



## INTERIOR BOARD OF INDIAN APPEALS

Vince Garcia and Registered Voters and Citizens of the Te-Moak Tribe v.  
Western Regional Director, Bureau of Indian Affairs

61 IBIA 45 (06/26/2015)



# 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

VINCE GARCIA and REGISTERED	)	Order Affirming Decisions
VOTERS AND CITIZENS OF THE	)	
TE-MOAK TRIBE,	)	
Appellants,	)	
	)	Docket Nos. IBIA 13-044
v.	)	14-128
	)	
WESTERN REGIONAL DIRECTOR,	)	
BUREAU OF INDIAN AFFAIRS,	)	
Appellee.	)	June 26, 2015

These appeals stem from dissatisfaction with the October 9, 2012, elections held by the four Bands of the Te-Moak Tribe of Western Shoshone (Tribe). Vince Garcia, a tribal member, appealed to the Board of Indian Appeals (Board) from a November 23, 2012, decision of the Western Regional Director (Regional Director), Bureau of Indian Affairs (BIA), upholding the decision of the BIA’s Eastern Nevada Agency Superintendent (Superintendent) declining to determine the validity of South Fork Band election results in response to Garcia’s allegations of procedural errors. Subsequently, the Registered Voters and Citizens of the Te-Moak Tribe (Registered Voters),<sup>1</sup> through Lois E. Whitney, also a tribal member, appealed to the Board from an August 8, 2014, decision, in which the Regional Director denied its request for BIA to redo the 2012 “tribal-wide” elections, which would seemingly include elections for each Band and the Tribal election of the Tribe’s Chairman. We affirm the Decisions because Garcia and Whitney have identified no authority permitting BIA to intervene in and evaluate the merits of the internal tribal election disputes or to hold or order the Tribe to hold tribal elections in response to their requests for BIA intervention.

---

<sup>1</sup> Garcia and the Registered Voters are referred to, collectively, as Appellants. Garcia’s appeal was assigned Docket No. IBIA 13-044 and the Registered Voters’ appeal was assigned Docket No. IBIA 14-128. The Board consolidates these appeals for the purposes of this decision. Garcia has a second appeal, Docket No. IBIA 14-033, pending before the Board, which the Board declines to consolidate with these.

## Background

### I. 2012 Tribal Elections

The Tribe, which includes the Battle Mountain, Elko, South Fork, and Wells Bands,<sup>2</sup> held its Band Council elections on October 9, 2012. The Tribe's Constitution specifies that the election of Band Council members shall take place each third year on the same day for each Band. Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada (Tribe's Constitution), art. 7, §§ 1, 4 (*Registered Voters* Administrative Record (AR) Tab V-2); *see also* Election Procedures Ordinance (Ordinance), § 13-4-2 (Band Council elections shall be held in the second week of October) (Registered Voters AR Tab V-1). Following such elections, each Band Council selects its representatives to the Tribal Council. Tribe's Constitution, art. 7, § 2. The election for Tribal Chairperson, who must be a member of the Tribal Council and therefore a representative of a Band Council, is then held within 21 days after the Band Council elections. *Id.* at § 3. Election disputes may be filed by any registered voter of the Tribe with the Band Election Committee, concerning Band elections, or with the Tribal Election Board, concerning Tribal elections. Ordinance, § 13-10-1. After a hearing, the Band Election Committee or Tribal Election Board renders a final decision on the validity of the disputed election. *Id.*

