



INTERIOR BOARD OF INDIAN APPEALS

Alturas Indian Rancheria v. Northern California Agency Superintendent,
Bureau of Indian Affairs

52 IBIA 7 (07/06/2010)

Related Board case:

54 IBIA 138

54 IBIA 15

54 IBIA 1

53 IBIA 100

51 IBIA 317



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ALTURAS INDIAN RANCHERIA,)	Order Docketing Appeal, Affirming
Appellant,)	Decision in Part, Vacating in Part,
)	and Remanding
v.)	
)	
NORTHERN CALIFORNIA AGENCY)		Docket No. IBIA 10-110
SUPERINTENDENT, BUREAU)		
OF INDIAN AFFAIRS,)		
Appellee.)		July 6, 2010

On June 30, 2010, the Board of Indian Appeals (Board) received a notice of appeal from the Alturas Indian Rancheria (Tribe or Appellant), through Steven J. Bloxham, Esq., of Fredericks, Peebles & Morgan LLP. The Tribe¹ seeks review of a May 25, 2010, decision by the Northern California Agency Superintendent (Superintendent), Bureau of Indian Affairs (BIA), declining to take action on a proposal from the Tribe for a contract for Fiscal Year 2010 under the Indian Self-Determination Education and Assistance Act (ISDA), Pub. L. No. 93-638. *See* 25 U.S.C. § 450f. The Superintendent concluded that he lacked authority to consider the proposal because it implicated a tribal governance dispute that was, at the time, at issue in an appeal that was pending before the Board.

¹ The notice of appeal states that it was filed “by and through” the Tribe’s governing body, the Alturas Indian Rancheria General Council. The present composition of the General Council is a matter of dispute within the Tribe. *See Del Rosa v. Acting Pacific Regional Director*, 51 IBIA 317 (2010) (vacating decisions). The members of the General Council who purport to represent a majority of the General Council of the Tribe in bringing this appeal are Darren Rose, Jennifer Chrisman, and Joseph Burrell (“Rose Faction”). The Board’s caption of this appeal and references to the Tribe as Appellant shall not be construed as an expression of any view on the merits of the underlying tribal dispute or whether the Rose Faction could authorize this appeal in the name of the Tribe.

See Del Rosa, 51 IBIA 317. The Tribe's present appeal was filed with the Board pursuant to 25 C.F.R. §§ 900.150 and 900.158, and the Tribe requests a hearing on the record.²

We summarily affirm the Superintendent's conclusion that he lacked jurisdiction to consider the contract proposal because of the pendency of the *Del Rosa* appeal and we affirm his decision not to act on the proposal on that ground. To the extent that the Superintendent's decision might be construed as going beyond relying on that jurisdictional bar, we vacate and remand to allow BIA to address and decide any and all issues necessary for taking action on the proposal, and to fully explain that action, unhindered by the jurisdictional constraints created by the *Del Rosa* appeal.

Discussion

At the time the Superintendent issued his decision, the tribal membership and governance dispute was the subject of an appeal before the Board, which involved a challenge to BIA's recognition or purported recognition of the composition of the General Council of the Tribe. *See Del Rosa*, 51 IBIA at 317-318. Because the pendency of that appeal before the Board had divested BIA of jurisdiction over that issue, the Superintendent found that he was precluded from deciding whether the proposal had been authorized by the Tribe, as required by ISDA,³ and that he thus was also precluded from taking action on

² The appeal instructions contained in the Superintendent's decision referred to BIA's general administrative appeals regulations found in 25 C.F.R. Part 2. The Board has treated BIA decisions refusing to act on ISDA proposals, on the threshold ground that the submitting party has not shown that the proposal is authorized by the tribe, as an "otherwise appealable pre-award dispute" under the ISDA regulations, 25 C.F.R. § 900.150(i). *See, e.g., Trenton Indian Service Area v. Turtle Mountain Agency Superintendent*, 47 IBIA 60, 60 (2008); *Timbisha Shoshone Tribe v. Central California Agency Superintendent*, Docket No. IBIA 10-096, Order at 2 (May 21, 2010); *see generally* 25 C.F.R. Part 900, Subpart L (ISDA appeals).

