



INTERIOR BOARD OF INDIAN APPEALS

Webster Cusick v. Acting Eastern Area Director, Bureau of Indian Affairs

31 IBIA 255 (11/17/1997)



United States Department of the Interior

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

WEBSTER CUSICK, : Order Affirming Decision
Appellant :
 :
 :
v. : Docket No. IBIA 96-100-A
 :
 :
ACTING EASTERN AREA DIRECTOR, :
BUREAU OF INDIAN AFFAIRS, :
Appellee : November 17, 1997

Appellant Webster Cusick seeks review of a June 3, 1996, letter (June letter) written by the Field Representative, New York Field Office, Bureau of Indian Affairs (Field Representative; BIA), to Chief Leo Henry of the Tuscarora Nation of New York (Nation). Inter alia, the June letter recognized Chief Henry as the spokesman for the Nation's Council of Chiefs. In a filing which the Board of Indian Appeals (Board) received on July 31, 1996, the Acting Eastern Area Director, BIA (Area Director), adopted the June letter as his own. For the reasons discussed below, the Board affirms the recognition of Chief Henry as the spokesman for the Tuscarora Council of Chiefs.

From the materials before the Board, it appears that BIA has considered Chief Henry to be the Council's spokesman at least since July 29, 1992, when Chief Henry wrote to the Field Representative, identifying the members of the Council of Chiefs and stating that "all business is to be handled through the Tuscarora Nation Clerk, (Chief Leo R. Henry) or Chief Arnold Hewitt, unless the clerk so notifies you." From these same materials, it further appears that Appellant, who is also a member of the Council of Chiefs, has continuously asserted that he is the Council's spokesman. On March 22, 1996, the Area Director wrote to Chief Henry, asking for a meeting with the Council of Chiefs that would "be an opportunity to reconfirm the tribe's leadership and to discuss other issues of mutual interest." The Area Director and the Field Representative met with the Council of Chiefs on May 15, 1996. Six of the eight Chiefs on the Council, including Appellant, attended the meeting, which was memorialized in the June letter.

The Board first addresses the question of whether the June letter is an appealable decision. Chiefs David Patterson, Kenneth Patterson, Arnold Hewitt, Hibert Chew, Stuart Patterson, John J. Hill, and Leo Henry (Respondents) argue in their Answer Brief that the June letter is merely a record of a meeting, and that "[t]he BIA has taken no action affecting its government-to-government relations with the Tuscarora Nation; it has merely attempted to engage in those relations. There is therefore a substantial question as to whether there has been any 'determination' subject to appeal at all." Respondents' Answer Brief at 2. The Area Director takes a similar position.

The Board agrees that most of the June letter is a record of the meeting between the Council of Chiefs and BIA. However, the letter also states:

[The Area Director] asked that I [the Field Representative] inform you [Chief Henry] that despite the complaint of [Appellant], [BIA] will continue to recognize you, Chief Leo Henry, as the spokesman for the Tuscarora Council of Chiefs and will conduct business primarily with you and Chief Arnold Hewitt in times when you are unavailable.

We feel that this is a reasonable request, and since it is apparent that the majority of the chiefs so desire, this arrangement will be our policy until further notice from the Council.

June 3, 1996, Letter at 3. The Board concludes that these paragraphs constitute an appealable BIA decision, and it therefore addresses the merits of Appellant's arguments.

The following excerpts from the June letter are quoted by Appellant as being the portions to which he objects:

[T]he [BIA] has to respect the majority view of the council when dealing with traditional Native American governmental entities where no written government ordinances exist. It is not reasonable to expect that unanimous agreement should be required by all members of a council for all matters of deliberation before them.

* * * * *

[You (Chief Henry) stated that 1/] under your laws one person cannot hold up progress.

* * * * *

[Appellant] asked that [BIA] advise him about any Tuscarora Nation matters that it becomes aware of. [The Area Director] responded that [Appellant] was free to request copies of documents from [BIA] through the Freedom of Information Act. [2/]

June 3, 1996, Letter at 2.

1/ This material was omitted in Appellant's quotation of this sentence at page 3 of his Opening Brief.

2/ Although Appellant contends that "[i]t is outrageous to suggest that [he] must file a Freedom of Information Act Request to find out what is going on between the BIA and individuals representing themselves as the authority of the Tuscarora Nation," Opening Brief at 3, he does not present any argument in regard to this statement, or otherwise refer to it in his filings.

