



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: September 27, 2007

CBCA 817-ISDA

CALIFORNIA VALLEY MIWOK TRIBE,

Appellant,

v.

DEPARTMENT OF THE INTERIOR,

Respondent.

Phillip E. Thompson, General Counsel, California Valley Miwok Tribe, Upper Marlboro, MD, counsel for Appellant.

Jane M. Smith, Office of the Solicitor, Department of the Interior, Washington, DC, counsel for Respondent.

Before Board Judges **VERGILIO**, **DeGRAFF**, and **STEEL**.

DeGRAFF, Board Judge.

Pending is respondent's motion to dismiss this appeal for lack of jurisdiction or for failure to state a claim upon which relief can be granted. Appellant opposes the motion. Because there has been no claim made to the awarding official and no decision by the awarding official upon a claim, we lack jurisdiction and dismiss the appeal. Because we are dismissing the appeal for lack of jurisdiction, we do not consider respondent's motion to dismiss for failure to state a claim upon which relief can be granted.

Background

In 1999, the Secretary of the Interior, on behalf of the United States, and the Sheep Ranch Band of Me-Wuk Indians, now known as the California Valley Miwok Tribe, entered into a contract pursuant to the authority granted by the Indian Self-Determination Act (ISDA), 25 U.S.C. §§ 450-450n (2000). The purpose of the contract was to transfer to the Tribe the planning, administration, and operation of the Aid to Tribal Government program so the Tribe could perform the services, functions, and activities of the program, and also to provide the Tribe the funds to perform these services, functions, and activities. The contract was signed by Silvia Burley, Chairperson, on behalf of the Tribe, and by Janice L. Whipple-DePina, Awarding Official, on behalf of Interior. Appeal, Exhibit 7.

Attached to the contract was an annual funding agreement which referred to the program which the Tribe had contracted to perform as Catalog of Federal Domestic Assistance (CFDA) 15.020, Aid to Tribal Government. Appeal, Exhibit 7. The CFDA, which is managed by the General Services Administration, maintains a web site (www.cfda.gov) which describes Aid to Tribal Government program assistance as funds provided to Indian tribal governments to support general tribal government operations, to maintain up-to-date tribal enrollment, to conduct tribal elections, and to develop tribal policies, legislation, and regulations. CFDA 15.020.

In late 1999 or early 2000, a disagreement regarding tribal leadership arose between Ms. Burley and Yakima Dixie.¹ Appeal, Exhibit 10; Appellant's Motion for Stay, Exhibit 5. In March 2000, Interior took the position that the disagreement was a matter for the Tribe to resolve. Appellant's Motion for Stay, Exhibit 5.

On November 6, 2006, Interior's Superintendent of the Bureau of Indian Affairs - Central California Agency (BIA-CCA) sent a letter to Ms. Burley and Mr. Dixie. According to the letter, Ms. Burley and Mr. Dixie each claimed leadership of the Tribe and they had each established membership criteria and developed constitutions and governing documents for the Tribe. In Interior's view, the disagreement between Ms. Burley and Mr. Dixie was at an impasse and threatened to impair the government-to-government relationship between the Tribe and the United States. Interior stated it had an obligation to make sure it was dealing with a government which represented the Tribe and, to this end, Interior said it was committed to assisting the Tribe in its efforts to reorganize a formal governmental structure

¹ Many of the facts surrounding this disagreement are set out in an opinion cited to us by appellant, *California Valley Miwok Tribe v. United States*, 424 F. Supp. 2d 197 (D.D.C. 2006), *appeal docketed*, No. 06-5203 (D.C. Cir. June 16, 2006).

that was acceptable to a majority of the Indians who had an interest in the Tribe. In order to begin the reorganization process, Interior told Ms. Burley and Mr. Dixie it would publish newspaper notices of a General Council meeting of the Tribe to be sponsored by Interior, and would invite members and potential members of the Tribe to the meeting. In Interior's view, the Tribe needed to determine its membership, establish a form of government, and then resolve the Tribe's leadership issues. Appeal, Exhibit 14.

Ms. Burley filed an appeal of the November 6 letter with Interior. In a letter dated December 13, 2006 to the Superintendent of BIA-CCA, she said there was no disagreement about leadership of the Tribe. She said the Tribe had organized itself and selected her as its leader, which Interior had consistently recognized. So far as she knew, the Tribe had not asked Interior to assist with any reorganization effort. She said Interior lacked the authority to take the actions which the November 6 letter said it intended to take. Ms. Burley found it particularly objectionable that Interior would propose a process which would allow persons who were not members of the Tribe to participate in a General Council meeting. Appeal, Exhibit 16.

On January 3, 2007, Interior sent Ms. Burley an amendment to the ISDA contract. The amendment identified Janice L. Whipple-DePina as the awarding official. Attached to the amendment was an annual funding agreement for 2007, which provided for a quarterly distribution of contract funds. Appellant's Motion for Stay, Exhibit 1.

On January 29, Interior's Regional Director of the Bureau of Indian Affairs - Pacific Regional Office (BIA-PRO) sent a letter to Ms. Burley regarding disbursement of the ISDA contract funds. The Regional Director said that although Interior recognized Ms. Burley as a "person of authority" within the Tribe, the Tribe lacked a governing body which was recognized by Interior. He also said it was important for the Tribe and Interior that the organizational process begun by the BIA-CCA be completed. Until this process was completed, he said, Interior would distribute the contract funds quarterly. Appellant's Opposition to Respondent's Motion to Dismiss, telefax p. 14.

On February 27, Ms. Burley sent a letter to the Superintendent of the BIA-CCA in response to a letter from the Superintendent which invited her to a meeting regarding organization of the Tribe and which said BIA intended to call a General Council meeting for the Tribe. Ms. Burley said she had heard nothing about her appeal from the November 6, 2006 letter and, unless she heard from the Superintendent within ten days, she would assume the appeal had been decided and would file another appeal. She reiterated her position that Interior lacked the authority to call a General Council meeting. In this regard, she said the ISDA contract made the Tribe responsible for deciding membership and governance matters. Ms. Burley said if Interior intended to violate the ISDA contract, the Superintendent should

let her know and she would request an informal conference with Interior. Appellant's Opposition to Respondent's Motion to Dismiss, telefax pp. 17-19.

On March 16, Ms. Burley sent another letter to the Superintendent of the BIA-CCA. Ms. Burley said until the appeal of the November 6, 2006 letter was resolved, the Tribe would not participate in any meeting related to the reorganization of the Tribe unless the meeting was conducted at the request of the Tribe or pursuant to the laws governing the ISDA contract. Ms. Burley repeated her position that Interior lacked the authority to involve itself in tribal government and membership matters, and pointed out again that the ISDA contract placed responsibility for such matters with the Tribe. She said if she did not receive a response to her February 27 letter, she would proceed with legal action. Also, she said the Tribe was prepared to take "administrative and legal action against the BIA and Department of the Interior to prevent any further violation of the Tribe's Aide to Tribal Government contract and sovereignty." Ms. Burley said she hoped the Superintendent of the BIA-CCA and his staff would meet with her and attempt to develop a reasonable solution to their problems. Appellant's Opposition to Respondent's Motion to Dismiss, telefax pp. 15-16.

On April 2, the Regional Director of the BIA-PRO decided Ms. Burley's appeal of the November 6, 2006 letter. The Regional Director repeated many of the points made in the November 6 letter and decided to follow the course of action set out in this letter because, he said, Interior did not recognize the Tribe's government and this created a threat to a government-to-government relationship between the United States and the Tribe. The Regional Director said Interior did not want to determine who ought to be a member of the Tribe, but did want to make sure those who believed they had a right to participate in the organization of the Tribe were given the opportunity to do so. The Regional Director instructed the Superintendent of the BIA-CCA to publish newspaper notices of Interior's plan to assist in identifying the whole tribal community. The Regional Director concluded his letter by explaining that his decision could be appealed to the Interior Board of Indian Appeals. Appeal, Exhibit 17.

Interior published a public notice on April 10 and April 17, which said it planned to assist the Tribe in its efforts to organize a formal governmental structure that was acceptable to all of its members. The first step, said the notice, was to identify those people who might be eligible to participate in the organizational process. People who were descendants of individuals named in the notice were directed to submit documentation to BIA-CCA so it could determine their eligibility to participate in the organization of the Tribe. Appeal, Exhibit 18.