³ Under ISDA, unless certain declination criteria are present, the Secretary is required to contract "upon the request of [an] Indian tribe by tribal resolution," 25 U.S.C. § 450f(a)(1). A tribal organization may submit a contract proposal only "[i]f so authorized by an Indian tribe." *Id.* § 450f(a)(2). The Board has recognized that whether a contract proposal is at the request of an Indian tribe by tribal resolution is a threshold determination that precedes application of the declination criteria, and refusal to accept a proposal on that threshold ground is not a "declination" of the proposal within the meaning of the statute. *See Navajo Nation v. Office of Indian Educ. Programs*, 40 IBIA 2, 14 (2004).

the ISDA proposal.⁴ The Superintendent's decision was sound, and we affirm that part of it. *See Bullcreek v. Western Regional Director*, 39 IBIA 100, 101 (2003) (affirming BIA's refusal to reconsider, for lack of jurisdiction, a BIA decision while it was on appeal to the Board; once an appeal is filed with the Board, BIA loses jurisdiction).⁵ We recently decided the *Del Rosa* appeal, and as we recognized in that decision, the effect of deciding *Del Rosa* was to return jurisdiction to BIA to consider, as appropriate, issues regarding the Tribe's governance for purposes of the government-to-government relationship. *See* 51 IBIA at 320-21.

On the other hand, the Superintendent's decision also contains several statements that could be construed as suggesting that, even if *Del Rosa* had not been pending, he would not have been able to make a determination whether the contract proposal was authorized by the Tribe, based on the continuing internal tribal dispute. It is unclear whether the Superintendent intended, in the alternative, to "decide" that issue, but because he was correct that he lacked jurisdiction, any such decision in the alternative was ultra vires. Moreover, the additional statements are at best conclusory in nature and thus in any event either would require or warrant additional explanation through a more comprehensive decision, which may now be rendered by BIA because *Del Rosa* has been decided and jurisdiction has been returned to BIA. Thus, to the extent the Superintendent's decision may purport to decide that other grounds exist for BIA to return the contract proposal without action, we vacate that part of his decision.

In its notice of appeal, the Tribe suggests that we should proceed directly to grant it relief by declaring that its contract proposal is approved. The Tribe argues that because there was no finding by the Superintendent that the Tribe did *not* authorize the contract proposal, and because it *was* so authorized (according to the Tribe), the Superintendent's action was tantamount to a declination. And since the Superintendent did not find that any grounds for declination were present, the Tribe reasons that we should declare the contract proposal approved by operation of law.

⁴ As we noted in *Del Rosa*, none of the parties informed the Board at the time that they had submitted ISDA contract proposals to BIA, nor did any ask the Board to authorize BIA to act on the proposals. The Appellant in the present appeal only informed the Board of its February 2010 contract proposal *after* the Superintendent issued his May 25, 2010, decision.

⁵ As a party to an appeal, BIA may of course reconsider its position and decide to seek a remand from the Board, but in *Bullcreek* the appellants had sought formal reconsideration from BIA and the issuance of a new decision by BIA while the appeal to the Board was pending.

We disagree. The Superintendent did not specifically find that the Tribe's contract proposal was *not* authorized by the recognized governing body of the Tribe because he found that he did not have *jurisdiction* to decide that issue. And in the absence of an actual determination by BIA whether or not the proposal was so authorized, the issue is not ripe for our review. We leave it to the Superintendent to determine in the first instance the threshold issue of whether the faction that submitted the proposal should be recognized, on an interim basis or otherwise, as having the authority to submit the proposal on behalf of the Tribe.⁶

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 affirms the Superintendent's May 25, 2010, decision in part, vacates it in part, and remands the matter for further proceedings.⁷

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

⁶ To the extent that our disposition of this appeal does not render the Tribe's request for a hearing on the record moot, we deny the Tribe's request for a hearing because the Superintendent's decision was not, as the Tribe contends, "tantamount to a declination," Notice of Appeal at 3, of its contract proposal.

⁷ Appellant did not certify that it had served a copy of its Notice of Appeal on the Del Rosa faction within the Tribe, which also apparently claims to represent the Tribe. Ordinarily in an ISDA appeal, the only interested parties are the Tribe and the Federal agency whose decision is being appealed, and there is no requirement to serve additional "interested parties." Compare 25 C.F.R. § 900.158(d) with 43 C.F.R. § 4.310(b). In the case of ISDA appeals involving quarreling factions within a tribe, with each claiming to represent the tribe for government-to-government purposes, the Board has required the appealing party to serve the opposing faction. See, e.g., *Timbisha Shoshone Tribe*, *supra* note 2, Order at 4. Because we summarily decide this appeal without deciding any issue concerning the underlying merits of the tribal dispute, and because the matter is returned on remand to BIA, we find it unnecessary to require the completion of service and to allow the *Del Rosa* faction an opportunity to respond.