

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
NORTHEASTERN DIVISION

Roger Yankton Sr., tribal member
and Chairman, Spirit Lake Tribe,

Plaintiff,

v.

No. _____

Ruth Hopkins, judge appointee of
council members, Leander McDonald,
Mardell Lewis, Yvonne Dubois,
Nancy Green-Robertson, and
Joel Red Fox, as council members,
Paul Gotland, NPCA judge,

Defendants.

Complaint for Habeas Corpus

1. Introduction. A restraining order bars Roger Yankton from the tribal office building, bars him from contact with the tribal council, and he has to stay 100 feet away from the petitioner [Leander McDonald]. Order styled “*Spirit Lake Tribal Council. v. Yankton.*” Chairman Yankton is detained by the order imposed without a hearing, or appeal route. The order deprives Yankton of due process, and his First Amendment rights to associate and free speech. Habeas relief is needed to halt the illegal detention of Chairman Yankton.

2. Plaintiff Roger Yankton, Sr. is the duly elected Chairman, Spirit Lake Tribe.

3. Defendants. Ruth Hopkins is a 2013 judge appointee of council members. Leander McDonald, Mardell Lewis, Yvonne Dubois, Nancy Green-Robertson, and Joel Red Fox are tribal council members. Paul Gotland serves as judge with the

the Northern Plains Inter-tribal Court of Appeals (N. Plains or NPCA).

4. Jurisdiction exists under 28 USC Sec. 1331 and 25 USC Section 1303, habeas corpus, and Indian Civil Rights Act (ICRA), 25 USC Sec. 1301 et. seq.

5. Events and tribal court. In 2012 the tribal council enacted a law that established their own appeals court, and withdrew from the N. Plains appeals court. Resolution No. A05-13-003. The council began hiring but have been hampered by recall petitions. Trial level judges such as Patrick Lee were properly hired.

6. Some tribal members tried to recall Yankton as Chairman and install Leander McDonald as Chairman. Yankton sued. L. McDonald and attorney Daniel Traynor attended the hearing, but did not file to intervene. On July 16, 2013 Judge Lee ruled the recall petition invalid, and ordered that Yankton re-instated as Chairman.

7. The Constitution requires the Chairman to call the meetings, upon notice. Four council defendants held an illegal meeting on July 17, 2013 to block the court order that reinstated R. Yankton as Chairman. The council defendants attempted to rejoin the N. Plains appeals court.

8, On July 17, 2013 “intervenor” Molly McDonald and others filed for and secured an order, the same day, that stayed the July 16, 2013 order to re-instate Yankton. Order by Judge P. Gotland of N. Plains.

9. On July 17, 2013 tribal attorney L. Leventhal wrote an opinion that the N. Plains order was invalid as the ‘appeal’ was filed with the wrong court since the Tribe withdrew from the NPCA in 2012. Resolution No. A05-13-003, law for

Spirit Lake Appeals court. The NPCA lacks authority over new cases. *Id.*

10. Summary orders. In late July 2013 the council defendants appointed Ruth Hopkins as tribal judge without a valid meeting, i.e. exclusion of Yankton. In July and early August 2013 Hopkins issued two orders that bar Roger Yankton from the tribal office building. This wrongfully restrains him. Yankton affirmation.

11. Recently, the council defendants fired employees perceived as Yankton supporters, and appointed agents such as Hopkins. These tactics disrupt tribal government, and jeopardize funds and services to tribal members.

Claim for habeas and declaratory relief

12. Plaintiff re-alleges and incorporates paragraphs 1-11.

13. Tribal agents must provide due process and cannot violate one's First Amendment right to associate and free speech. ICRA. 25 USC Sec. 1303 provides for federal court review of an illegal detention.

14. Detention. The two restraining orders by defendant Hopkins against Roger Yankton, imposed without a hearing, violates Yankton's civil rights, ICRA. And the council defendants are firing employees that impacts Yankton's right to associate.

15. No tribal appeal available. Though a 2012 law adopted a Spirit Lake appeals court, and withdraw from NPITCA, the judges were not hired yet. In short, the Spirit Lake appeals court is not staffed. ¹

¹ When no functioning appellate court, exhaustion of tribal remedies is per se futile. *Krempel v. Prairie Island Indian Community*, 125 F. 3d 621 (8th Cir. 1997).

