



INTERIOR BOARD OF INDIAN APPEALS

Acting Governor Leslie Wandrie-Harjo, Cheyenne and Arapaho Tribes
v. Southern Plains Regional Director, Bureau of Indian Affairs

53 IBIA 121 (03/28/2011)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

ACTING GOVERNOR LESLIE)	Order Vacating Decision and
WANDRIE-HARJO, CHEYENNE)	Remanding
AND ARAPAHO TRIBES,)	
Appellant,)	
)	
v.)	Docket No. IBIA 11-065
)	
SOUTHERN PLAINS REGIONAL)	
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	March 28, 2011

Leslie Wandrie-Harjo (Appellant), as Acting Governor of the Cheyenne and Arapaho Tribes, Oklahoma (Tribes), appeals to the Board of Indian Appeals (Board) from a January 6, 2011, decision (Decision) of the Southern Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA). The Decision recognized Janice Prairie Chief-Boswell as the Tribes' Governor,¹ on an interim basis, for purposes of executing certain proposed modifications for the Tribes' Indian Self-Determination and Education Assistance Act (ISDA) contract modifications and related drawdown requests.²

We summarily vacate the Decision because, although the Decision includes an accurate summary of the law that governs BIA action in relation to a tribal governance dispute, the Decision fails to explain how the application of the law to the record before the Regional Director led him to conclude that he should recognize Prairie Chief-Boswell.

¹ Prairie Chief-Boswell apparently was elected Governor of the Tribes in November 2009 and sworn into office in January 2010. *See* Affidavit of Janice Prairie Chief-Boswell, Answer of Interested Party, Ex. 3. Although Prairie Chief-Boswell's affidavit is not part of the Regional Director's record, she contends that she remains Governor and has not been validly removed from office.

² The Board's caption of this case and references to the capacity in which Appellant filed this appeal shall not be construed as expressing any view on the underlying issue of Appellant's status and authority.

More specifically, the Decision does not explain why the Regional Director chose not to defer to a tribal court preliminary injunction which, by its terms, suspended Prairie Chief-Boswell from office. Therefore, we vacate the Decision and remand for further proceedings consistent with this order.

Background

The administrative record submitted to the Board by the Regional Director is limited, and provides the following information.³ On December 17, 2010, a tribal trial court judge issued an emergency temporary restraining order (TRO) which, by its terms, suspended the authority of Prairie Chief-Boswell as the Tribes' Governor and granted Appellant the powers of the Governor. *See* Administrative Record (AR) Tab 6. On December 27, 2010, after Prairie Chief-Boswell apparently failed to appear for a hearing, the trial court issued a preliminary injunction against her to the same effect. *See id.* Tab 4. The record also contains a Legislative Proclamation signed by the Speaker of the Third Legislature of the Tribes, and dated December 17, 2010, which acknowledges the TRO and declares that the Third Legislature recognizes that the Governor's signature authority shall be transferred to Appellant, effective on that date. *See id.* Tab 7.

The Regional Director's administrative record does not include any countervailing tribal court decisions, nor does it include any information to indicate that Prairie Chief-Boswell was contesting the tribal court's injunction through other means within the Tribes. The record does contain a copy of a January 5, 2010, authorized signature form for ISDA contract payment requests, which identifies Prairie Chief-Boswell as the authorized individual to sign such requests. In addition to this limited information, the record contains copies of ISDA contract modifications executed by Prairie Chief-Boswell and BIA's contracting officer on December 21, 2010, and a copy of the Tribes' Constitution.

The Regional Director's January 6, 2010, Decision advised Prairie Chief-Boswell that BIA had accepted the ISDA contract modifications that she had executed. The Decision stated, "[a]s you know, the issue of the purported suspension of your authority has been a matter of dispute and uncertainty" since the tribal court's TRO was issued on December 17, 2010. Decision at 1. After providing a summary of the law that tribal governance disputes must be resolved by tribal procedures, that Federal interference would interfere with the powers of tribal self-governance, and that when a tribal dispute has not

³ The record was certified by the Deputy Regional Director as containing all information and documents utilized by the Regional Director in rendering the Decision. *See* Administrative Record, Table of Contents, at (unnumbered) 2.

been resolved, BIA may still need to recognize tribal officials on an interim basis — when and if Federal action is required for government-to-government purposes — the Regional Director decided to recognize Prairie Chief-Boswell, “**on an interim basis only**,” for purposes of the ISDA contract modifications and related drawdown requests. *Id.* at 2.

Appellant appealed the Decision to the Board, arguing that the tribal court injunction against Prairie Chief-Boswell constituted the Tribes’ own resolution of the dispute and was thus binding on the Regional Director. Appellant requested that the Board grant immediate recognition to Appellant as the Acting Governor of the Tribes. The Board allowed interested parties to respond to Appellant’s request for immediate recognition. No timely responses were received. However, Prairie Chief-Boswell subsequently filed an answer brief on the merits, responding to Appellant’s notice of appeal, and arguing that a tribal forum has not determined that Appellant is Acting Governor and further contending that the tribal court order upon which Appellant relies is not valid.⁴

Discussion

The Board reviews questions of law and the sufficiency of evidence de novo. *See Parker v. Southern Plains Regional Director*, 45 IBIA 310, 318 (2007). When a BIA decision involves the exercise of discretion, we determine whether an appellant has satisfied the burden of proof to demonstrate that BIA’s decision is not in accordance with the law, not supported by the record, or not adequately explained. *See Spang v. Acting Rocky Mountain Regional Director*, 52 IBIA 143, 148-49 (2010).