### II. Garcia's Appeal

Garcia disputed the legitimacy of the 2012 election held by the South Fork Band. In a protest presented to the South Fork Band Election Committee the day following the elections, Garcia cataloged several alleged violations by the Band Election Committee of the Tribe's Constitution and other alleged procedural errors. Letter of Protest, Oct. 10, 2012 (*Garcia* Supplemental Administrative Record (Supplemental AR) Tab A) (arguing that the Band failed to announce the election schedule ("date of events") in a timely manner, permitted a candidate to run for office in violation of constitutional standards, and posted an invalid list of approved voters). Following the Election Committee's denial of his protest, *see* Letter from South Fork Band Election Committee to Garcia, Oct. 11, 2012 (*Garcia* Supplemental AR Tab B), Garcia sought relief from the Superintendent, *see* Letter from Garcia to Superintendent, Oct. 12, 2012 (*Garcia* Supplemental AR Tab A). Garcia also contended that although there was a successful recall of certain South Fork Band Council members, these individuals continued to act as tribal officials. *Id.* Garcia requested that BIA render a decision regarding the validity of the South Fork Band's election. *Id.*

---

<sup>2</sup> *See Shoshone-Paiute Tribes of the Duck Valley Reservation v. Phoenix Area Director*, 18 IBIA 423, 423 n.1 (1990).

The Superintendent rejected Garcia's request without reaching the underlying merits of Garcia's allegations regarding the Band's election. Superintendent's Decision, Oct. 22, 2012 (*Garcia* AR Tab 4). After noting Garcia's concerns, the Superintendent stated that BIA would not become involved in the internal affairs of the Tribe or infringe on the Tribe's right to govern itself. *Id.* Garcia then appealed to the Regional Director. Notice of Appeal to the Regional Director, Oct. 26, 2012 (*Garcia* AR Tab 5). In addition to asserting that "many violations and irregularities" occurred during the tribal election, Garcia argued that the Superintendent had a conflict of interest in the matter and requested that BIA "thoroughly investigate" the Superintendent's involvement in the Band election and in other matters. *Id.* at 1-2. Upholding the Superintendent's decision, the Regional Director concluded that the Superintendent correctly stated BIA's policy of abstaining from internal tribal issues, such as elections. Regional Director's Decision, Nov. 23, 2012 (*Garcia* AR Tab 3). The Regional Director further explained that Garcia's remedy rested with the Tribe's election ordinance or other tribal processes used to address election disputes. *Id.*

On appeal to the Board, Garcia again argues that BIA should investigate the alleged voter fraud and misconduct that occurred in the South Fork Band's 2012 election. Garcia's Opening Brief (Br.), July 4, 2013, at 2. Garcia reasserts his claim that the Superintendent improperly used his position to unlawfully gain a financial advantage. *Id.* He also, for the first time, argues that the electoral violations will promote disenrollment of tribal members, encourage illegal land assignments, as well as further the interests of those seeking to remove Garcia and (unidentified) others from their allotments and grazing permits. Garcia's Opening Br. at 2; Garcia's Notice of Appeal, Dec. 20, 2012, at 1.

### III. Registered Voters' Appeal

On behalf of Registered Voters, Whitney seeks to redo the elections for all four Bands of the Tribe and the Tribal Chairperson. Approximately a year and a half after the Tribal elections, Whitney submitted to the Regional Director petitions signed by individual Tribal members, including Whitney, requesting BIA's assistance with their "INITIATIVE TO REDO 2012 TRIBAL WIDE ELECTIONS." Letter from Whitney to Regional Director, April 22, 2014 (*Registered Voters* AR Tab IV-2); Letter from Whitney to Regional Director, July 27, 2014 (*Registered Voters* AR Tab IV-1). The Regional Director declined the request, finding that "tribal elections are an inherent function of the Tribe" and that issues regarding tribal elections must be handled through tribal administrative processes. Regional Director's Decision, Aug. 8, 2014, at 1 (unnumbered) (*Registered Voters* AR Tab III).

