



INTERIOR BOARD OF INDIAN APPEALS

Margene Bullcreek, Lisa Bullcreek, and Ohngo Gaudadeh Devia
v. Western Regional Director, Bureau of Indian Affairs

40 IBIA 191 (01/07/2005)

Related Board cases:

39 IBIA 100

40 IBIA 196

Judicial Review:

Appeal dismissed, Bullcreek v. U.S. Department of the Interior,
426 F. Supp. 2d 1221 (D. Utah 2006)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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MARGENE BULLCREEK, LISA	:	Order Affirming Decision to Dismiss
BULLCREEK, and OHNGO	:	for Lack of Standing
GAUDADEH DEVIA,	:	
Appellants,	:	
	:	
v.	:	Docket No. IBIA 03-46-A
	:	
WESTERN REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee.	:	January 7, 2005

Appellants, Margene Bullcreek, Lisa Bullcreek, and Ohngo Gaudadeh Devia, appealed a November 14, 2002, decision of the Western Regional Director, Bureau of Indian Affairs (Regional Director; BIA). ^{1/} Margene and Lisa Bullcreek are individual members of the Skull Valley Band of Goshute Indians of Utah (Tribe). Ohngo Gaudadeh Devia (OGD) is an organization composed of tribal members. The Regional Director's decision related to a leadership dispute among members of the Tribe. He considered several issues and concluded, in part, that Appellants lacked standing to bring their complaint to BIA. He also affirmed and reiterated BIA's position on the composition of the Tribe's Executive Committee.

For the reasons discussed below, the Board of Indian Appeals (Board) affirms the portion of the Regional Director's November 14, 2002, decision that concludes that Appellants lack standing. The Board need not reach the two remaining jurisdictional issues considered by the Regional Director.

^{1/} On May 19, 2003, this case was referred to the Department's Office of Collaborative Action and Dispute Resolution for an alternative dispute resolution (ADR) assessment. On Aug. 19, 2003, Abby Bullcreek v. Western Regional Director, IBIA No. 02-8-A, was consolidated with this case, because the internal tribal dispute was also implicated in that case. ADR efforts were unsuccessful, and the Board concludes that it is appropriate to issue separate decisions. Abby Bullcreek is also being decided today. 40 IBIA 196 (2005).

Background

The Tribe is governed by a General Council form of government, which consists of all members of the Tribe who are at least 18 years of age. Although the General Council is the Tribe's governing body, the Tribe also has a Tribal Executive Committee, elected from its membership.

Since at least the year 2000, there has been a controversy over which group of individuals constitutes the duly elected Executive Committee of the Tribe. On the one hand, Leon Bear and Lori Skiby (the Bear group) claim to be the duly elected Executive Committee. On the other hand, Marlinda Moon, Sammy Blackbear, and Miranda Wash (the Moon group) claim that they were elected as the Executive Committee. Apparently, this internal tribal dispute has not yet been resolved.

On March 25, 2002, the Superintendent wrote a letter to Leon Bear, as Chairman of the Tribe. The letter stated that BIA would continue to fund the Tribe's Indian Self-Determination Act contracts as long as it appeared that services were being delivered, and that BIA would continue to conduct routine business with the Tribe through the Executive Committee composed of the Bear group. ^{2/} On appeal of that letter to the Regional Director, the Regional Director concluded that Appellants lacked standing, and that the Superintendent's letter was not an appealable decision under 25 C.F.R. Part 2. The Regional Director also concluded that a May 24, 2002, letter signed by the Assistant Secretary had decided the underlying issue by referring to Mr. Bear as the "recognized Chairman." Despite these three dispositive conclusions, the Regional Director proceeded to address the merits. The Regional Director then affirmed the Superintendent's position, noting that BIA would continue to deal with the Bear group as the duly authorized Executive Committee until notified otherwise. Appellants thereafter filed this appeal.

After receiving the notice of appeal, the Board directed Appellants to address three jurisdictional issues. The first issue was whether Appellants had standing to bring this appeal. The second issue was whether a May 24, 2002, letter from the Assistant Secretary - Indian Affairs constituted a final Departmental determination of which group the Department recognized as the Executive Committee. The third issue was whether the Regional Director's letter identifying the individuals with whom BIA would deal for government-to-government

^{2/} Apparently, in a letter dated Feb. 21, 2002, the Superintendent offered assistance to resolve this internal tribal dispute through an election, with BIA handling all costs and administration of the election, and conducting and verifying results. No one accepted the Superintendent's offer and, on Mar. 25, 2002, the Superintendent wrote the letter which announced his position.

purposes constituted an appealable decision under 25 C.F.R. Part 2.

Appellants are not members of either of the two rival Executive Committees. Appellants state that they have no interest in the recognition of any particular group, but “seek only to have the BIA address problems in the election procedures and mistreatment of individual Band members resulting from the controversy between the two factions.” Notice of Appeal at 2; Appellants’ Br. on Jurisdictional Issues at 6-7.