⁴ In her answer brief, Prairie Chief-Boswell also argues that Appellant’s appeal is untimely because the deadline for filing an appeal in this case was February 7, 2011. We agree that the deadline was February 7, but as noted in the Board’s February 9, 2011, pre-docketing notice, the appeal was received by the Board on February 7. *See* 43 C.F.R. § 4.310(a)(1) (date of filing is date of mailing or personal delivery). Thus, the appeal is timely and we have jurisdiction.

The Board received no requests to place the Regional Director’s decision into immediate effect, either before or after Appellant filed her appeal. *Cf. Boland v. Acting Pacific Regional Director*, 42 IBIA 236, 237-38 (2006) (BIA decisions to recognize tribal officials placed into immediate effect); *Grasshopper Suppression on Lands Administered by the Bureau of Land Management in Wyoming*, 40 OHA 202 (2010) (the Director of the Office of Hearings and Appeals or an Appeals Board has authority to grant or deny a request under 43 C.F.R. § 4.21(a)(1) to put a bureau decision into immediate effect, whether or not an appeal from the decision has been filed).

The Decision in the present case includes a fairly comprehensive summary of the law governing BIA action when the leadership of a tribe is disputed. See Decision at 1-2, citing, e.g., *Poe v. Pacific Regional Director*, 43 IBIA 105, 112-13 (2006); *Wasson v. Western Regional Director*, 42 IBIA 141, 157-58 (2006), and cases cited therein. The Regional Director correctly understood the principle that tribal governance disputes are to be resolved by tribal procedures, not by BIA. He also correctly understood that when a tribal dispute remains unresolved, but BIA must take some action for government-to-government purposes, BIA may need to recognize one or more individuals as tribal officials on an interim basis, which ordinarily — though not invariably — means that BIA will recognize the last undisputed tribal official(s). See *Poe*, 43 IBIA at 112 & n.10. But the charge made by Appellant in this appeal is not that the Regional Director misunderstood the law, but that he mistakenly relied on law that is applicable to *unresolved* tribal disputes, and that he failed to acknowledge that the dispute in this case had been resolved. As noted above, Appellant contends that the tribal court injunction against Prairie Chief-Boswell *constituted* resolution of the dispute through the Tribes’ own procedures.

We decline to summarily reverse the Regional Director’s decision, as Appellant asks us to do, and we do not find, as a matter of law, that the tribal court preliminary injunction is binding on BIA. But we do find that the Regional Director failed to adequately explain his decision to continue to recognize Prairie Chief-Boswell, albeit on an interim basis, and not to give effect to the tribal court orders, in light of the record before him.

The Decision refers to “the issue of the purported suspension” of Prairie Chief-Boswell’s authority as “a matter of dispute and uncertainty” since issuance of the tribal court’s TRO. Decision at 1. That may well reflect a reality, and it may be that the TRO and preliminary injunction, viewed in the context of a more complete record, do not require the Regional Director to recognize Appellant as Acting Governor. But the only court orders contained in the administrative record are those which, by their terms, suspend Prairie Chief-Boswell’s authority as Governor and vest that authority in Appellant. And a proclamation from the Tribes’ Third Legislature, which is also in the record, accepts the tribal court’s injunctive relief and recognizes Appellant as the Acting Governor.⁵ Moreover, if the Regional Director found some basis in the Tribes’ Constitution, a copy of which is in the record, for not deferring to the tribal court’s injunction, the Decision does not articulate his reasoning. Cf. *Tarbell v. Eastern Regional Director*, 50 IBIA 219, 230-31 (2009) (BIA

⁵ The Third Legislature has also filed a request with the Board to join Appellant’s appeal, which the Board construes as a motion to intervene. Given our summary disposition of this appeal, the motion is moot.

must defer to a tribe's reasonable interpretation of tribal law but may be required to interpret tribal law when necessary for carrying out government-to-government relations).

Because we find that the limited record relied upon by the Regional Director does not support the Decision, and that the Decision does not sufficiently explain its premise that the issue of Prairie Chief-Boswell's authority was a matter of dispute and uncertainty that rendered it permissible for BIA not to defer to the TRO and preliminary injunction, we vacate the Decision and remand for further proceedings consistent with this order.

We do not hold, as Appellant urges us to do, that the Regional Director was bound to follow the tribal court ruling, or even that BIA deference necessarily was required.⁶ Our holding is narrowly limited to finding, based on the administrative record relied upon by the Regional Director, and the absence of a more complete explanation, that the Regional Director's Decision cannot be sustained. On remand, the Regional Director must ensure that he has developed a complete record and has fully explained his reasoning in deciding whom he will recognize, on an interim basis or otherwise, as having the authority to represent the Tribe in dealings with BIA when necessary for the government-to-government relationship.

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 Board docket this appeal, vacates the Regional Director's January 6, 2011, decision, and remands the matter for further proceedings.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

⁶ In responding to Appellant's notice of appeal, Prairie Chief-Boswell submitted additional information or documents to the Board that she contends supports her position that she remains Governor of the Tribes and that the Regional Director reached the correct conclusion in recognizing her for purposes of ISDA contract modifications and drawdown requests. We leave it to the Regional Director, on remand, to consider any supplemental information from or arguments made by Prairie Chief-Boswell, or Appellant.