



INTERIOR BOARD OF INDIAN APPEALS

Kim Hazard v. Eastern Regional Director, Bureau of Indian Affairs

59 IBIA 322 (01/22/2015)



# 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

KIM HAZARD,	)	Order Affirming Decision
Appellant,	)	
	)	
v.	)	
	)	Docket No. IBIA 12-069
EASTERN REGIONAL DIRECTOR,	)	
BUREAU OF INDIAN AFFAIRS,	)	
Appellee.	)	January 22, 2015

Kim Hazard (Appellant), appealed to the Board of Indian Appeals (Board) from a January 4, 2012, decision (Decision) of the Eastern Regional Director (Regional Director), Bureau of Indian Affairs (BIA), denying a request from Appellant for BIA to intervene in a tribal dispute to vindicate her civil rights. Appellant was elected to the Narragansett Tribal Council (Council) in 2008, and contends that her right to serve a 6-year term was violated when her seat was declared open and filled in the 2010 election. Appellant obtained a favorable ruling from the Narragansett Indian Tribal Court, and when the Chief Sachem, the Tribal Council, and the Tribal Election Committee failed to implement the Tribal Court decision, she asked BIA to declare the 2010 election invalid and to suspend funding to the Narragansett Tribe (Tribe) until her civil rights were restored.<sup>1</sup> The Regional Director concluded that BIA had no authority to intervene in the dispute in the absence of specific authority, which he concluded was not supplied by the Indian Civil Rights Act (ICRA), 25 U.S.C. § 1302.<sup>2</sup>

We affirm the Decision. ICRA, standing alone, does not provide BIA with authority to intervene in tribal disputes in order to provide a remedy to individuals who allege that a tribe has violated their civil rights, including a right to serve a term of office. Appellant identified no Federal action pending before the Regional Director at the time of

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<sup>1</sup> The Board's references to actions taken by the Tribe or individuals or entities within the Tribe shall not be construed as expressing any view on the merits of matters that may be disputed within the Tribe.

<sup>2</sup> ICRA prohibits Indian tribes, in exercising powers of self-governance, from violating a list of enumerated rights, including due process of law. 25 U.S.C. § 1302.

her request that would have provided BIA with authority to act and that, in turn, would have required BIA to determine Appellant's individual status on the Council. And even assuming, as Appellant contends, that tribal requests for BIA action on Indian Self-Determination and Education Assistance Act (ISDA)<sup>3</sup> proposals were pending, the alleged violation of her civil rights by the Tribe provided no basis under ISDA for BIA to deny the Tribe's request or to suspend Federal funding.<sup>4</sup>

### Background

This appeal grows out of a tribal dispute over the length of terms for positions on the Tribe's 9-member Council, and the effect of an amendment to the Tribe's Constitution and Bylaws to implement a system of staggered terms of office. Appellant contends that she was elected to the Council in 2008, and that to address confusion over the Constitutional amendment, the 2008 Council determined how the staggered terms would take effect. *See* Letter from Cleary to Regional Director, Oct. 17, 2011, at 2-3 (AR Tab 4). According to Appellant, she and two other Council members were to hold their seats until 2014, but her seat was then unlawfully declared open for the Tribe's 2010 election and she was replaced. *Id.* After obtaining a Tribal Court decision in her favor, and attempting—unsuccessfully—to have the Chief Sachem, the Council, and the Election Commission restore her to her position on the Council, Appellant sought relief from BIA, pursuant to ICRA, to vindicate her rights. *Id.* at 4; *see also* Letter from Cleary to Regional Director, Nov. 21, 2011 (AR Tab 2); Letter from Appellant to Regional Director, Dec. 12, 2011 (AR Tab 3). Specifically, Appellant asked BIA to declare the 2010 election void and to suspend Federal funding to the Tribe until her rights have been recognized and restored. AR Tab 4, at 1, 5.

