



INTERIOR BOARD OF INDIAN APPEALS

Dana Cassadore v. Acting Phoenix Area Director, Bureau of Indian Affairs

29 IBIA 280 (08/15/1996)



United States Department of the Interior

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

DANA CASSADORE,
Appellant

v.

ACTING PHOENIX AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Docketing and Dismissing
: Appeal
:
:
: Docket No. IBIA 96-102-A
:
:
: August 15, 1996

This is an appeal from a May 2, 1996, letter sent by the Acting Phoenix Area Director, Bureau of Indian Affairs (Area Director; BIA), to Felix Ike, Chairman, Te-Moak Tribes (Tribe). The letter listed the elected officials recognized by BIA as constituting the governing bodies of the Tribe and its constituent bands, including the Elko Band.

It appeared from his notice of appeal that appellant Dana Cassadore objected to the Area Director's letter only insofar as it concerned the members of the Elko Band Council. However, although he stated that he was a member of the Tribe, appellant did not state that he was a member of the Elko Band. Nor did he state any basis upon which, under its decisions in this area, the Board could recognize him as having standing to appeal the Area Director's letter. The Board therefore furnished appellant with copies of Swab v. Sacramento Area Director, 25 IBIA 205 (1994) and Stops v. Billings Area Director, 23 IBIA 282 (1993), and gave him an opportunity to show that he had standing under those decisions.

In his response, appellant states that he is a member of the Elko Band. He further states that he was a candidate for the Elko Band Council at an October 25, 1994, election; that he received 44 votes in that election; and that he was a member of the 1994 Elko Band Election Committee although he temporarily left the committee from October 10, 1994, to October 31, 1994, in order to run for office.

Appellant's notice of appeal indicates that he seeks to require BIA to recognize the individuals elected at the October 25, 1994, election as the Band's proper governing body. He does not state that he was one of those elected. Indeed, he furnishes a list of those whom he states were elected on October 25, 1994, and the list does not include appellant. Therefore, the Board must conclude that appellant was defeated at the October 25, 1994, election.

It appears from the materials submitted by appellant that the October 25, 1994, election was declared invalid by the Tribe on November 1, 1994, and that a new election was scheduled for January 30, 1995. See

Te-Moak Tribal Council Resolutions 94-TM-44 and 94-TM-45. 1/ These materials do not show whether or not the rescheduled election actually took place. 2/

Even if appellant were found to have standing here, he would face other obstacles to Board review of his appeal--most significantly, the fact that the invalidation of the October 25, 1994, election was a tribal action, not a BIA action. Thus, any challenge to that action must first be taken to the appropriate tribal forum. E.g., Johnson v. Acting Minneapolis Area Director, 28 IBIA 104 (1995).

The Board does not reach the question of whether appellant has exhausted his tribal remedies here. Rather, it disposes of this appeal on standing grounds.

Appellant does not challenge the results of the October 25, 1994, election. Had he disputed those results, and had the matter reached BIA, appellant might well have had standing to appeal the BIA decision although, again, he would face the other obstacles just discussed. Here, however, appellant's challenge is to BIA's failure to recognize as the Band Council the individuals, not including appellant, who were elected at the October 25, 1994, election. The Board finds that appellant's status as a defeated candidate for office at the October 25, 1994, election does not give him standing before the Board to challenge a BIA decision which did not recognize the results of that election.

The Board further finds that appellant cannot claim standing as a member of the Election Committee. Even if an individual Election Committee member could be found to have standing in a case where the individual served on the committee at the time of the election in dispute,3/ appellant concedes that he was not serving on the Election Committee at the time of the October 25, 1994, election.

1/ In addition to declaring the Oct. 25, 1994, election invalid and scheduling a new election, Te-Moak Tribal Council Resolution 94-TM-44 directed "each Band Council to immediately appoint an impartial Election Committee to ensure that this Band Election shall be held fairly and objectively." On Nov. 9, 1994, the Elko Band Council removed all Elko Band Election Committee members from office and announced its intent to appoint a new committee. Elko Band Council Resolution 94-EC-35.

2/ A recall election, at which three Elko Band Council members were recalled, took place on Nov. 1, 1995. A decision concerning that election was issued by the Area Director on Apr. 17, 1996, and is the subject of an appeal presently pending before the Board. Brady v. Acting Phoenix Area Director, Docket No. IBIA 96-68-A.

3/ The Board reaches no conclusion here as to whether an individual Election Committee member would have standing in such a case.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is docketed but is dismissed for lack of standing.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge