



INTERIOR BOARD OF INDIAN APPEALS

Norman M. Crooks v. Minneapolis Area Director, Bureau of Indian Affairs

14 IBIA 271 (09/30/1986)

Denying reconsideration of:

14 IBIA 181



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

NORMAN M. CROOKS

v.

AREA DIRECTOR, MINNEAPOLIS AREA OFFICE, BUREAU OF INDIAN AFFAIRS

IBIA 86-8-A (Reconsideration)

Decided September 30, 1986

Petition for reconsideration of Crooks v. Minneapolis Area Director, 14 IBIA 181 (1986).

Petition denied.

1. Rules of Practice: Appeals: Reconsideration

The Board of Indian Appeals will not consider an issue in a petition for reconsideration which was not timely raised and considered below.

APPEARANCES: David G. Ronald, Esq., Minneapolis, Minnesota, for appellant; Priscilla A. Wilfahrt, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Twin Cities, Minnesota, for appellee.

OPINION BY ACTING CHIEF ADMINISTRATIVE JUDGE VOGT

On August 28, 1986, the Board of Indian Appeals (Board) received from Norman M. Crooks (appellant) a petition for reconsideration of its July 24, 1986, decision in Crooks v. Minneapolis Area Director, 14 IBIA 181 (1986). That decision affirmed the decision of the Minneapolis Area Director (appellee) finding that appellant was properly removed from the position of Chairman of the Shakopee Mdewakanton Sioux Community (community).

Reconsideration of appeals by the Board is governed by 43 CFR 4.315, which provides in pertinent part: "Reconsideration of a decision of the Board will be granted only in extraordinary circumstances. * * * The petition * * * shall contain a detailed statement of the reasons why reconsideration should be granted."

Appellant requests reconsideration on three grounds: (1) that the record before the Board was incomplete because it did not include an April 17, 1985, letter (with exhibits) requesting appellee to conduct an investigation of certain payments made by the community to the community's counsel of record in this case, (2) that an individual whose right to vote had not previously been challenged was ineligible to vote for the removal of appellant, and (3) that I should have disqualified myself from this appeal.

Appellant asserts that the correspondence relating to payments to the attorneys, which was signed by ten community members, was relevant to the instant appeal because "no action would have been brought for [appellant's] removal without the covert aid and assistance of these attorneys, rendered in apparent contravention of regulations applicable to contracts between attorneys and Indian tribes." Petition at 2. Appellant correctly assumed that this document was not in the administrative record before the Board. However, the relevance of the document to the issue before the Board is not apparent, and there would have been no reason for the Bureau of Indian Affairs (BIA) to have considered it a part of the record. If appellant wished the Board to consider documents not directly related to the matter at issue, it was incumbent upon him to furnish copies to the Board with his appeal. In any event, the Board has now reviewed the document and finds it of no relevance to the issue in this appeal.

[1] Appellant also asserts that "it has now been discovered that one person who voted in favor of [appellant's] removal, Ms. Rose Prescott, was not a Community member and not included in the voting rolls of the Community as far back as 1980." Petition at 2. Appellant gives no explanation for why he did not raise the issue of Ms. Prescott's voting eligibility in prior proceedings in this matter. Indeed, appellant's appeal memorandum stated at page 3: "[Appellee's] ruling correctly states that the status of only five individuals [not including Ms. Prescott] is in dispute in connection with the removal election." As Chairman of a small tribe, appellant might be expected to have some familiarity with the membership of the tribe. As appellant in a case where voting eligibility was critical, appellant certainly should have carefully reviewed the voting list before this point. Appellant's failure to prepare his appeal with care in the first instance is not an "extraordinary circumstance" warranting the granting of reconsideration pursuant to 43 CFR 4.315. Moreover, the Board has previously stated that it will not consider an issue in a petition for reconsideration which has not been timely raised and considered below. Burns v. Anadarko Area Director, 11 IBIA 133 (1983).

Appellant next asserts that I had a conflict of interest in this appeal "on the basis of [my] prior and extensive involvement with the Bureau of Indian Affairs and [my] past professional relationship with Reid Chambers, a partner of the law firm currently retained by the Community" and because, "while a member of the Solicitor's office, [I] was called upon to handle matters relating to the disputes that have occurred at the Community regarding him and other parties." Petition at 2. I have had no involvement whatsoever with the matter at issue in this appeal or with any internal tribal dispute of the community. Moreover, my duties as an attorney in the Solicitor's office to provide legal counsel to BIA, and my past professional relationship with Reid Chambers, who left the Solicitor's office 10 years ago and who is not an attorney of record in this appeal, are insufficient grounds to warrant my disqualification from this matter.

On September 19, 1986, the Board received from appellant a letter seeking to supplement the arguments contained in his petition for reconsideration. Appellant now asserts that an additional six individuals who voted at the

removal hearing were not eligible to vote because they were not enrolled members of the community and did not possess the required degree of Mdewakanton Sioux blood. For the same reasons discussed above with respect to appellant's challenge to the voting eligibility of Rose Prescott, the Board rejects this belated attempt to generate what is essentially an entirely new appeal.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, appellant's petition for reconsideration is denied.

//original signed

Anita Vogt
Acting Chief Administrative Judge

I concur:

//original signed

Kathryn A. Lynn
Administrative Judge