PARMENTON DECORAH ET AL.
v.
MINNEAPOLIS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 92-17-A Decided June 10, 1992

Appeal from decisions concerning Wisconsin Winnebago tribal governmental issues.

Dismissed in part; vacated in part.

1. Board of Indian Appeals: Generally--Indians: Tribal Government: Constitutions, Bylaws, and Ordinances

   The Board of Indian Appeals undertakes to interpret tribal law only where there is a clear necessity for it to do so. It therefore does not consider moot issues where, in order to render a decision on the merits, it would be required to interpret tribal law.

2. Bureau of Indian Affairs: Generally--Indians: Tribal Government: Constitutions, Bylaws, and Ordinances

   In accordance with the Federal policy of fostering tribal self-determination, which counsels respect for the right of tribes to interpret their own governing documents, the Bureau of Indian Affairs should avoid interpreting a tribal constitution unless there is a clear necessity for it to do so.

APPEARANCES: Kurt V. BlueDog, Esq., and Andrew M. Small, Esq., Bloomington, Minnesota, for appellants; Mark A. Anderson, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Twin Cities, Minnesota, for the Area Director; Jeff Scott Olson, Esq., Madison, Wisconsin, for James Greendeer and Alvin Cloud.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellants Parmenton Decorah, Greg Littlejohn, Dwight Steele, John Mann, George Garvin, Evans Littlegeorge, Stuart Taylor, and Ermon Dick seek review of September 12 and September 26, 1991, decisions of the Minneapolis Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning certain actions taken by the General Council of the Wisconsin Winnebago Tribe (Tribe) and the status of two individuals, James Greendeer and Alvin

WWWVersion

Cloud, as holdover members of the Wisconsin Winnebago Business Committee (WWBC). 1/ For the reasons discussed below, the Board dismisses this appeal in part and vacates the Area Director's decision in part.

Background

At a tribal election held on June 8, 1991, Greendeer and Cloud were candidates for positions on the WWBC. Both received more votes than their opponents. However, the eligibility of both had been challenged prior to the election and, following the election, the Tribal Election Board ruled both ineligible. On July 13, 1991, the General Council of the Tribe met and, among other things, voted to affirm the June 8 election results and seat Greendeer and Cloud on the WWBC.

On July 17, 1991, the Superintendent, Great Lakes Agency, BIA, wrote to the newly elected Tribal Chairperson, identifying 10 individuals whom he recognized as valid members of the WWBC following the election. He continued:

> I am not presently in a position to recognize James Greendeer, Stuart Taylor, Alvin Cloud or Ermon Dick. As you are aware, there is a dispute over the manner in which James Greendeer and Alvin Cloud were ruled "ineligible" following the June election and I will continue to review that matter as information is made available.
>
> Another concern that we have is the General Council Meeting of July 13, 1991. Several resolutions were passed at this meeting concerning tribal affairs. The Constitution and Bylaws of the [Tribe] does not grant the General Council authority which would allow or empower it to take action as described in the resolutions passed at the July 13, 1991 meeting.

(Superintendent's July 17, 1991, Letter at 2).

The Tribe's Chairperson appealed this letter to the Area Director, who responded on September 12, 1991, stating:

> There are two basic issues involved in this appeal. First, the Superintendent, Great Lakes Agency expressed a concern that

---

1/ Appellants Decorah, Littlejohn, Steele, Mann, Garvin, and Littlegeorge are members of the WWBC. Appellants Taylor and Dick were candidates for the WWBC in a June 8, 1991, tribal election. They ran in opposition to Greendeer and Cloud.

The General Council apparently consists of all voting members of the Tribe. The WWBC is designated, in Article IV, section 1, of the tribal constitution, as the governing body of the Tribe.

This is one of three appeals to the Board which concern conflicts within the Tribe. See also Greendeer v. Minneapolis Area Director, 22 IBIA 91 (1992); Decorah v. Minneapolis Area Director, 22 IBIA 32 (1992).

WWWVersion

> certain action taken at a General Council meeting on July 13, 1991, were in excess of the authority granted the General Council in the Constitution and Bylaws of the [Tribe]. Your position on appeal is that the Superintendent was incorrect in recognizing limitations on the General Council's power and that to the contrary, the General Council is "the voice of the Winnebago Nation" and the ultimate governing body of the Tribe. I find, however, that the Superintendent's position is correct. The clear language of the Constitution is that the governing body is the [WWBC] and it provides the General Council only specific, limited powers. Except as expressed in those sections noted by the Superintendent, the Constitution contemplates that the general Tribal membership may compel particular action only through the referendum process provided in Article XI - not by a meeting and voting in General Council.
>
> The second issue arising from the Superintendent's July 17, 1991, decision is one that was not directly addressed. Rather, the issue arose from the Superintendent's explicit recognition of ten (10) members of the [WWBC]. The implication of that recognition and the corresponding nonrecognition of who held the two disputed seats, was that the [WWBC] consisted of ten (10) members and therefore a quorum of six could meet and conduct Tribal business. You assert that the Constitution provides that the term of office of [WWBC] members does not end "until their successors have been installed." Again, I am persuaded by the plain language of the Constitution and I agree with you that incumbents Alvin Cloud and James Greendeer remained on the [WWBC] notwithstanding the controversy concerning their eligibility and re-election. Thus, there were no vacancies on the [WWBC] following the June 8, 1991, election. Accordingly, I reverse the Superintendent, Great Lakes Agency's decision in that regard.

