



## INTERIOR BOARD OF INDIAN APPEALS

Harvey Bonga, Leonard Roy, Mike Smith, and Raymond Bellcourt v.  
Midwest Regional Director, Bureau of Indian Affairs

61 IBIA 153 (07/30/2015)



# 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

HARVEY BONGA, LEONARD ROY,	)	Order Affirming Decision
MIKE SMITH, and RAYMOND	)	
BELLCOURT,	)	
Appellants,	)	
	)	Docket Nos. IBIA 13-069
v.	)	13-070
	)	13-071
MIDWEST REGIONAL DIRECTOR,	)	13-084
BUREAU OF INDIAN AFFAIRS,	)	
Appellee.	)	July 30, 2015

Harvey Bonga (Bonga), Leonard Roy (Roy), Mike Smith (Smith), and Raymond Bellcourt (Bellcourt) (collectively, Appellants) appeal to the Interior Board of Indian Appeals (Board) from a February 4, 2013, decision (Decision) of the Midwest Regional Director (Regional Director), Bureau of Indian Affairs (BIA).<sup>1</sup> The Decision affirmed BIA's Acting Minnesota Agency Superintendent's (Superintendent) March 30, 2012, decision regarding Appellants' complaints about tribal governance issues within the White Earth Band of Chippewa Indians, a constituent Band of the Minnesota Chippewa Tribe (Tribe), and BIA's alleged inaction concerning such complaints.

We affirm the Decision because Appellants have not identified any authority requiring BIA to intervene in the internal tribal matters identified in their filings or in their attempt to remove the chairwoman of the White Earth Reservation Tribal Council (Reservation Council). As explained below, BIA's obligation to take action pursuant to the Tribe's Constitution was not triggered, because Appellants have not shown that the Reservation Council failed to act on their removal petitions. Further, neither the Indian Civil Rights Act (ICRA), 25 U.S.C. § 1302, nor Appellants' allegations of civil rights violations, provide authority for BIA to become involved in the dispute.

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<sup>1</sup> The appeals were filed separately and consolidated by the Board by orders issued on March 12, 2013, and April 16, 2013. Bonga's appeal was assigned Docket No. IBIA 13-069, Roy's appeal was assigned Docket No. IBIA 13-070, Smith's appeal was assigned Docket No. IBIA 13-071, and Bellcourt's appeal was assigned Docket No. IBIA 13-084.

## Background

This appeal concerns attempts by White Earth Band members to remove the Reservation Council's chairwoman for alleged malfeasance in the handling of tribal affairs and violations of the Tribe's Constitution. *See* Answer Brief (Br.), July 29, 2013, at Exhibit (Ex.) 1 (Petition for Recall). The Tribe's Constitution permits reservation members to seek removal of Reservation Council members for any of the following causes: malfeasance, dereliction or neglect of duty, unexcused failure to attend meetings, felony conviction, or refusal to comply with the Tribe's Constitution. Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, Minnesota (Tribe's Constitution), art. X, §§ 2, 3.<sup>2</sup> To initiate the removal process, reservation members must submit a petition to the Reservation Council, which must state the cause for removal and be supported by signatures of no less than 20% of eligible resident voters. *Id.* § 3. If the Reservation Council fails to act, reservation members may appeal to BIA, by a petition meeting the same 20% signature requirement. *Id.* § 5. If BIA determines that the charges are substantial, it will call an election to permit the reservation's electorate to consider the matter. *Id.*

On June 28, 2010, Appellants submitted a 31-page petition to the Reservation Council seeking the chairwoman's removal. *See* Letter from Tribe's Executive Director to Reservation Council Secretary/Treasurer, July 12, 2010 (AR Tab 11<sup>3</sup>). Appellants' petition was reviewed by the Tribe, which informed the Reservation Council that, based on its review, the petition contained less than the requisite 20% of eligible resident voters' signatures. *See id.* (finding that 549 signatures were needed and only 459 petition signatories lived within reservation boundaries). Subsequently, the Reservation Council

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<sup>2</sup> Appellants filed copies of the Tribe's Constitution downloaded from the University of Oklahoma Law Center website, <http://thorpe.ou.edu/constitution/chippewa/index.html>, on April 13, 2011, with their appeals to the Regional Director and, subsequently, to the Board. In her decision, the Regional Director stated that she "utilized a version of the [Tribe's] Constitution incorporating the amendments up to and including the 2006 amendments" which apparently included changes to Article IV of the Constitution. *See* Decision at 3 (unnumbered). The Regional Director did not include a copy of the Tribe's Constitution used to inform her decision with the administrative record transmitted to the Board, as required pursuant to 43 C.F.R. § 4.335(a). Our references to the Tribe's Constitution are therefore to the version filed by Appellants and included in the administrative record. *See, e.g.*, Roy Notice of Appeal, Apr. 20, 2012, Ex. 1: Revised Constitution and By-Laws of the Minnesota Chippewa Tribe (AR Tab 4).

