



INTERIOR BOARD OF INDIAN APPEALS

Healy Lake Village v. Alaska Regional Director, Bureau of Indian Affairs

61 IBIA 113 (07/15/2015)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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HEALY LAKE VILLAGE,)	Order Dismissing Appeal
Appellant,)	
)	
v.)	
)	Docket No. IBIA 14-124
ALASKA REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	July 15, 2015

Healy Lake Village (Tribe¹ or Appellant), through Ray Fifer as 1st Chief, appealed to the Board of Indian Appeals (Board), pursuant to 25 C.F.R. § 2.8 (appeal from inaction of official), from the failure of the Alaska Regional Director (Regional Director), Bureau of Indian Affairs (BIA), to respond to a § 2.8 request from Appellant, dated July 7, 2014, to take action and issue a decision to recognize the “Fifer Faction” Council (Fifer Council) as the governing body of the Tribe. While this appeal was pending, the Regional Director reported, and Appellant does not dispute, the Tribe held an election in which Melissa Erickson was elected 1st Chief. We thus conclude that Appellant’s § 2.8 demand for action from BIA to recognize Fifer as 1st Chief is moot. In addition, we are not convinced, as Appellant argues, that an Indian Self-Determination and Education Assistance Act (ISDA) proposal submitted in 2013 by Appellant, and declined at the time by BIA because of the tribal leadership dispute, provides a basis for the Board, in this § 2.8 appeal, to order BIA to issue a decision concerning the Tribe’s current leadership. Therefore, we dismiss this appeal.

Background

In early 2013, Fifer submitted to BIA, on behalf of the Tribe, a proposal to contract certain programs under ISDA, which BIA declined to process because it had not previously

¹ This case involves a tribal dispute. The Board’s references to actions taken by or on behalf of the Tribe, tribal entities, or tribal officials, and the Board’s use of titles claimed by various individuals or entities, shall not be construed as expressing any view on the underlying merits of the dispute.

recognized the Fifer Council as the governing body of the Tribe and was not prepared to do so without first soliciting briefing from the Fifer faction and the previously recognized “Polston” faction, each of which claimed to be the Tribe’s governing body. In addition to soliciting briefing on the merits of their claims, the Regional Director also sought to encourage and assist the factions in mediation or other alternative dispute resolution mechanisms.

In August 2014, when no resolution had been reached, Appellant filed this appeal, as a § 2.8 appeal, seeking an order from the Board directing the Regional Director to issue a decision on the merits to recognize a governing body of the Tribe, and specifically the Fifer Council for purposes of ISDA contracting. After soliciting and receiving a status report from the Regional Director, and a response from Appellant, the Board solicited a second status report because it was unclear to the Board “why the Regional Director was not required, under § 2.8, to issue an appealable decision, e.g., either granting or denying on the merits Appellant’s request to be recognized, or deciding why BIA was not required to issue any tribal leadership recognition decision.” Order Granting Amicus Status to Traditional Council and Order for Second Status Report, Apr. 7, 2015.²

In response, the Regional Director submitted a status report, stating that a tribal election had been held in March 2015, and that Melissa Erickson had subsequently sent an email to BIA identifying the members of the Tribe’s Council as herself, 1st Chief; Gary Healy, Jr., Vice-President; Evelyn Combs, Secretary/Treasurer; Brian Erickson, Council Member; and Ellenore Kirstatter, Council Member. Status Report, May 11, 2015.³ The Regional Director stated that BIA had not been notified of any challenges to the tribal election, and that, based on the election, a decision from the Regional Director recognizing the Fifer Council is no longer necessary. The Regional Director also stated that BIA had not received an ISDA application from the newly elected Council.

Replying to the Regional Director’s status report, Appellant acknowledges and accepts the the recent tribal election, including the election of Erickson replacing Fifer as 1st Chief. Appellant’s Reply, May 29, 2015, at 1. Appellant also explains that its 2013 ISDA proposal was submitted because at the time, Tanana Chiefs Conference (TCC), which had been serving as the “Indian organization” designated to operate the Tribe’s ISDA contracts,

² It is well-established that the scope of a § 2.8 appeal is limited to deciding whether BIA must take action or issue a decision, and does not include determining how BIA must act on or how it must decide a matter. See *Pritzkau v. Acting Great Plains Regional Director*, 59 IBIA 235, 238 (2014), and cases cited therein.

³ Two of the five members of the council elected in the March 2015 election, including Erickson, were also on the Fifer Council.

had terminated its willingness to do so. Appellant represents that in light of the Tribe's recent election, TCC is now willing to again serve as the Tribe's Indian organization for ISDA purposes.

Thus, Appellant recognizes a change in circumstances since it submitted its § 2.8 demand to the Regional Director for a recognition decision, both with respect to the Tribe's leadership and—apparently—with respect to ISDA contracting. But Appellant takes issue with the Regional Director's assertion that BIA has not received an ISDA request, arguing that the 2013 ISDA request submitted by Appellant, although declined at the time by BIA due to the leadership dispute, continues to provide a basis for the Board to require action by the Regional Director to issue a formal decision determining whom BIA recognizes as the governing body of the Tribe.

We disagree. First, the 2013 ISDA request was the basis on which Appellant specifically demanded that BIA recognize Fifer as 1st Chief and the Fifer Council as the Tribe's governing body. Appellant acknowledges that Fifer no longer claims to be 1st Chief, and thus it cannot reasonably be disputed that Appellant's request for BIA to recognize Fifer as such is moot. Second, considering the admitted change in the Tribe's leadership and change in contracting circumstances with respect to TCC, we are not convinced that the 2013 ISDA proposal, which BIA declined at the time based on the tribal dispute, provides an adequate basis for the Board, in this appeal, to order the Regional Director to take action and issue a recognition decision based on the Fifer Council's § 2.8 request.⁴

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
Thomas A. Blaser
Administrative Judge

⁴ If the Tribe wishes to submit a new ISDA proposal to BIA, it may do so, and BIA may take action on that proposal accordingly.