



INTERIOR BOARD OF INDIAN APPEALS

Gary Frost and Vivian Kimbol v. Northwest Regional Director, Bureau of Indian Affairs

51 IBIA 300 (06/11/2010)



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

GARY FROST AND)	Order Dismissing Appeal
VIVIAN KIMBOL,)	
Appellants,)	
)	
v.)	
)	Docket No. IBIA 10-070
NORTHWEST REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	June 11, 2010

Gary Frost and Vivian Kimbol (Appellants) appealed to the Board of Indian Appeals (Board) from a December 11, 2009, decision of the Northwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning a recall dispute involving the Tribal Council of the Klamath Tribes. Appellants contended that seven Tribal Council members had been removed from office and that Appellants were the newly appointed Chairman and Vice-Chairman. The Regional Director recommended that the disputants work through the Tribe's court system or other tribal mechanism to resolve the dispute, and took the position that while the dispute remained unresolved, BIA would continue to recognize the Tribal Council elected in 2007.¹

The elected Council intervened in this appeal and filed a motion to dismiss on the grounds that Appellants had failed to exhaust tribal remedies, and that the Regional Director's decision was rendered moot by a temporary restraining order entered against Appellants by the tribal court. The Board provided Appellants and the Regional Director an opportunity to respond to the motion to dismiss, with responses due on or before April 26, 2010. The Regional Director filed a response in support of dismissal. The Board received no response from Appellants.

¹ The Tribal Council elected in 2007 consisted of Joseph S. Kirk, Chairman; Joe Hobbs, Vice-Chairman; Torina Case, Secretary; Brandi Decker, Treasurer; and Council Members Jeff Mitchell, William Hatcher, and Allen Foreman.

On May 7, 2010, the Board received from the intervenor Council a Notice of Ruling in Related Litigation in Tribal Court and Update of Status of Tribal Elections. The tribal court ruling referenced in the notice was an April 15, 2010, entry of a preliminary injunction against Appellants from holding themselves out as representatives of the Tribe, with the injunction to remain in effect until after the 2010 election was held and the elected individuals were sworn into office. The election update from the intervenor Council reports that the 2010 election for Tribal Council was held on April 22, 2010; no challenges were filed; and the new Tribal Council was to be sworn in on or about May 13, 2010.²

Because Appellants failed to respond to the intervenor Council's motion to dismiss for failure to exhaust tribal remedies, we dismiss this appeal. In addition, it appears that this appeal has been rendered moot by the 2010 tribal election. See *Smith v. Acting Pacific Regional Director*, 42 IBIA 224, 224-25 (2006), and cases cited therein.

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 dismisses this appeal.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

² The intervenor Council reports that the newly elected Tribal Council consists of the following: Gary Frost, Chairman; Don Gentry, Vice-Chairman; Torina Case, Secretary; Brandi Decker, Treasurer; and At-Large Members Shawn Jackson, Albert Bert Lawvor, Sr., GeorGene Wright-Nelson, Jeff C. Mitchell, Charles E. Kimbol, Sr., and Frank Summers.