



INTERIOR BOARD OF INDIAN APPEALS

Amber Toppah, Charlotte Bointy, Alva D. Tsoodle, Stephen Smith and Ricky Horse;
Kiowa Tribe of Oklahoma (Komalty KBC); and John Daugomah v.
Southern Plains Regional Director, Bureau of Indian Affairs

62 IBIA 176 (02/17/2016)

Related Board case:
62 IBIA 166



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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AMBER TOPPAH, CHARLOTTE)	Order Vacating Decision
BOINTY, ALVA D. TSOODLE,)	
STEPHEN SMITH and RICKY)	
HORSE; KIOWA TRIBE OF)	
OKLAHOMA (Komalty KBC); AND)	
JOHN DAUGOMAH,)	Docket Nos. IBIA 15-065
Appellants,)	15-066
v.)	15-067
)	
SOUTHERN PLAINS REGIONAL)	
DIRECTOR, BUREAU OF INDIAN)	
AFFAIRS,)	
Appellee.)	February 17, 2016

In these consolidated appeals, two groups claiming to constitute the Kiowa Business Committee (KBC) of the Kiowa Tribe of Oklahoma (Tribe), and one individual member of the Tribe, appeal to the Board of Indian Appeals (Board) from a January 26, 2015, decision, as revised and expanded on May 20, 2015 (collectively, the “2015 Decision”), of the Southern Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA), regarding a governance dispute within the Tribe.¹ The Regional Director concluded that factual circumstances exist under which BIA has authority, under the Tribe’s Constitution, to call and supervise a tribal election for members of the KBC.

We vacate the 2015 Decision on the ground that in issuing it, the Regional Director exceeded his jurisdiction because he purported to decide a matter that was pending before the Board in an appeal from an earlier decision of the Regional Director involving the tribal

¹ 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, shall not be construed as expressing any view on the underlying merits of the dispute. We refer to the Toppah group of appellants as the “Toppah KBC,” because Toppah claims to be Chair of that KBC, and we refer to Appellant Tribe as the “Komalty KBC,” because Matthew Komalty claims to be Chair of the KBC that filed its appeal in the name of the Tribe.

dispute.² We express no opinion on the merits of the Regional Director’s decision, or on whether the Board would otherwise have jurisdiction to review the merits of the decision.

Background

A quorum of the KBC consists of five members, and “[n]o business of any nature shall be transacted unless a quorum is present.” Kiowa Const., Art. XV, § 4. The Tribe’s Constitution provides that “[s]hould the [KBC] be permanently unable to raise a quorum, the Commissioner of Indian Affairs or his authorized representative may call and supervise an election to bring the committee up to its full complement and prescribe the rules of procedure.” *Id.*, Art. IV, § 3.

Since at least 2011, the Tribe has been involved in a dispute over the membership of the KBC and, apparently, the membership of the Kiowa Hearing Board and Kiowa Election Board, two tribal boards that might otherwise be in a position to resolve the dispute. Among the issues in dispute are whether the KBC that has been in control of the Tribe’s government—the Toppah KBC, the members of which were last elected in 2010—has been depleted to four members, and is thus unable to raise a quorum. The Komalty KBC contends that the Toppah KBC no longer even exists, having been entirely replaced by tribal elections held in 2011, 2012, and 2013—elections that the Toppah KBC contends were all invalid.

In August 2013, J.T. Goombi, a tribal member and intended candidate for the KBC, asked BIA to invoke its authority to call a tribal election, asserting that the Toppah KBC was permanently unable to raise a quorum. In December 2013 and January 2014, both the Toppah KBC and the Komalty KBC submitted documents to the Regional Director through which they sought recognition by BIA. The Regional Director deferred action on Goombi’s request, rejected the Komalty KBC’s claim to legitimacy, and decided to recognize the Toppah KBC for purposes of renewing the Tribe’s contracts with BIA under the Indian Self-Determination and Education Assistance Act (ISDA). *See* Letter from Regional Director to Sir or Madam, Nov. 7, 2013 (“Deferral Decision”) (Administrative Record (AR) 14); Letter from Regional Director to Newland, Feb. 4, 2014 (AR 14), and Letter from Regional Director to Tribe, Feb. 5, 2014 (AR 14) (collectively, “2014 Recognition Decision”).