Whitney appealed the Regional Director's Decision to the Board, arguing that BIA should intervene in this matter because the petitioning tribal members had identified

electoral and tribal constitutional violations. Whitney's Notice of Appeal, Sept. 5, 2014, at 1 (unnumbered). The appeal was filed in the name of Registered Voters, but Whitney did not identify her position within the organization or otherwise describe the composition or nature of the organization or group which she purportedly represented. Consequently, after receiving the administrative record for the appeal, the Board ordered Registered Voters to address standing and Whitney's authority to represent Registered Voters as an organization or as individual tribal members in the opening brief. Notice of Docketing and Orders, Oct. 7, 2014, at 3. The Board also noted that the record submitted by the Regional Director was incomplete and did not contain the enclosures and attachments that Whitney submitted to the Regional Director as part of the appeal, and that the Regional Director subsequently returned to Whitney. *Id.* at 1-2. The Board therefore requested that Registered Voters submit a complete copy of the documents to the Board. *Id.* at 2.

In response, Whitney filed the signed petitions to "Redo the 2012 Tribal Wide Elections" and lists of the registered voters for each Band. Letter from Whitney to Board, Nov. 21, 2014. In addition, Whitney filed a brief, primarily reasserting concerns with the Tribal election process, the Superintendent, and the involvement of recalled members of the South Fork Band Council in the Band's election process. Whitney's Opening Br., Dec. 9, 2014, at 1-4. She also argued that the tribal members involved in the petition had exhausted all tribal remedies to the best of their ability prior to filing the appeal to the Board. *Id.* at 4 (stating that the Election Board and Tribal Council were unwilling to hear their protests, and the Court of Indian Offenses was unable to hear the dispute).

Following the completion of briefing, Whitney filed a motion for default judgment on the basis that the Regional Director failed to file an answer brief. Motion for Default Judgment, Jan. 22, 2015. The Board denied the motion, explaining that appellants, not BIA, have the burden of proof in an appeal to the Board, and that the regulations do not require BIA to file an answer brief. Order Denying Motion for Default Judgment, Feb. 5, 2015.

### **Analysis**

We hold that BIA properly declined to intervene in Tribal elections, either by independently determining the validity of the South Fork Band Council elections, as demanded by Garcia, or by holding new Tribal elections to replace those held in 2012, as demanded by Whitney and the petitioning individual Band members. Appellants have cited no statutory, regulatory, or other authority that would authorize such an intervention in sovereign tribal processes under these circumstances, nor are we aware of any. Accordingly, we affirm the Regional Director's Decisions as to Garcia and Registered Voters.

Appellants' complaints center on tribal conduct and alleged electoral and tribal constitutional violations. *See, e.g.*, Garcia's Notice of Appeal, Dec. 20, 2012, at 1; Whitney's Notice of Appeal, Sept. 5, 2014, at 1-2. Appellants, however, provide little insight as to why BIA would be permitted to weigh in on these matters. It is well established that tribal governance disputes should be resolved by tribal procedures, rather than by the Federal government. *See, e.g., Acting Governor Leslie Wandrie-Harjo, Cheyenne and Arapaho Tribes v. Southern Plains Regional Director*, 53 IBIA 121, 124 (2011) (noting that "tribal governance disputes are to be resolved by tribal procedures, not by BIA"); *Tarbell v. Eastern Regional Director*, 50 IBIA 219, 230 (2009) (observing that "[t]hese principles derive from the doctrines of tribal sovereignty and self-determination"). Contrary to Appellants' suggestions, BIA lacks a "general and independent duty to serve as arbiter of a tribal dispute," nor is BIA empowered to ensure that a stable, lawful tribal government is in place at all times. *Del Rosa v. Acting Pacific Regional Director*, 51 IBIA 317, 320 n.6 (2010).