The Regional Director rejected Appellant's request without reaching the underlying merits of the tribal dispute. Regional Director's Decision, Jan. 4, 2012 (Decision). The Regional Director concluded that BIA is prohibited from interfering in matters within the

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<sup>3</sup> Pub. L. No. 93-638, 25 U.S.C. § 450 *et seq.*

<sup>4</sup> It is possible that this appeal was rendered moot when the 6-year term claimed by Appellant expired in 2014, but Appellant contends that the 2014 tribal election is being disputed. *See* Order Soliciting Briefing on Possible Mootness, Oct. 17, 2014; Brief of Appellant on Mootness, Nov. 6, 2014. The Tribe contends that the appeal is moot. *See* Tribe's Response to Order of Possible Mootness, Dec. 2, 2014, at 2 (Tribal Court is not a valid forum because it has been suspended). Rather than decide, implicitly or explicitly, issues that may themselves be the subject of an internal dispute, the Board declines to dismiss the appeal as moot.

jurisdictional authority of a tribal government unless there is specific legal authority for BIA to become involved. *Id.* The Regional Director further concluded that ICRA did not provide authority for BIA involvement in this matter. *Id.*

Appellant appealed to the Board, arguing that the Regional Director had improperly declined to “exercise [BIA’s] government-to-government relationship with the Tribe, and suspend non-critical [BIA] programs until a resolution was achieved.” Notice of Appeal, Jan. 20, 2012, at 2; *see also id.* at 6 (requesting order for BIA to decline to recognize results of the 2010 and 2012 elections and suspend non-essential program funding until the Tribe complies with the Tribal Court decision). Appellant contends that her civil rights have been violated by the Tribe, and that ICRA vests in BIA “both the authority and responsibility to withhold or suspend recognition of a tribal government installed under a tribal election infected by violations of [ICRA].” *Id.* at 6. In her opening brief, Appellant argues that the Regional Director had grounds to become involved in the dispute because BIA must consider the renewal of a number of the Tribe’s Federal grants and contracts, thus providing independent authority for BIA to take action. Brief of Appellant, May 7, 2012, at 1. Appellant contends that it is BIA’s responsibility to withhold or suspend recognition of a tribal government elected in violation of ICRA, and that BIA should defer to the Tribal Court’s findings. *Id.* at 7-8. Appellant asks that the Board declare the Tribal Court ruling binding on the Regional Director, vacate the Decision, and remand the matter to the Regional Director to develop a record explaining his reasoning in deciding whom he will recognize to represent the Tribe in dealings with BIA. *Id.* at 8-9.

The Regional Director responds that he properly informed Appellant that BIA lacked authority under the circumstances to make a substantive determination regarding the tribal dispute over the validity of the 2010 election. Brief of Appellee, Jun. 8, 2012, at 2. The Regional Director contends that Appellant did not identify any separate Federal action involving the Tribe that, in turn, would have required BIA to intervene in the tribal dispute. *Id.* In addition, the Regional Director argues that neither BIA nor the Board has the authority to grant Appellant the relief she seeks. *Id.* at 2-3.

In reply, Appellant contends that it was BIA’s burden, not Appellant’s, to identify what matter might be pending for BIA action that could serve as the basis for BIA to intervene in the dispute, because Appellant would not necessarily know what matters are pending before BIA. Appellant’s Reply Brief, Jun. 22, 2012, at 1-2. Appellant contends on appeal that the requisite Federal action existed because BIA was formalizing ISDA contracts with the Tribe during the time that her request was before the Regional Director. *Id.* at 3-4.

## Discussion

We agree with the Regional Director that BIA was not required to intervene in the tribal dispute in response to Appellant's request and allegation that BIA must do so to vindicate her civil rights. As the Board has held, BIA is only permitted to intervene in disputes involving tribal governance matters when some Federal action is required or warranted that, in turn, necessitates a decision regarding that dispute. *Coyote Valley Band of Pomo Indians v. Acting Pacific Regional Director*, 54 IBIA 320, 326 (2012); see also *Pueblo de San Ildefonso v. Acting Southwest Regional Director*, 54 IBIA 253, 258 (2012) (“[The Board’s] threshold inquiry is to determine whether there was any Federal need for action that compelled BIA to . . . declare a particular [tribal] election valid or invalid); *Bucktooth v. Acting Eastern Area Director*, 29 IBIA 144, 149 (1996) (“This rule applies with particular force to intra-tribal disputes concerning the proper composition of a tribe’s governing body.”).