² We are also deciding the related appeal today, *see Kiowa Tribe of Oklahoma v. Acting Southern Plains Regional Director*, 62 IBIA 166 (2016), but our resolution of that appeal does not cure the jurisdictional defect in the Regional Director’s 2015 Decision.

The Komalty KBC appealed the 2014 Recognition Decision to the Board (Docket No. IBIA 14-070) and Goombi appealed the Deferral Decision (Docket No. IBIA 14-088), and the two appeals were consolidated. While those appeals were pending, the Regional Director issued the 2015 Decision, concluding that the KBC was permanently unable to raise a quorum and that BIA would exercise its authority under tribal law to call and supervise a tribal election. As relevant to our disposition of these appeals, the Regional Director found that “there has not been a valid tribal election since December 2010,” thus concluding that the December 2013 election—one of the subjects of the Recognition Decision—was not valid. Letter from Regional Director to Tribe, May 20, 2015, at 5 (unnumbered); *see also* Letter from Regional Director to Tribe, Jan. 26, 2015 (collectively, the “2015 Decision”).

Discussion

On appeal to the Board, the Komalty KBC contends that it was impermissible for the Regional Director to “decide” the same issue that was already the subject of the Komalty KBC’s pending appeal in Docket No. IBIA 14-070.³ We agree.

It is well-established that when an appeal is filed with the Board from a decision of a BIA official, BIA loses jurisdiction over the matter, and its involvement is limited to participating as a party to the appeal. *Alturas Indian Rancheria v. Pacific Regional Director*, 53 IBIA 100, 101 (2011). Although there may be cases in which the precise scope of the “matter” encompassed by an appeal, and the corresponding limitation on BIA’s jurisdiction, are unclear, this is not such a case.⁴ Here, the validity of the 2013 tribal election, and arguably the 2011 and 2012 elections as well, were at issue in the Komalty KBC’s submissions to the Regional Director seeking recognition, and in his 2014 Recognition Decision, which summarily rejected the Komalty KBC’s claims and which it appealed to the Board. That appeal was pending when the Regional Director issued the 2015 Decision, and as such, he lacked jurisdiction to declare that the 2013 election was invalid, and arguably lacked jurisdiction to declare the same for the 2011 and 2012 elections, given the nature of the Komalty KBC’s claim and appeal. And the determination regarding the validity of the prior elections was a necessary predicate for the Regional Director’s determination that the factual circumstances exist for BIA to exercise its authority to call a

³ The Toppah KBC and Daugomah take issue with the Regional Director’s 2015 Decision on other grounds. Because we conclude that the jurisdictional issue is dispositive, we do not address the arguments raised by the Toppah KBC and Daugomah appellants.

⁴ Where uncertainty exists, there is a simple solution—the BIA official may file an appropriate request with the Board in the pending appeal seeking clarification or an order granting BIA jurisdiction.

tribal election. As the Komalty KBC correctly observes, the Regional Director either improperly assumed that his Recognition Decision would be affirmed by the Board, or improperly purported to “independently” issue a decision that was already the subject of an appeal to the Board.⁵

As noted earlier, in the Komalty KBC’s related appeal, the Board is vacating the Regional Director’s 2014 Recognition Decision and remanding the case to BIA for further proceedings. *See Kiowa Tribe*, 62 IBIA 166. Although not legally relevant to our disposition of these appeals on jurisdictional grounds, our merits disposition in that case underscores the soundness of the rule that when an appeal is pending before the Board, BIA cannot proceed to issue a “new” decision that purports to decide the very same issue.

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 vacates the Regional Director’s 2015 Decision.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Robert E. Hall
Administrative Judge

⁵ The Recognition Decision was not placed into effect by the Board.