Appellant contends that the June letter constitutes a radical departure from, and intrusion upon, traditional Tuscarora and Iroquois government, which, he states, operates by consensus, not by majority rule. He argues that "[b]y arbitrarily determining that a majority of the Chiefs should be sufficient to determine the important issues, the BIA has imposed a new and foreign system of government on the Tuscarora people." Opening Brief at 20. Appellant also contends that the June letter deprives him of his traditional authority, derived from his status as Chief of the Snipe Clan, to be the spokesman for the Council of Chiefs, and argues that both BIA and Chief Henry have previously acknowledged his role as spokesman. He contends:

The proper position to be taken by the BIA in matters of this sort is to either (i) require a written statement of tribal policy, by a resolution of the Chiefs in Council, signed by all of the Chiefs or (ii) if the BIA must interface with one person in order to be advised as to proper action by the Chiefs in Council, that person should be the traditional spokesperson recognized by Tuscarora law and tradition, the Chief of the Snipe Clan, [Appellant]. * * *

* * * * *

Given the evidence available to the Acting Area Director, before issuing the instant determinations he should at least have conducted a fact finding investigation, perhaps utilizing the anthropology services of [BIA] to confirm the customs and traditions of the Tuscarora Nation and the requirements for action by the Council of Chiefs.

Id. at 19-20.

Respondents disagree with Appellant as to the import of the June letter. They argue:

Appellant's * * * allegation that the [June] letter * * * changed the form of Tuscarora government rests solely on this acknowledgement that Chief Henry and not [Appellant] is the principal Council spokesman for the Council in its dealings with the United States. The position [of Respondents] * * * is (1) that because the spokesman is empowered only to communicate the opinions and decisions of the Council to the United States (or visa-versa) and does not speak on his own behalf, neither the designation of a particular spokesman for the Council nor the acknowledgement of that designation by the Area Director has any impact on the form of Tuscarora government or on the relations between the Council and the United States government; (2) that any dispute over the manner in which the spokesman was designated by the Council is a purely intratribal matter, governed by tribal law; and (3) that [the] Area Director's conclusion that involvement of the BIA in the merits of such a dispute would represent an unwarranted and

unauthorized intrusion into the internal affairs of the Tuscarora Nation was therefore correct.

Answer Brief at 3. Respondents continue:

In the instant case there is no dispute as to the form or composition of the Tuscarora government. All parties agree that governmental authority is vested in the Council of Chiefs and that all chiefs speak with equal voice within the Council. All parties are in agreement as to the membership of the Council. Appellant would have the BIA * * * monitor the Council's internal decision-making process to make sure it comports with appellant's notions of tribal law. The BIA has no authority to so intrude into the internal governmental affairs of the Nation. * * *

* * * * *

The Area Director's acceptance of Chief Henry as the principal spokesman of the Council of Chiefs does not prescribe a new form of Tuscarora government. It does not divest the Council of Chiefs of its governmental authority. It does not alter the composition of the Council or impede in any way the ability of the Council to conduct business as it sees fit. It does not affect government-to-government relations between the Tuscarora Nation and the United States. It simply enhances the ability of both governments to pursue those relations. There are no more grounds for the involvement of the BIA in the purely intratribal controversy generated by the appellant concerning the Council's designation of Chief Henry as spokesman than in any other internal Council action.

The actions of the Area Director in this matter--such as they were--have been narrowly tailored to preserve [the] sovereign right of the Tuscarora Nation to self-determination and the ability of the Nation to conduct its internal affairs and resolve internal disputes free from the interference of foreign authority.

Id. at 6-8.

It is possible that the Area Director may have been less than totally circumspect, and may have shown less than complete understanding of the Nation's form of government, when he stated that it was not reasonable to expect unanimity in the deliberations of the Council of Chiefs. However, the Board cannot agree with Appellant that the statement alters the Nation's government. The Area Director's decision related only to the recognition of the Council of Chiefs' designation of its spokesman. It was reasonable for the Area Director to accept as spokesman the individual agreed to by all of the Chiefs assembled, with the sole exception of Appellant, especially when the designated spokesman had served in that capacity since at least 1992. The designation of a spokesman, whether determined by tradition or by a departure from tradition, is an internal matter for decision

by the Council of Chiefs. Any attempt by BIA to look behind the designation, by for example, holding the fact-finding hearing which Appellant advocates, would constitute not only an unwarranted intrusion into tribal government, but also a "retreat into the old days of paternalism." Smoke v. Acting Eastern Area Director, 30 IBIA 90, 91 (1996). If Appellant disagrees with the decision made by the other Chiefs, his remedy is with the Chiefs, not with the Department. See, e.g., Wadena v. Acting Minneapolis Area Director, 30 IBIA 130 (1996); John v. Acting Eastern Area Director, 29 IBIA 275 (1996); Bucktooth v. Acting Eastern Area Director, 29 IBIA 144 (1996).

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 Eastern Area Director's June 3, 1996, decision is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge