for each year so that the maximum increase shall be seventy-five (75%) percent” — contradicts Appellant’s assertion that the word “increase” was intended to refer to an increase in the CPI. The phrase is clearly designed to be read as a single thought. The internal signal “so that” indicates that the second part of the phrase — the 75% limitation — is to be considered an elaboration of the thought introduced in the first part of the phrase — the 3% limitation. Appellant argues, and we agree, that the “increase” of 75% in the second half of this phrase was intended as an “absolute, inviolate limit” on the overall increase in the minimum annual rental, compared with the starting figure of \$30,000.00. See discussion below, 41 IBIA at 250. But in making this argument, Appellant inadvertently gives the word “increase” two different meanings within this short, cohesive phrase. The “increase” of 3% cannot refer to annual CPI increases, while the “increase” of 75% refers to an increase in the minimum annual rental over the starting amount of \$30,000.00.

Also, to read the word “increase” in this phrase as a reference to increases in the CPI would mean that the parties agreed to limit annual published CPI figures so that they could not reflect an increase over the previous year of more than 3%. Obviously, limiting actual CPI figures was not within the power of the parties. All they could agree to do was to limit how annual CPI increases, whatever they were, would apply to the escalation clauses in their leases.

We therefore turn instead to the possibility that the word “increase,” as used in the limitations language of subparagraphs 4(a)(5), refers to a limitation in the increase of the minimum annual rental. That usage makes perfect sense, particularly when we realize (as already noted) that the 3% per annum limitation and the overall increase limitation of 75% are meant to describe one and the same concept.

In 1976, the parties could reasonably have thought that the minimum annual rental of \$30,000.00 should increase — when it finally did — by no more than 3% (or \$900.00) for each year the lease had been in effect. If we assume that this calculation is unrelated to the CPI increase it is intended to limit, we are free to assume that the 3% limitation is not intended to be compounded, which in turn allows for a harmonious interpretation of the 3% and 75% limitations. Three percent of \$30,000.00 is \$900.00, and if the minimum annual rental of

\$30,000.00 were increased by that amount for each of 25 years, the total resulting increase would be \$22,500.00. That is the same as an overall increase of 75% in the starting minimum annual rental of \$30,000.00.

This interpretation of subparagraphs 4(a)(5) causes none of the problems that follow an assumption that “increase,” in the limitations provision of subparagraphs 4(a)(5), refers in one or both cases to an increase in the CPI. There is no inherent distortion of the use of, or information contained in, the CPI. There is no double meaning for the word “increase” in a short clause. And there is no suggestion that the parties were somehow agreeing to limit the published entries for the CPI for the Los Angeles area so that they reflected no more than a 3% increase each year.

To the contrary, interpreting “increase” as a reference to the increase in the minimum annual rental alone — and not the CPI, or any annual increase in the CPI — leads to an understandable escalation clause, particularly from the perspective of someone signing a lease in 1976. Viewed this way, the limitations language restricts the effects of an unaltered (and thus, meaningful) CPI increase. It does not assume the parties intended (as Appellant argues) to have the new minimum annual rental dependent upon a formula that never uses CPI entries properly in the first place.

Since we find only one reasonable interpretation for the disputed limitations language in subparagraphs 4(a)(5) of leases PSL-202 and PSL-203, the Board does not find that language ambiguous. We therefore decline Appellant’s invitation to consider extrinsic evidence of how other leases have been interpreted. 12/

Appellant’s fourth argument, to the effect that BIA’s initial minimum annual rental calculation of \$49,615.24 is final, and can no longer be appealed or revised by BIA, is quickly disposed of. As we have already stated, when BIA becomes aware of an error in its prior

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12/ The objective of such a review, in any event, would be to determine the intent of the parties to leases PSL-202 and PSL-203 at the time they were executed. 49 Am. Jur. 2d Landlord and Tenant § 43 (1995). Although Appellant has offered some evidence of how the parties to other leases may have come to interpret language similar to that in subparagraphs 4(a)(5), he has offered no evidence that at the time of lease execution, the parties to leases PSL-202 and PSL-203 clearly understood that those provisions would be interpreted according to the so-called “Higgins method.” To the contrary, the Mar. 27, 2003 Declaration of Martha Higgins chronicles a case in which the initial interpretation of a lessor to an escalation provision in a similar lease, PSL-183, differed from the “Higgins method.” In the face of that example, we certainly cannot suppose that the lessors in our case would all have agreed in 1976 that the “Higgins method” was the proper way to calculate the 2001 increase in minimum annual rental.

interpretation of law, or in this case a lease provision, it has not only the authority but the responsibility to correct its interpretation. In addition, the November 16, 2001 letter announcing the \$49,615.24 calculation does not qualify as a final decision under 25 C.F.R. §§ 2.6 and 2.7. The PSFO Director did not give Appellant or the lessors appeal rights with respect to his initial calculation, thus the decision remained appealable under 25 C.F.R. § 2.7(b) until it was mooted by the PSFO Director's August 7, 2002 decision.

We come then to Appellant's fifth and final argument, that the escalation clauses in PSL-202 and PSL-203 set the maximum increase of minimum annual rental at 75%, which means a maximum increase of \$22,500.00, or a maximum new minimum annual rental of \$52,500.00. Appellant's Opening Brief at 6, 10-11.

However calculated, the Regional Director's December 20, 2002 decision produced new minimum annual rentals for leases PSL-202 and PSL-203 in excess of the maximum increases allowable. Subparagraphs 4(a)(5) each say that the "maximum increase shall be seventy-five (75%) percent." As we have already stated, this language refers to the "increase" of the new minimum annual rental over the preceding minimum annual rental of \$30,000.00. A 75% increase would equal \$22,500.00, for an absolute maximum new minimum annual rental of \$52,500.00. The Regional Director's calculation of \$54,754.00 exceeds that sum, and must be overturned.

In light of our conclusion that subparagraphs 4(a)(5) of leases PSL-202 and PSL-203 are unambiguous expressions of the means by which the minimum annual rental should be increased, we disagree with the Regional Director's statement in his December 20, 2002 decision that "[n]owhere in the lease does it show a specific formula to use to determine the rental increase." We correspondingly find that his reliance upon Gossett, *supra*, was misplaced. In Gossett, neither the lease itself nor applicable regulations provided any formula for determining an appropriate increase, though both anticipated that there should be one. <sup>13/</sup> In the present case, subparagraphs 4(a)(5) provide a sufficiently detailed procedure for calculating the new minimum annual rental.

The provisions of leases PSL-202 and PSL-203 are dispositive of this case, so the Board denies Appellant's requests for oral argument and an evidentiary hearing.

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<sup>13/</sup> The specific regulatory provision applicable in Gossett was the former 25 C.F.R. § 162.8. It applied to business, residential and other lease uses, and provided under the facts of that case that rental was subject to "periodic review, at not less than five-year intervals, of the equities involved. Such review shall give consideration to the economic conditions at the time, exclusive of improvement or development required by the contract or the contribution value of such improvements." The lease essentially tracked this regulatory language. *See Gossett*, 28 IBIA at 73.

Conclusion

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board vacates the Regional Director's December 20, 2002 decision and remands this case to the Regional Director with instructions to issue a new minimum annual rental for leases PSL-202 and PSL-203 of \$52,500.00 per annum each, effective September 9, 2001.

I concur:

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// original signed  
David B. Johnson  
Acting Administrative Judge

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// original signed  
Anita Vogt  
Senior Administrative Judge