16. Bad faith. Also, exhaustion is not required when use of tribal authority is “motivated by a desire to harass and done in bad faith” or futile. Here, the Hopkin’s summary orders are a classic example of bad faith – no trial, no appeal route open.

Claim two – declaratory and habeas relief

17. Plaintiff re-alleges and incorporates paragraphs 1-16.

18. In *Superior Homes v. Spirit Lake Housing Authority*, no. 2:12-cv-00106 (July 12, 2013) this court dismissed a suit brought by plaintiff’s attorney Daniel Traynor, who failed to exhaust tribal remedies. Traynor failed to file in the *trial court* at Ft. Totten, ND and sued in federal court. The opinion notes the tribe has a functioning lower court, and cites data [exhibit B, p. 3] that the Spirit Lake Tribe established its own appeals court in October 2012. *Superior Homes*, at page 6.

19. On July 16, 2013 in *Yankton v Election Board* Judge Lee ordered that Yankton be re-instated as Chairman.

20. July 17, 2013. Rather than seek relief in the Spirit Lake trial court, as required by *Superior Homes*, attorney Traynor filed for “Intervenors” Molly McDonald and others, in the N. Plains appeals court. It appears Traynor misled the NPCA by saying the tribe is a member of Northern Plains, though a 2012 Resolution says otherwise. *Superior Homes, supra*.

21. On July 17, 2013 Judge Gotland issued an order that ‘stays’ the order to re-instate Yankton as Chairman. Yankton moved to dismiss noting that the Tribe withdrew from NPTICA in 2012, but Gotland has yet to withdraw the stay order.

22. Habeas corpus. Exhaustion is not required when jurisdiction is lacking, *Krempele*. Since the Tribe is not a member of NPCA, Gotland lacks authority to issue an order. The Gotland order, coupled with the Hopkin's order, wrongfully detains Yankton and improperly limits his freedom of movement and speech.

23. Relief. Declaratory and habeas relief should issue since Gotland order lacks authority over Spirit Lake cases. See 2012 Resolution withdrawing from NPCA and *Superior Homes*.

WHEREFORE plaintiff seeks a ruling that:

1. the Roger Yankton, Sr. is being wrongfully detained in violation of his civil rights, through the conduct of defendants.

2. An order to show cause should issue to free Yankton from the illegal restraints that make him a virtual prisoner on the Reservation.

Dated August 13, 2013.

s/ Vance Gillette

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Attorney for Plaintiff Yankton

August 10, 2013

To Whom It May Concern

On Wednesday July 31st. 2013 at 1:15 pm while attending a community youth event at our Tribal Park facility I was served a Restraining Order by Law Enforcement from the Tribal Court. This Restraining Order was filed by the Spirit Lake Tribal Council and was unsigned by a Judge. Since this time I have been served two additional times the same Restraining order.

Restraining Order #2 – was served the same day Wednesday July 31, at 2:15 pm; this order was then signed by Judge Hopkins

Restraining Order # 3 –the same Order was served to me again on August 6, 2013 at 10:20 am at my home; the only difference was it stated Reissued at the top of the order. This order was signed by Judge Hopkins. I went to the court to ask why was this reissued, the clerk Leola White stated that this time Judge Hopkins signed it as Chief Judge, court staff member Ms. Williams was a witness to this statement.

When I looked at each of the orders the title Chief Judge is typed on all three as the title of the signer.

This restraining order to my knowledge was not passed in the minutes or by resolution of the Tribal Council in a legal meeting with a quorum. I have requested copies and there are none available.

I am concerned that with this restraining order as written, I have not been given notice of a hearing to be heard, the order is written to be indefinite with no end and has been described also to be written as a full gag order, along with no definition of third party which for me would mean also the people of Spirit Lake.

This restraining order is affecting my ability to do my job as the Tribal Chairman. I was elected into this position by the people of our tribe and I am not able to conduct business matters of the Tribe and I am not able to fulfill my duties directed of my position in our Constitution due to this restraining order.

Signed,



Roger Yankton Sr., Tribal Chairman
Spirit Lake Tribe

*I swear under penalty of perjury the above
FACTS ARE TRUE.*

PLAINTIFF EXHIBIT 1

**SPIRIT LAKE TRIBAL COURT
SPIRIT LAKE JURISDICTION**

**IN TRIBAL COURT
FORT TOTTEN, NORTH DAKOTA**

**Spirit Lake Tribal Council,
Petitioner,**

vs.

**REISSUED
RESTRAINING ORDER**

**Roger Yankton, Sr.,
Respondent.**

CIV# 13-07-183

Spirit Lake Tribal Council petitioned for a restraining order on July 26, 2013.

FINDINGS OF FACT

1. Petitioners Spirit Lake Tribal Council are all members of the Spirit Lake Tribe who transact business with the Spirit Lake Tribe and reside within the boundaries of the Spirit Lake Reservation.
2. Respondent Roger Yankton, Sr., is a tribal member who resides within the boundaries of the Spirit Lake Reservation.
3. Petitioners testify that threats of physical harm have been made by multiple parties against the Petitioners as well as the Respondent, due to his continuing presence in the Spirit Lake Tribal Office (Blue Building).
4. The Spirit Lake Tribal Office (Blue Building) is a public facility serving as the seat of Tribal government, and houses a number of Tribal programs and is therefore a high traffic area within the community.
5. Public safety is a concern due to the controversial nature of recent events regarding both Petitioners and Respondent.
6. Under Spirit Lake Tribal Code Section 11-1-101, any appeal from the Spirit Lake Tribal Court shall be to the Northern Plains Intertribal Court of Appeals. This has been given further legal authority by Spirit Lake Tribal Council Resolution, and the Northern Plains Intertribal Court of Appeals has verified that the Spirit Lake Tribe is indeed still a member. In the matter regarding Roger Yankton Sr., vs. Spirit Lake Tribal Council, the Northern Plains Intertribal Court of Appeals has issued a stay. Until they've ruled in the case, the Spirit Lake Tribal Court will stay consideration of all further hearings in the matter.

CONCLUSIONS OF LAW

1. This court has jurisdiction pursuant to Spirit Lake Tribal Code Section 2-2-101.
2. Pursuant to Spirit Lake Tribal Code Section 4-1-172, the injury is that Petitioners and Respondent have been threatened with physical harm.
3. Pursuant to Spirit Lake Tribal Code Section 4-1-172, there is no other adequate legal remedy and that a greater harm will result unless this Restraining Order is granted.

PLAINTIFF EXHIBIT 2

Based on the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the Court hereby enters the following:

ORDER

- (1) Respondent Roger Yankton Sr. is hereby ordered not to enter the Spirit Lake Tribal Office (Blue Building).
- (2) Respondent Roger Yankton is hereby ordered not to have any direct or indirect contact with members of the Spirit Lake Tribal Council, except as otherwise permitted by this order. Any violence or harassment directed at the Petitioner must stop.

Direct Contact shall include physical harm, bodily injury, assault or the infliction of fear of imminent physical harm, or assault, not committed in self-defense on the Petitioner, and through direct telephone calls and messages.

Indirect Contact shall include physical harm, bodily injury assault or the infliction of fear of imminent physical harm or assault, not committed in self-defense on the petitioner's family or household members and shall also mean that said contact cannot be made on the Petitioner **by or through any third party**, by any means, including telephone calls and voice mail, e-mail or other types of electronic messages.

- (3) **The Respondent Roger Yankton Sr. shall not:**
 - (a) **Threaten, molest, injure, take or damage any of the Petitioners property directly or through any third party.**
 - (b) **No direct/indirect phone calls or messages through anyone other than your attorney or the Tribal Court.**
 - (c) Enter or come within **100 feet** of:
 - ☒ [X] Petitioner's home or place of residence.
 - ☒ [X] Petitioner's place of employment.
 - ☒ [X] Petitioner's daycare, if applicable.
 - ☒ [X] **Petitioner in any public place.**
 - (d) Have any physical contact with or threaten the Petitioner or members of Petitioner's immediate family including the minor children.

**VIOLATION OF THE CONDITIONS OF THIS ORDER MAY
RESULT IN ARREST.**

Any Officer of the Fort Totten Police Department may arrest you with or without a warrant and take you into custody if said Officer has probable cause to believe that you have violated this Order.

VIOLATION OF THIS RESTRAINING ORDER MAY SUBJECT YOU TO A TERM OF IMPRISONMENT/JAIL AND OR ANY APPLICABLE FINES.

The Clerk of Court shall give a copy of this Order to the Fort Totten Police Department that has jurisdiction over the residence of the Petitioner.

So Ordered this 6th day of August 2013.

BY THE COURT:

Hon. Ruth Hopkins
Honorable Ruth Hopkins
Chief Judge

ATTEST

Shelley White
Tribal Court Clerk

*Received
10:20 AM*