<sup>3</sup> This document is identified on the AR table of contents as Tab 12. In instances where the table of contents does not match the AR documents, the Board uses the tabs attached to the documents, rather than those listed on the table of contents.

dismissed the petition “for failure to meet the threshold of signatures needed” by a vote of 4 to 0. Reservation Council Special Meeting, July 15, 2010, at 1 (AR Tab 14); *see also* Letter from Reservation Counsel to Mike Smith, July 11, 2011 (AR Tab 12) (“The signatures and addresses that were submitted in support of the petition were verified by staff at the [Tribe], and by a committee of persons at White Earth. The result was that the threshold requirement included in Article X of the [Tribe’s Constitution] had not been met . . .”).

In September 2011, Appellants filed a “Request for Action and Decision on Petition of Grievances” with the Superintendent. *See* Letter from Superintendent to Appellants, Mar. 30, 2012, at 1 (unnumbered) (Superintendent’s Decision) (describing a September 28, 2011, office visit and letter from Appellants).<sup>4</sup> With their filing, Appellants submitted the 31-page Petition for Recall, along with a 55-page petition also calling for the removal of the chairperson of the Reservation Council but citing different charges, and requested that the Superintendent review the adequacy of the petitions. *Id.* at 2-3 (unnumbered); *see also* Answer Br. at Exs. 1, 2. On February 2, 2012, Appellants filed an appeal with the Superintendent based on alleged inaction, pursuant to 25 C.F.R. § 2.8. Superintendent’s Decision at 2 (unnumbered).

The Superintendent addressed Appellants’ request and appeal from inaction in a decision issued March 30, 2012. Considering both the 31-page and 55-page removal petitions, the Superintendent determined that neither petition complied with Article X, § 5 of the Tribe’s Constitution. *Id.* at 4-5. Thus, the Superintendent held that BIA could not take action on the petitions. *Id.* After finding that the 55-page petition had not been presented to the Reservation Council, the Superintendent also held that the petition was not in conformance with 25 C.F.R. Part 82, which provides procedures for the submission of petitions to BIA requesting a Secretarial election. *Id.* at 5. In addition, the Superintendent discussed a number of other issues raised by Appellants, including whether the Tribe’s Constitution guaranteed them certain rights and BIA’s role in enforcing such rights, tribal court orders allegedly restricting or depriving tribal members of treaty rights, and whether BIA could review ordinances enacted by the Reservation Council. *Id.* at 2-6. Ultimately, the Superintendent concluded that nothing in the Tribe’s Constitution or

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<sup>4</sup> The Superintendent’s decision letter was included in each of the appeals filed with the Regional Director. *See, e.g.*, Bonga Notice of Appeal to the Regional Director, Apr. 23, 2012 (AR Tab 3). In addition to Appellants, the Superintendent’s decision letter was addressed to Dean Van Wert. Superintendent’s Decision at 1 (unnumbered). Mr. Van Wert appealed the Superintendent’s Decision to the Regional Director, *see* Van Wert Notice of Appeal, Apr. 16, 2012 (AR Tab 5), but did not file an appeal from the Regional Director’s decision with the Board. When referring to the appeal of the Superintendent’s Decision, references to Appellants should be understood to also include Mr. Van Wert.

applicable Federal law compelled BIA to become involved with the internal tribal governance issues raised by Appellants. *Id.* at 6.

Appellants appealed to the Regional Director.<sup>5</sup> Upholding the Superintendent's decision, the Regional Director stated that BIA was correct in declining to take any action on the petitions because they failed to comply with the requirements of Article X, § 5. Letter from Regional Director to Appellants, Feb. 4, 2013, at 4-5 (unnumbered) (Decision).<sup>6</sup> Specifically, the Regional Director explained that petitions for BIA involvement under § 5 "must outline charges that 'the Reservation Business Committee fail[ed] to act as provided in Sections 3 and 4 of [Article X – Vacancies and Removal].'" *Id.* at 4 (unnumbered). Because neither petition included the charges required by the Tribe's Constitution, the Regional Director concluded that "no petition has been submitted requiring any decision by [BIA]." *Id.*

The Regional Director also reviewed the documentation submitted by Appellants with the Petition for Recall and observed that the petition did not appear to meet the signature requirement imposed by Article X, § 3, and that no similar analysis had been provided for the 55-page removal petition. *See id.* Finally, the Regional Director determined that all other issues raised by Appellants concerned internal tribal matters that must be resolved in tribal forums, *id.* at 2-4 (unnumbered), and that the Superintendent acted appropriately by declining to take any action because neither petition complied with the requirements of Article X, § 5 of the Tribe's Constitution, *id.* at 4-5.

