



INTERIOR BOARD OF INDIAN APPEALS

Ho-Chunk Nation v. Minneapolis Area Director, Bureau of Indian Affairs

30 IBIA 69 (10/28/1996)



# United States Department of the Interior

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

HO-CHUNK NATION, : Order Affirming Decision  
Appellant :  
 :  
v. : Docket No. IBIA 96-4-A  
 :  
MINNEAPOLIS AREA DIRECTOR, :  
BUREAU OF INDIAN AFFAIRS, :  
Appellee : October 28, 1996

Appellant Ho-Chunk Nation seeks review of an August 28, 1995, decision issued by the Minneapolis Area Director, Bureau of Indian Affairs (Area Director; BIA), denying appellant's application for funding under the FY 1995 Special Tribal Court grant program. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

By letter apparently dated June 28, 1995, the Area Director informed tribes under her jurisdiction that a total of \$100,000 was available within the Area for the FY 1995 Special Tribal Court grant program. Appellant filed an application seeking \$100,000. By letter dated August 28, 1995, the Area Director acknowledged that appellant was eligible for top priority consideration, but informed it that, regardless of that fact, its application would not be funded. The letter stated at page 1:

The budget narrative lacks the information for us to determine the reasonableness of the figures in the proposed budget. For example, on-site training is listed as \$16,000; the justification states that the three Justices and other, support personnel will attend seminars and educational training to help in the performance of their duties. Nowhere in the application is an explanation provided for a budget line which exceeds one-quarter of the budget, the type of training [to be] provided or how the results of the training will be measured as to contributing to the overall objectives of the funding. The statement that the results will be measured by the physical presence of participants is inadequate. By having the judges submit reports is too vague for this office to determine if the training is appropriate for the objectives of the Special Tribal Court Funds.

We are aware of the commitment of the Ho-Chunk Nation Legislature, as demonstrated by the Judiciary Act of 1995. However, it remains unclear as to whether this commitment will meet a great percentage or a small percentage of the supreme court's budgetary needs. The chief justice is given a great deal of authority to file and execute liens upon the funds and assets of the Nation and yet the request for \$100,000 appears to indicate that the court will be without adequate financial resources with which to operate. The application did little to clarify this inconsistency, therefore, we could not determine the need of the supreme court.

Appellant filed only a statement of reasons. In that document, appellant made four arguments against the decision:

1) [Appellant's] Tribal Court is new, which makes it a top priority category in terms of the Special Tribal Court Funds Grant. This should have justified allocating the court some portion of the grant money requested. While [appellant] had received Tribal Court Funds in the past, a new Constitutional Component--the Appellate Supreme Court is added. This enhancement of due process is to litigants is a costly mandate, amended which should entitle us to funds for the Appellate Court [sic].

2) Our court system is independent of our Tribal government, and therefore requires a funding source separate from the Tribe. Financial assistance from outside the Tribe is essential to ensuring that the Judiciary Branch is not unduly influenced by Tribal politics.

3) Our Tribal Constitution is new, and has a fourteen-county jurisdiction area. For the Ho-Chunk Constitution to cover such a geographically diverse area, a strong court system must be established. Special Tribal Court Funds Grant monies would enhance our court's ability to serve our people.

4) The notice of fund availability was significantly less than two pages in length. It did not provide specific[s] as to how detailed the proposal's budget narrative should have been, nor did it expressly prohibit budget lines which exceed one-quarter of the budget. Rather than awarding [appellant] some portion of the \$100,000 requested, the B.I.A. declined to award any amount. [Emphasis in original.]

The Board's standard of review of decisions allocating discretionary grant funds is well established. In Lower Elwha Tribe v. Portland Area Director, 18 IBIA 50, 51 (1989), the Board held that

[d]ecisions concerning whether or not a particular application for a \* \* \* grant should be funded are committed to the discretion of BIA. In reviewing such decisions, it is not the Board's function to substitute its judgment for that of BIA. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion.

It is also well established that the appellant bears the burden of proving the error in the Area Director's decision. Winnebago Tribe of Nebraska v. Aberdeen Area Director, 18 IBIA 441 (1990).

Appellant's first three arguments are statements of its need for funds. The Board has previously held that a tribe's need for funding is not a sufficient basis for overturning a decision not to fund that particular application. Rather, the appellant must show error in the decision. Louden Village Council v. Acting Juneau Area Director, 26 IBIA 240 (1994); Coast

Indian Community of the Resighini Reservation v. Deputy Commissioner of Indian Affairs, 21 IBIA 183 (1992), and cases cited therein.

Appellant's fourth argument is essentially that the letter announcing the availability of funding did not provide information on how much detail should be provided in the application. That letter stated that "successful applicants must demonstrate the following: \* \* \* measurable results consistent with stated objectives; a sound and workable plan of action; an evaluation with appropriate criteria for assessing results \* \* \*." The decision shows that the Area Director was concerned about the large amount of funds allocated for unspecified training in view of the statements in the application regarding how appellant would measure whether the training objectives were met.

The Board concludes that the letter sent to appellant was sufficient to put appellant on notice that it was responsible for providing enough information for BIA to assess its proposed use of grant funds. Appellant knew that this was a competitive program, and that whether or not its request was funded depended upon the quality of the information presented in its application. In choosing to submit limited information, appellant assumed the risk that its application would not fare well in a competitive situation. The Board does not find it unreasonable for the Area Director to have concluded that appellant's application was deficient when a significant percentage of the funds sought was designated for unspecified training with the only stated means of measuring the results of the training being whether the trainee showed up at the training session and was able to prepare some unidentified kind of report.

Appellant appears to contend that, even if BIA found problem in its application, it should still have received some portion of the funds sought. The Board rejects this contention. There is no obligation for BIA to fund any part of a grant application found to be inadequate.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Minneapolis Area Director's August 28, 1995, decision is affirmed.

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Kathryn A. Lynn  
Chief Administrative Judge

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//original signed  
Anita Vogt  
Administrative Judge