Standing alone, ICRA does not provide BIA with such authority to intervene or to review tribal action. *Calto Tribe of the Laytonville Rancheria v. Pacific Regional Director*, 38 IBIA 244, 248-49 (2002) (“ICRA is not an independent grant of authority and does not authorize BIA to scrutinize tribal actions not otherwise properly within its jurisdiction.”). Similarly, Appellant’s suggestion that BIA possesses independent authority to enforce the Tribal Court’s decision, see Brief of Appellant at 8, is incorrect. *Camel v. Assistant Portland Area Director*, 21 IBIA 179, 181 (1992) (“BIA does not have the authority or the responsibility to enforce a tribal court decree. That authority and responsibility, which is part of tribal sovereignty, resides with the tribal court.”).

Instead, as the Board has made clear, BIA’s authority to review alleged ICRA violations is dependent upon BIA having a separate source of authority to act on a matter, the resolution of which implicates the alleged ICRA violation. *Welmas v. Sacramento Area Director*, 24 IBIA 264, 271-72 (1993). If a matter arises that requires or warrants BIA action in the exercise of its government-to-government relationship with a tribe, and if an alleged ICRA violation is relevant to BIA taking action on such a matter, it may then be proper for BIA to address the ICRA violation. *Id.* at 271.

We disagree with Appellant’s contention that it should be BIA’s burden—not that of a party requesting BIA intervention in a tribal dispute—to identify matters that may be pending that require or warrant BIA action. See *Committee to Organize the Cloverdale Rancheria Government v. Acting Pacific Regional Director*, 55 IBIA 220, 223-25 (2012) (concluding that BIA properly declined to issue a decision on tribal dispute, because appellants’ request did not provide a justification for BIA to intrude into tribal affairs); *Wasson v. Western Regional Director*, 42 IBIA 141, 153-54 (2006) (affirming BIA’s decision not to issue a recognition decision because the appellants’ request failed to identify any

Federal action that was dependent on their recognition as tribal council). The requirement for a separate matter to require or warrant BIA action does not mean that if such a matter is pending, BIA then has open-ended authority to intervene in a tribal dispute and address alleged ICRA violations, whether or not necessary to take action on the pending matter. *See Cayuga Indian Nation of New York v. Eastern Regional Director*, 58 IBIA 171, 179-81 (2014) (stating that no statute or regulation imposes a free-standing obligation on BIA to intervene in a tribal dispute, when the dispute has not affected BIA's ability to perform its duties). The separate matter that independently requires or warrants BIA action, such as a contract funding proposal submitted on behalf of a tribe, serves both as the jurisdictional basis for BIA to take action and as the context in which to evaluate, specifically, whether *and to what extent* BIA may, if "essential for Federal purposes," decide matters that are the subject of an internal tribal dispute. *Id.* at 178-79.

In the present case, even assuming, as Appellant alleges, that one or more tribal ISDA proposals were pending before BIA at the time of her request, and assuming that Appellant had identified such a proposal as a matter requiring BIA action, it would not follow that BIA would have been authorized or required to decide *Appellant's individual status* on the Council in order to take action on the proposal. Appellant does not identify any basis upon which BIA could cut off funding to an existing contract, or refuse to grant a contract or new funding, based on an allegation that an individual member of a tribal council had been unlawfully unseated. It is certainly not apparent, nor explained by Appellant, how a dispute over Appellant's seat on the 9-member Council could serve to divest the Council of the authority to authorize contract or funding proposals to BIA. *See* 25 U.S.C. § 450f(a)(1), (2). Nor does Appellant contend that the dispute over her seat on the Council could serve as a basis for BIA to decline a tribal proposal. *Id.* § 450f(a)(2) (detailing the five grounds on which BIA can decline to award an ISDA contract); *see also* 25 C.F.R. § 900.22 (same); *id.* § 900.24 (stating that BIA may only decline a proposal based upon one or more of the five reasons specified in the statute).<sup>5</sup>

In sum, the Regional Director properly declined, in issuing a decision in response to Appellant's request, to address the merits of Appellant's claims that the 2010 tribal election was invalid and that she was improperly unseated from the Tribal Council.

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<sup>5</sup> Appellant's request for relief from BIA was premised on her effort to vindicate her individual rights. AR Tab 4 at 1. Although Appellant does not purport to seek vindication on behalf of additional Council members, to the extent her request for relief seeks a broad determination concerning the overall composition of the Tribal Council, she lacks standing to assert the rights of third parties. *Thompson v. Great Plains Regional Director*, 58 IBIA 240, 241 (2014).

## 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 Regional Director's January 4, 2012, decision.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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//original signed  
Robert E. Hall  
Administrative Judge