Appellants appealed to the Board from the Regional Director's decision and submitted individual notices of appeal and statements of reason, with supporting documents. The Regional Director filed an answer brief.

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<sup>5</sup> Bonga Notice of Appeal to the Regional Director, Apr. 23, 2012 (AR Tab 3); Roy Notice of Appeal to the Regional Director, Apr. 20, 2012 (AR Tab 4) (including Bellcourt Notice of Appeal, Apr. 17, 2012); Smith Notice of Appeal to the Regional Director, Apr. 17, 2012 (AR Tab 6).

<sup>6</sup> The table of contents of the administrative record transmitted by BIA does not indicate inclusion of the decision being appealed from, as required by the regulations. *See* 43 C.F.R. § 4.335(b). Appellants, fortunately, included a copy of the Decision with their respective Notice of Appeal. References to the Decision will be to the document so identified and filed by Appellants.

## Discussion

### I. Standard of Review

Appellants bear the burden of proving error in the Decision, and we review the Decision to determine whether it comports with the law, whether it is supported by substantial evidence, and whether it is arbitrary or capricious. *Johnson v. Great Plains Regional Director*, 61 IBIA 92, 95 (2015). We review questions of law *de novo*. *Id.*

### II. Analysis

Appellants argue generally that the Reservation Council Chairwoman, Reservation Council, and tribal courts have violated certain treaty rights, the Tribe's Constitution, and Federal law, and that BIA has a duty to protect Band members against these violations. *See, e.g.*, Bellcourt Notice of Appeal, Mar. 25, 2013, at 13 (unnumbered) (asserting that "the [Regional Director's] decision is arbitrary and capricious in ignoring . . . BIA's responsibility to members under the [Tribe's Constitution]").<sup>7</sup> Appellants also contend that BIA has failed to carry out its "enforcement duties" under the Tribe's Constitution. *See id.* In addition, Roy contends that BIA is responsible for enforcement of ICRA. Roy Notice of Appeal, Mar. 1, 2013, at 34 (unnumbered). In keeping with this argument, Smith also contends that the tribal court does not have jurisdiction over any of their civil rights claims. Smith Notice of Appeal, Feb. 28, 2013, at 9-10 (unnumbered).

Appellants do not, however, directly address the requirements of Article X, § 5, nor do they argue that the Regional Director erred in determining that the Reservation Council acted on the petition submitted to it and that no action was therefore required of BIA under that constitutional provision.<sup>8</sup> Pursuant to Article X, § 5, BIA is to call an election if sufficient petitions presenting substantial charges are presented to the Reservation Council

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<sup>7</sup> *See also* Bonga Notice of Appeal, Feb. 28, 2013, at 9 (unnumbered); Roy Notice of Appeal, Mar. 1, 2013, at 2 (unnumbered); Smith Notice of Appeal, Feb. 28, 2013, at 16 (unnumbered).

<sup>8</sup> Specifically, art. X, § 5, of the Tribe's Constitution provides:

In the event the Reservation Business Committee fails to act as provided in Sections 3 and 4 of this Article, the Reservation membership may, by petition supported by the signatures of no less than 20 percent of the eligible resident voters, appeal to the Secretary of the Interior. If the Secretary deems the charges substantial, he shall call an election for the purpose of placing the matter before the Reservation electorate for their final decision.

Tribe's Constitution, art. X, § 5.

and the Council fails to act. Appellant Smith contends that their petitions “are not ‘dead,’ but only unacted upon.” Smith Notice of Appeal at 10 (unnumbered). This argument is not supported by the record, however, because the Reservation Council clearly took action, at a special council meeting called for the purpose of considering the petition, when it voted 4 to 0 to dismiss Appellants’ 31-page Petition for Recall for failure to meet requirements under the Tribe’s Constitution. *See* Reservation Council Special Meeting, July 15, 2010, at 1 (AR Tab 14). Appellants do not challenge the Tribe’s review, which determined that the petition did not meet the 20% signature requirement, nor do Appellants provide any evidence that the Reservation Council had the opportunity to review the 55-page petition and then failed to act upon it.