In addition, Appellants' mere references to the Indian Self-Determination and Education Assistance Act (ISDA), Pub. L. No. 93-638, 25 U.S.C. § 450 *et seq.*, are insufficient to establish a basis for BIA to intervene in a tribal election dispute. *See* Garcia's Opening Br. at 2-7 (citing 25 U.S.C. §§ 450a, 450k); Whitney's Opening Br. at 3. Similarly, Whitney's general suggestion that BIA has ISDA contracts pending with the Tribe does not provide grounds for BIA to examine the validity of the 2012 tribal elections, based on a request by individual tribal members, or to hold new elections. *See, e.g., Coyote Valley Band of Pomo Indians*, 54 IBIA 320, 326 (2012) (ISDA contract does not create an ongoing relationship that gives BIA "carte blanche" to intervene in tribal disputes); *Pueblo de San Ildefonso v. Acting Southwest Regional Director*, 54 IBIA 253, 259 (2012) (vacating intrusion into tribal elections simply for "fiduciary purposes").

Further, Appellants' allegations that the Superintendent has a conflict of interest miss the mark. Appellants' claims are based on the Superintendent's status as a member of the Tribe and the South Fork Band, and amorphous implications that he could use his authority for his personal gain. *See, e.g.*, Whitney's Opening Br. at 1-2. But Appellants provided no specific charges to the Regional Director, let alone actual evidence of bias or prejudice on the part of the Superintendent, nor have they shown how the decision not to intrude in the Tribe's elections would further the Superintendent's personal or financial interests. *Heirs and Successors in Interest to Mose Daniels v. Eastern Oklahoma Regional Director*, 55 IBIA 139, 143-44 (2012) (appellants failed to show that former tribal attorney or regional director had a personal or financial stake in the decision). Moreover, Appellants have failed to make the substantial showing necessary to overcome the presumption that the Superintendent discharged his official duties properly, and to establish that recusal was required. *Roberts County v. Acting Great Plains Regional Director*, 51 IBIA 35, 49 (2009),

*aff'd sub nom. South Dakota v. U.S. Dep't of the Interior*, 775 F. Supp. 2d 1129, 1136-37 (D.S.D. 2011), *appeal dismissed*, 665 F.3d 986 (8th Cir. 2012).

In sum, neither Garcia<sup>3</sup> nor Registered Voters, through Whitney, has demonstrated that the Regional Director erred in declining to intervene in internal tribal election disputes regarding the validity of the 2012 elections. Appellants have failed to identify a legal theory that would require BIA to take the requested actions, or the statutory, regulatory or other authority enabling BIA to do so. Thus, the Regional Director correctly declined to assess the merits of Appellants' allegations of electoral irregularities or to declare the election results invalid and "redo" the 2012 tribal elections. *Hazard v. Eastern Regional Director*, 59 IBIA 322, 325-26 (2015) (allegation that Tribal Election Committee had violated appellant's civil rights insufficient to show that BIA had authority to declare tribal elections invalid and suspend funding to tribe); *Committee to Organize the Cloverdale Rancheria Government v. Acting Pacific Regional Director*, 55 IBIA 220, 224 (2012) (appellants failed to identify a "single discrete action" providing a justification for BIA to intrude into tribal affairs).

### 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 decisions of November 23, 2012, and August 8, 2014, that were the subject of the appeal brought by Garcia and by Registered Voters through Whitney, respectively.

I concur:

\_\_\_\_\_  
// original signed  
Robert E. Hall  
Administrative Judge

\_\_\_\_\_  
//original signed  
Steven K. Linscheid  
Chief Administrative Judge

<sup>3</sup> Generally, the Board does not consider arguments made or evidence presented by an appellant for the first time on appeal, which could have been made or presented in the proceedings below. 43 C.F.R. § 4.318. But even if we were to consider the new issues raised by Garcia, it would not alter our conclusion. Garcia's speculation regarding the future effect of the 2012 tribal elections on the Tribe's decisions concerning disenrollment, land assignments, allotments, and grazing permits is not only attenuated, but fails to identify any specific and separate action required by or warranted of BIA which, in turn, would permit BIA to review the validity of the election. *See also* 43 C.F.R. § 4.330(b)(1) (Board lacks jurisdiction over tribal enrollment disputes).