(Area Director's Sept. 12, 1991, Decision at 1-2). On September 25, 1991, attorney Kurt V. BlueDog, on behalf of unnamed parties, filed a document entitled "Informal Response" with the Area Director. The Area Director issued a second decision on September 26, 1991, stating:

> I have carefully reviewed the material you have submitted. They do not provide any new information or arguments which cause me to alter the decision of September 12, 1991. In fact, they do not really address the two issues which were decided but rather discuss generally the procedures followed in handling the appeal and the overriding question of when it is appropriate for [BIA] to take action in disputes which are arguably internal Tribal ones. As [the Superintendent] pointed out in his July 17, 1991, letter which was appealed, it does on occasion become necessary for [BIA] to determine the properly elected representatives of a Tribe in order to determine whether or not actions taken by a governing body have been validly taken. There has been no appeal

WWWVersion

> challenging the fact that the Superintendent made the decision in the first instance, the challenge being directed at the result of the decision, so this is an issue which I need not decide.

(Area Director's Sept. 26, 1991, Derision at 2).

The Board received appellants' appeal from the two decisions on October 28, 1991. Briefs were filed by appellants, the Area Director, and Greendeer and Cloud.

Discussion and Conclusions

It is clear that this appeal is partially moot. On December 23, 1991, the Area Director issued a decision recognizing Greendeer and Cloud as having been elected in the June 8, 1991, election. Appellants appealed that decision to the Board; the appeal was docketed as IBIA 92-112-A. On April 17, 1992, at appellants' request, the Board dismissed the appeal. Decorah v. Minneapolis Area Director, 22 IBIA 32 (1992). Accordingly, the Area Director's decision recognizing Greendeer and Cloud as properly elected members of the WWBC is now final for the Department.

[1] This being the case, the status of Greendeer and Cloud as holdover members of the WWBC, pending installation of their successors, is now moot. In accord with its longstanding practice, the Board declines to address this moot issue. The Board will not address a moot issue "where, in order to render a decision on the merits, it would be required to interpret tribal law." E.g., Sahmaunt v. Anadarko Area Director, 17 IBIA 60, 64 (1989). The Board's rule derives in part from standard judicial practice concerning consideration of moot issues but also reflects the Board's tenet that it will not undertake to interpret tribal law unless there is a clear necessity to do so. Id.

What remains at issue in this appeal is the Area Director's finding concerning the powers of the General Council. Appellants do not dispute the conclusion reached by the Area Director but object to the Area Director's having issued a decision at all. They allege that BIA is interfering in internal tribal affairs and "attempt[ing] to bind the Tribe with its own Constitutional interpretations" (Appellants' Opening Brief at 10). The Area Director contends that he made only such decisions as were necessary to enable him to determine which individuals he would recognize as members of the WWBC.

The Area Director's conclusions concerning the General Council are broadly worded and not specifically tied to recognition of any particular individuals as WWBC members or any particular action taken by the General Council. It appears that the Area Director was attempting to give tribal members notice of his interpretation of the Tribe's constitutional provisions, presumably because he believed that interpretation might affect future determinations he expected to be called upon to make.

WWWVersion

As noted above, the Area Director subsequently rendered a decision holding that Greendeer and Cloud had been elected to the WWBC at the June 8 election. That decision, however, was based on the actions of the Election Board before and after the election. The Area Director did not reach the point where he was required to consider the validity of the General Council vote to affirm the election of Greendeer and Cloud. The Board is unaware of any determinations made by the Area Director concerning any other specific actions taken by the General Council.

The Board has often stated that, even though BIA should give deference to a tribe's reasonable interpretation of its own governing documents, BIA has both the authority and responsibility to interpret tribal law when necessary to carry out the government-to-government relationship with the tribe. Decisions which BIA may be required to render in this context often involve questions of whether a tribal governing body is properly constituted, including questions of whether certain individuals have been properly elected to or removed from tribal office. See, e.g., United Keetoowah Band of Cherokee Indians v. Muskogee Area Director, 22 IBIA 75 (1992). In other circumstances, BIA might be required to decide whether certain actions taken by a tribal body were within the authority of that body. As noted in Greendeer, BIA has a legitimate need to know whether a tribal governing body is properly constituted and whether certain of its actions are valid in order to know whether BIA may do business with that body.

[2] If, however, the government-to-government relationship does not require that BIA render a particular decision, for which an interpretation of tribal law must be made, BIA officials should exercise restraint in undertaking to interpret tribal law, in order to avoid conflict with the well-established Federal policy encouraging tribal self-determination and respecting the right of tribes to interpret their own laws.

The Area Director's wish to inform the Tribe of his view concerning the powers of the General Council is understandable under the difficult circumstances that were facing both the Tribe and BIA. However, it appears that his interpretation of the Tribe's constitution was not actually necessary to any decision he was required to make. The Board finds that it is inappropriate, in light of the self-determination policy, for BIA to render a decision for the sole purpose of announcing BIA's interpretation of tribal law. Rather, BIA should refrain from interpreting tribal law unless it must do so in order to make a decision which it is required to make in furtherance of its government-to-government relationship with a tribe.

The Board concludes that it must vacate the Area Director's decisions insofar as they interpret the Wisconsin Winnebago tribal constitution with respect to the powers of the General Council. 2/

2/ The Board reaches no conclusions concerning the substance of the Area Director's conclusions as to the powers of the General Council.

WWWVersion

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 dismissed in part and the Minneapolis Area Director's September 12 and September 26, 1991, decisions are vacated in part.

Anita Vogt
Administrative Judge

I concur:

Kathryn A. Lynn
Chief Administrative Judge

WWWVersion