We agree with the Regional Director that the Reservation Council “took action” on the 31-page petition and that BIA intervention was therefore not warranted pursuant to Article X, § 5 of the Tribe’s Constitution. *See* Answer Br. at 7-9. We also agree that nothing in the record indicates that the 55-page petition was ever submitted to the Reservation Council for action, which is a precondition to a determination that the Reservation Council failed to act, thereby triggering any duty for BIA to intervene pursuant to Article X, § 5 of the Tribe’s Constitution. *See* Answer Br. at 9-10.

The Regional Director also argues that this appeal is rooted in an intra-tribal dispute that both BIA and the Board should abstain from deciding. *Id.* at 10-11. In addition, the Regional Director states that ICRA does not provide BIA with independent authority to review tribal action. *Id.* at 11. The Regional Director emphasizes that BIA was correct to refrain from considering appellants’ alleged civil rights violations, because the Tribe’s Constitution does not include explicit authority permitting BIA to do so. *Id.* at 12. Finally, the Regional Director argues that Appellants failed to exhaust their tribal remedies because they did not present evidence to BIA that the tribal appellate court considered their claims. *Id.* at 12-13.

Appellants’ suggestions that other provisions of the Tribe’s Constitution require BIA to take action regarding their complaints lack merit. Some of the appellants rely on Article XIII, which states that tribal members “shall be accorded by the governing body equal rights, equal protection, and equal opportunities,” Tribe’s Constitution, art. XIII, § 1, as grounds for BIA’s intervention. *See, e.g.*, Bellcourt Notice of Appeal at 13 (unnumbered); Roy Notice of Appeal at 34-37 (unnumbered); Smith Notice of Appeal at 9, 11 (unnumbered). But Article XIII does not state that BIA shall play any role in enforcing such rights. Roy points to Article XIV (Referendum) as providing an entry point for BIA action. Roy Notice of Appeal at 35 (unnumbered). BIA, however, is not involved in the

referendum process set out in this provision.<sup>9</sup> Roy also relies on Article XV (Manner of Review), which places an obligation on BIA to review resolutions and ordinances presented to it by the Tribal Executive Committee or a reservation business committee. *Id.* at 11 (unnumbered). In this case, no such resolutions or ordinances were submitted to BIA.<sup>10</sup> Accordingly, Appellants have not identified any other provision of the Tribe's Constitution that would allow BIA to sidestep the Reservation Council and directly review the merits of Appellants' petitions or call an election.

Although Appellants argue that BIA is responsible for enforcing ICRA, that statute does not require BIA to address the dispute over the Reservation Council chairwoman. By itself, ICRA does not provide BIA with authority to review actions taken by the Reservation Council or the Tribe. *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."); *Welmas v. Sacramento Area Director*, 24 IBIA 264, 271-72 (1993) (BIA may review alleged ICRA violations if it has a separate source of authority to act on a matter). Similarly, Appellants have not presented any authority establishing that their allegations of civil rights violations are sufficient to allow BIA to intervene and address internal tribal matters. *Hazard v. Eastern Regional Director*, 59 IBIA 322, 325 (2015) (allegation that appellant's civil rights had been violated by tribe insufficient to show that BIA had authority to intervene in tribal dispute); *Wasson v. Western Regional Director*, 42 IBIA 141, 157 (2006) ("the Board has ruled that neither BIA nor the Board should generally decide disputes that are intra-tribal in nature").

In sum, Appellants have not shown that BIA erred in declining to become involved in internal tribal governance matters or in enforcing the petitions to remove the Reservation Council chairwoman.<sup>11</sup>

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<sup>9</sup> Article XIV imposes an obligation on a reservation business committee to conduct a referendum vote on enacted or proposed ordinances or resolutions, upon receiving a petition complying with the 20% signature requirement.

<sup>10</sup> BIA's duties are limited to reviewing resolutions or ordinances, which by the terms of the Tribe's Constitution are subject to review by BIA. *See, e.g.*, Tribe's Constitution, art. VI, § 1(d) (a reservation business committee can levy licenses or fees on non-members or non-tribal organizations doing business within the reservation subject to BIA's review).

<sup>11</sup> Although the Superintendent also determined that the petitions did not satisfy BIA's requirements for effecting action by the Secretary pursuant to 25 C.F.R. Part 82, *see* Superintendent's Decision at 5, the record does not reflect any intent to petition under  
(continued...)

## 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 February 4, 2013, decision.

I concur:

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// original signed  
Robert E. Hall  
Administrative Judge

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//original signed  
Steven K. Linscheid  
Chief Administrative Judge

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(...continued)  
those regulations, nor do Appellants raise any challenges regarding Part 82 in their appeals from the Decision. Consequently, we need not address BIA's findings regarding Part 82.