However, Appellants also seem to challenge BIA’s decision to recognize the Bear group as the duly constituted Executive Committee. Margene Bullcreek and Lisa Bullcreek assert that they bring this appeal in their individual capacities as tribal members and in their “official capacities” as members of the Tribe’s governing body, the General Council. They claim that they have been adversely affected by the Regional Director’s decision. They allege that the Regional Director’s decision has resulted in harm to them, specifically, their exclusion from benefits under the Indian Self-Determination and Education Assistance Act as well as from economic dividends from the Tribe. The individual Appellants provide no specific information describing what benefits allegedly have been denied them, or how BIA’s decision caused a denial of their benefits. They also assert that their right to participate in fair election procedures has been compromised by BIA’s decision. Appellant OGD alleges that it and its members have an interest in preserving governmental integrity in election procedures and practices.

Discussion

Appellants contend that their objective is to have BIA address tribal election procedures. They claim that their right to participate in fair election procedures has been violated and they disclaim any interest in whether the Bear group or the Moon group is ultimately recognized as the duly elected Executive Committee. The BIA action that Appellants challenge, however, is its recognition of and relation with the Bear group as the Executive Committee, which Appellants contend is in error. Regardless of how Appellants choose to characterize their ultimate objective, this appeal is limited to their challenge to the Regional Director’s decision, and their standing must be evaluated in that context. ^{3/}

Appellants further contend that, as individuals, they have been denied benefits from Indian Self-Determination Act-funded programs administered by the Tribe and benefits from

^{3/} Because this appeal can be resolved on the basis of standing alone, the Board does not decide whether the Superintendent’s Mar. 25, 2002, letter was a non-appealable statement of a continuing “policy,” as characterized by the Regional Director, Reg. Dir. Decision of Nov. 14, 2002, at 2, or an appealable “decision,” as characterized by Appellants, Appellants’ Br. on Jurisdictional Issues at 6.

tribal “economic dividends,” due to the internal tribal leadership dispute.

Appellants claim to bring this appeal in their individual capacities as tribal members as well as in their “official capacity,” specifically, as voting members of the Tribe’s General Council, its “governing body.” We first examine their standing to bring this appeal as individual tribal members, and conclude that, as individuals, they lack standing. We then address whether Appellants’ claim to bring this appeal in their “official capacity,” as members of the General Council, requires a different result, and conclude that it does not.

The Board’s precedent concerning the standing of individual tribal members to bring appeals involving internal tribal disputes and disputes over BIA’s recognition of a tribe’s leadership is well established. Such individual tribal members have no standing. Displaced Elem Lineage Emancipated Members Alliance v. Sacramento Area Director, 34 IBIA 74, 77 (1999); Swab v. Sacramento Area Director, 25 IBIA 205, 209 (1994); Frease v. Sacramento Area Director, 17 IBIA 250, 256 (1989). Regardless of whether Appellants’ challenge is characterized as one concerning tribal election procedures or concerning BIA’s recognition of the Bear group as constituting the Executive Committee, the result is the same. Tribal members, as individuals, as well as organizations composed of individual tribal members, do not have standing to bring an action based on a personal assessment of what is or what is not in the best interests of the tribe. Displaced Elem Lineage Emancipated Members Alliance v. Sacramento Area Director, 34 IBIA 74, 76-77 (1999); Frease v. Sacramento Area Director, 17 IBIA 250, 256 (1989); see also White Earth Band of Chippewa Indians v. Minneapolis Area Director, 23 IBIA 216, 217 n. 1 (1993). These rules involving standing, which the Board applies in cases concerning intra-tribal disputes, are intended to implement the Federal policy of respect for tribal self-government and the principle that intra-tribal disputes should be resolved in tribal forums. Displaced Elem Lineage Emancipated Members Alliance v. Sacramento Area Director, 34 IBIA 74, 77 (1999).

With regard to Appellants’ claim that they have been adversely affected because they have been excluded from benefits from the Tribe’s Indian Self-Determination Act contract programs as well as other economic dividends because of the controversy, they failed to describe any specific or particularized injury. To establish standing, Appellants must articulate a “concrete injury that affected [them] in a personal and individual way.” Shawano County Concerned Property Taxpayers Association v. Midwest Regional Director, 38 IBIA 156, 158 (2002). Even assuming that Appellants could describe the requisite concrete injury, the injury would not be “fairly traceable” to the Regional Director’s decision, but, rather, would be the result of the independent action of a third party — the Bear group Executive Committee — in administering the Tribe’s Indian Self-Determination Act contracts. See id. at 157-58. We conclude that Appellants, as individuals or a group of individuals, lack standing to bring this appeal.

Although the individual Appellants attempt to secure greater status by also bringing this appeal in their “official capacities” as members of the Tribe’s General Council, their status is no different before the Board than their status as individual members of the Tribe. The Board has drawn no distinction between tribal members of tribes that have elected branches of government and those tribes, as in this case, in which the entire adult population constitutes the governing council of the tribe. See, e.g., Frease v. Sacramento Area Director, 17 IBIA 250, 256 (1989) (appellants were members of the Tribe’s “governing body,” but lacked standing as tribal members). When the membership of a governing body of a Tribe is indistinguishable from the adult membership of the Tribe as a whole, individual members of the governing body do not have an “official capacity” that imbues them with greater standing than their individual capacity as tribal members. As such, we conclude that Appellants’ “official capacity” claim requires no different result, and that Appellants lack standing to bring this appeal.

Conclusion

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 portion of the Regional Director’s November 14, 2002, decision dismissing Appellants’ claims based on lack of standing is affirmed.

// original signed
Colette J. Winston
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge