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United States Court of Appeals
Tenth Circuit

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UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

ROBERT L. HOECKER
Clerk

JAMES MILAM; ALLAN MILLER;
CHARLEY BELL; PAUL CULLY;
JOHNSON WARLEDO; MARIE JONES,

Plaintiffs-Appellants,

v.

WILLIAM HODEL, Secretary, Department
of Interior; BUREAU OF INDIAN AFFAIRS;
JOHN FRITZ; ABE ZUNI; GEORGE GOODNER;
ALENE MILLER; PAULINE STEWARD;
ROBERT KERNELL, JR.,

Defendants-Appellees.

No. 86-2755
(D.C. No. 86-61-C)
(E.D. Okla.)

ORDER AND JUDGMENT

Before LOGAN, LEAVY,* and BRORBY, Circuit Judges.

*The Honorable Edward Leavy, Circuit Judge, United States Court of Appeals for the Ninth Circuit, sitting by designation.

This is an appeal from an order of the district court granting summary judgment in favor of the appellees, officials of the Bureau of Indian Affairs (BIA), the Secretary of the Department of the Interior, and the members of the Seminole tribal election board. The appellants, former elected officials and other members of the Seminole nation, contend on appeal that the district court erred as a matter of law in determining that the

appellees did not improperly interfere in certain internal matters of the tribe. We affirm.

The issues in this case grow out of a long-standing dispute between certain members of the Seminole nation and the BIA. The dispute began in 1982, when for reasons not germane to this appeal, the General Council of the Seminole nation acted to remove appellants Milam and Miller, then Principal Chief and Assistant Chief, respectively, of the Seminole nation, from office. The BIA recognized the removal of these officers, and Milam and Miller brought an action in federal district court, seeking a declaratory judgment that their removal was invalid. The court granted this relief, finding that the General Council had not complied with certain constitutional notice requirements in removing the appellants from office. It further directed the BIA to recognize Milam and Miller as Chief and Assistant Chief. See Milam v. United States Dep't of the Interior, 10 Indian L. Rep. (Am. Indian Law Training Program) 3013, No. 82-3099 (D.D.C. Dec. 23, 1982)(Milam I).

After the district court's ruling in Milam I, dissension within the Seminole tribal government continued. Several bands within the tribe attempted to remove and replace their elected representatives to the General Council.¹ As a result of these

¹ The General Council of the Seminole nation is comprised of three representatives selected by each of the fourteen bands in the nation. To be recognized as a band, the band must consist of at least ten tribe members. Bands with fewer than ten members have no representation in the General Council. Seminole Nation Const. art. IV, § 1.

attempts, competing factions of the tribe contested the legitimate composition of the General Council. The BIA was unable to determine which band representatives comprised the General Council, and it refused to release federal funds to the tribe until the issue was resolved. By letter to appellant Milam, dated January 10, 1984, the BIA took the position that a band's attempt to remove its representative from office was not effective until the General Council had affirmatively acted to remove the representative. Since the council had not acted to vacate the office of certain representatives rejected by their bands, the BIA concluded that the members of the General Council acting in June, 1982 (the June 1982 Council) were the de jure council for the nation, despite the appellants' claim that several of these members had been legitimately removed from office.

The dispute over recognition of the General Council continued through the summer of 1984, and members of the June 1982 Council requested that the BIA intervene in an upcoming council meeting. The BIA declined to do so, and noted that the only way that the current impasse could be resolved would be through a new election of tribal officers, and it recommended that a special election be called for this purpose. A special election proved unnecessary, however, as a regular tribal election was to be held the following year.

On March 30, 1985, the General Council, comprised of the June 1982 Council and certain members recognized by the appellants, met and enacted certain measures governing the conduct of the upcoming election. Ordinance 85-1 set forth comprehensive rules and

regulations for the qualification and registration of electors and candidates, notice requirements, and voting procedures. In addition, the ordinance provided for the establishment of an Election Board to carry out the provisions of the ordinance, and a Review Board to hear election protests, review petitions against election procedure, and serve as final arbiter of Election Board appeals. In Resolution 85-2, the General Council ratified the action taken at an earlier council meeting in which the Election Board was appointed and requested the local office of the BIA to provide technical and financial assistance for the registration of voters. At the close of this meeting, a representative of the BIA indicated that the actions taken by the council at this meeting would be recognized by the BIA.

In response to the tribe's request for election assistance, the BIA determined that it would be unable to provide a direct grant of funds to the tribe because the BIA had not resolved problems with the tribe over payment of previous grants under the Indian Self-Determination Act, 25 U.S.C. § 450(h)(1982 & Supp. IV 1986). Instead, the BIA decided to pay the salaries of the tribally appointed Election Board and provided the board with equipment and facilities out of which to operate. The BIA took no other action with respect to payments to or supervision of the Election Board.

The election was scheduled for July 6, 1985. In June, 1985, appellant Milam, then Principal Chief of the tribe, received reports from several tribal members of constitutional violations in the election process. When one member brought these violations

to the attention of the Election Board, the board declined to act, on the grounds that it had no authority to do so. On June 27, 1985, pursuant to Ordinance 85-1, Milam appointed a Review Board to investigate the alleged violations in the electoral process. Upon learning of the appointment of the Review Board, the BIA sent a letter to Milam, informing him that it was the BIA's position that before the Review Board could legally act, the appointees to the board must be approved by the majority of the General Council.

On July 5, 1985, the Review Board reported its findings to the Chief, recommending that, because of a number of constitutional violations, the upcoming election should be declared invalid. Chief Milam accepted the board's recommendation, and that day declared the election null and void. The election was conducted over Milam's protest and despite his declaration that the election was invalid, and it resulted in a runoff between several candidates. On August 2, 1985, the appellants filed the instant action in federal district court for the District of Columbia, seeking declaratory and injunctive relief and requesting a temporary restraining order to prevent the runoff election from taking place. Their request for a restraining order was denied, and the runoff election was held as scheduled. This case was subsequently transferred to the District Court for the Eastern District of Oklahoma. The BIA thereafter recognized the results of both the election and the runoff.

Upon transfer of the case to this jurisdiction, the appellants moved for summary judgment. The parties filed a joint statement of issues and facts which was to govern the district

court's consideration of the motion. The stipulation identified two issues for the district court's resolution: whether the BIA was improperly involved in the tribe's internal affairs when it recognized the June 1982 Council, and whether the BIA's funding of the Election Board was an improper intrusion into internal tribal affairs. The court granted summary judgment for the appellees on both issues. First, it found that the BIA had the authority to interpret the Seminole Constitution in order to determine which representatives constituted the General Council for the limited purpose of carrying out federal relations with the tribe. Second, it saw no impropriety in the BIA's decision to fund the 1985 election by providing assistance in the form of wages and facilities to the Election Board and concluded that the BIA had not improperly interfered in internal tribal matters. The appellants now appeal to this court, arguing that the district court's ruling on these issues was in error.

In reviewing a grant of summary judgment, this court applies the same standard as that applied by the district court. Osgood v. State Farm Mut. Auto. Ins. Co., 848 F.2d 141, 143 (10th Cir. 1988). Under this standard, summary judgment is proper only if there is no genuine material issue of fact and if the moving party is entitled to judgment as a matter of law. Willner v. Budig, 848 F.2d 1032, 1033-34 (10th Cir. 1988). In this case, since the parties submitted a joint stipulation of facts upon which summary judgment was to be based, the role of this court is to determine whether the appellees were entitled to judgment as a matter of law.

This court has long recognized that internal Indian tribal disputes are matters for resolution by the tribe under the principle of tribal self-determination and are not within the jurisdiction of the federal courts or of the federal government agencies. See Wheeler v. Swimmer, 835 F.2d 259, 261 (10th Cir. 1987); Wheeler v. United States Dep't of Interior, Bureau of Indian Affairs, 811 F.2d 549 (10th Cir. 1987); McCurdy v. Steele, 506 F.2d 653, 656 (10th Cir. 1974); Groundhog v. Keeler, 442 F.2d 674, 679 (10th Cir. 1971); Motah v. United States, 402 F.2d 1, 2 (10th Cir. 1968); Prairie Band of Pottawatomie Tribe of Indians v. Udall, 355 F.2d 364, 367 (10th Cir.), cert. denied, 385 U.S. 831 (1966); Martinez v. Southern Ute Tribe of S. Ute Reservation, 249 F.2d 915, 917 (10th Cir. 1957), cert. denied, 356 U.S. 960 (1958). Other jurisdictions have similarly recognized this principle. Goodface v. Grassrope, 708 F.2d 335, 338 (8th Cir. 1983); Shortbull v. Looking Elk, 677 F.2d 645, 650 (8th Cir.), cert. denied, 459 U.S. 907 (1982); Harjo v. Kleppe, 420 F. Supp. 1110, 1117 (D.D.C. 1976), aff'd sub nom., Harjo v. Andrus, 581 F.2d 949 (D.C. Cir. 1978); United States v. Pawnee Business Council of the Pawnee Indian Tribe of Okla., 382 F. Supp. 54, 58 (N.D. Okla. 1974).

Tribal resolution of internal political disputes, and particularly those involving tribal elections, is central to the tribe's ability to govern itself. McCurdy v. Steele, 506 F.2d at 656. Federal interference in such elections is warranted only in very limited circumstances, such as when the election is a referendum on a new form of tribal government. See, e.g., Morris

v. Watt, 640 F.2d 404 (D.C. Cir. 1981); Harjo v. Kleppe, 420 F. Supp. 1110. When this court is asked to review agency action with respect to internal tribal matters where intervention is required, we review the agency's action under the arbitrary and capricious standard. Goodface v. Grassrope, 708 F.2d at 338. We resolve any question with respect to that involvement with an eye toward protecting the tribal right of self-determination. Wheeler v. Department of Interior, 811 F.2d at 552.

As to the first issue on appeal, we agree with the district court that the BIA had the authority to determine which tribal government it would recognize and that it did not act arbitrarily or capriciously by determining that it would interact with the June 1982 Council. One of the few circumstances in which an agency is empowered to intervene in an internal tribal matter results from an agency's need to determine which tribal government to recognize in order to carry out government relations with the tribe. Id.; see also Milam I, 10 Indian L. Rep. (Am. Indian Law Training Program) at 3015-16. In this case, to perform its statutorily defined duties, the BIA was required to interact with the General Council of the Seminole tribe in order to provide much-needed federal funds for tribal programs. Without a clear indication as to which tribal faction to recognize, the BIA was legitimately concerned that it deal with the proper representatives of the Seminole nation. By looking to the tribal Constitution to make this determination, it was simply taking action "necessary to carry out its statutory and regulatory

obligations." Wheeler v. Department of Interior, 811 F.2d at 552; Goodface v. Grassrope, 708 F.2d at 339.

Given that the BIA had the duty to act in this situation, we agree with the district court that the BIA's interpretation of the Seminole constitution was not arbitrary and capricious. The constitution provides that "by an affirmative vote," council members may remove a band representative who fails to carry out his duties. Seminole Nation Const. art. IX, § 1. It similarly provides that the council shall automatically "declare vacant" the seat of a member who fails to attend two council meetings in succession. Id. § 2. Further, bands have the responsibility "to fill, pursuant to tribal customs, any vacancy which may occur." Id. § 3. Thus, in each case, some sort of council action is required to remove a band representative from office. Once that vacancy is so created, bands may fill that vacancy according to tribal custom. The appellants' contention that bands may unilaterally terminate their representatives from office, creating a vacancy on their own initiative, is clearly inconsistent with the above language. Consequently, we affirm the district court's ruling that the BIA had the authority to interpret the Seminole constitution for the purpose of carrying out federal relations with the tribe and that its interpretation was not arbitrary and capricious.

As to the appellants' second argument on appeal, we concur with the district court that the manner in which the BIA provided funding to the tribe for the 1985 election does not require invalidation of that election. The primary thrust of the

appellants' argument on appeal is that, because the BIA paid the wages of the Election Board, and the board subsequently conducted the election in an unconstitutional manner, the BIA is responsible for the Board's actions and that this constitutes unlawful interference by the BIA in the tribe's internal affairs. We disagree.

First, there is no dispute that the members of the Election Board were temporary federal employees while performing the functions assigned to the Board. But this fact, in and of itself, does not establish improper federal intrusion into the election process. The appellants have demonstrated no causal connection between the fact that the BIA chose to fund the tribe in this particular manner and the irregularities which occurred in the election notification, registration, and petition process. On the contrary, the undisputed facts indicate that the Election Board was appointed by appellant Milam and approved by the General Council. Any inappropriate actions appear to have been the result of the individual proclivities of the board members, and not because such members were receiving federal paychecks. There is no additional evidence that the BIA took any action to influence the outcome of the election or the manner in which the Election Board registered electors or conducted the petition process for candidates for office. Moreover, the General Council specifically requested the assistance of the BIA in the election process.²

² In Resolution 85-1, the council directed Chief Milam to negotiate a grant or contract with the BIA for a "tribal enrollment/registration office," and in Resolution 85-2, it reaffirmed this action and requested the BIA provide "technical and financial assistance necessary to register Seminole tribal

When a case is submitted to the court on a stipulation of facts, the burden is on the party seeking to recover to demonstrate his right from the facts agreed upon. 83 C.J.S. Stipulations, § 25 (1955). Appellants have not met this burden; consequently, we affirm the district court's grant of summary judgment in favor of the BIA on the issue of the BIA's finding of the Election Board.

The appellants raise a third issue in this appeal, contending that the BIA's refusal to recognize the legitimacy of the Review Board was also an unwarranted intrusion into the tribe's internal affairs. We need not reach this issue, because it is not properly before us on appeal. It was not raised in the parties' stipulation of issues, and the district court did not address its merits. Issues not ruled on by the district court are generally not properly before this court on appeal.³ Burnette v. Dresser Indus. Inc., 849 F.2d 1277 (10th Cir. 1988). Moreover, since the filing of the complaint in this case, appellant Milam has taken up this matter directly with the BIA and the Department of Interior. Before the district court and this court on appeal have jurisdiction to hear the merits of this issue, appellant Milam must first exhaust his administrative remedies through these agencies. See Runs After v. United States, 766 F.2d 347, 351-52 (8th Cir. 1985).

members" for the upcoming election.

³ For this reason, and because we have concluded that the BIA's funding of the Election Board was not an improper intrusion into tribal matters, we likewise do not reach the issue of whether the BIA's conduct amounted to fraud or mismanagement of federal funds.

The judgment of the United States District Court for the Eastern District of Oklahoma is AFFIRMED.

The mandate shall issue forthwith.

ENTERED FOR THE COURT
PER CURIAM