On June 19, the Superintendent of the BIA-CCA responded to a request from Mr. Dixie to suspend or withdraw Interior's recognition of Ms. Burley as the authorized

representative of the Tribe. The Superintendent said he could not comply with this request. He said Interior recognized Ms. Burley as a “person of authority” only so far as the ISDA contract was concerned. Interior did not, however, recognize the actions Ms. Burley took pursuant to the contract to organize the Tribe to be representative of the will of the larger tribal community. Therefore, said the Superintendent, Interior did not recognize a tribal governing body or governmental leader. The Superintendent went on to say Interior was processing information provided by 485 people who responded to the newspaper notices, and would notify those who it decided were eligible to participate in the organization of the Tribe. Then, Interior would notify eligible individuals about the organizational meeting. Appeal, Exhibit 19.

On July 10, 2007, appellant filed this appeal from the April 2, 2007 decision. Appellant contends the November 6, 2006, April 2, 2007, and June 19, 2007 letters and the April 2007 newspaper notices constitute a revision and/or amendment of the ISDA contract in violation of the terms of the contract and in violation of 25 U.S.C.A. §§ 450m-1(b), 450f(a)(1)(A)-(E), 450f(2), 450f(a)(2)(A)-(E), 450f(b)(1)-(3), 450m(1), (2) (2001 & Supp. 2007). Appellant contends these three letters and the newspaper notices also violate the policies set out in 25 CFR 900.3(b) (2007) and amount to a reassumption by Interior of the program covered by the contract which violates 25 CFR 900.240 - .246. Appellant asks that we find Interior to be in violation of these statutes and regulations, that we enjoin BIA from violating the contract, and that we direct Interior to provide funding to the Tribe to carry out the ISDA contract. Appeal at 7-11.

Discussion

Our jurisdiction to consider this appeal depends upon whether appellant submitted a claim to the awarding official and whether the awarding official rendered a decision upon the claim. In the absence of a claim and a decision, there is no jurisdiction here at the CBCA. *England v. The Swanson Group, Inc.*, 353 F.3d 1375 (Fed. Cir. 2004). This is so because the Contract Disputes Act (CDA), 41 U.S.C.A. §§ 601-613 (1987 & Supp. 2007), applies to ISDA contracts. 25 U.S.C.A. § 450m-1. The CDA requires that “[a]ll claims by a contractor against the government shall be in writing and shall be submitted to the contracting officer for a decision.” 41 U.S.C.A. § 605(a). The regulations which apply to this ISDA contract required the Tribe to submit its claim to the awarding official, not a contracting officer. 25 CFR 900.219; *Confederated Salish & Kootenai Tribes v. Department of the Interior*, CBCA 692-ISDA (Sept. 14, 2007).

A claim, according to the applicable regulations, is a written demand asking for (1) payment of a specific sum of money under the contract, (2) adjustment or interpretation of contract terms, or (3) any other claim relating to the contract. 25 CFR 900.218. The

awarding official's decision is supposed to describe the claim or dispute, refer to the relevant contract terms, set out the facts, give the reasoning which supports the decision, and notify the Tribe that it can appeal the decision to the Civilian Board of Contract Appeals (CBCA). 25 CFR 900.222.

Appellant filed this action as an appeal from the April 2, 2007 decision issued by the Regional Director of the BIA-PRO. In its opposition to the pending motion to dismiss, appellant contends the April 2 decision provides us with jurisdiction because it addresses all of the issues raised in the correspondence submitted to Interior by Ms. Burley. Appellant's Opposition to Respondent's Motion to Dismiss at 4.

In order to determine whether appellant submitted a claim to the awarding official which led to a decision by the awarding official, we begin by reviewing the November 6, 2006 letter from the Superintendent of the BIA-CCA. This letter set out Interior's plan to make sure the Tribe is organized under a formal governmental structure that is acceptable to a majority of the Indians who have an interest in the Tribe. The concerns Interior expressed in the November 6 letter had to do with the organization and governance of the Tribe, and did not mention the ISDA contract.

Ms. Burley's December 13, 2006 letter of appeal from the November 6 letter took issue with Interior's concerns and plans regarding tribal organization and governance. In her February 27, 2007 and March 16, 2007 letters, Ms. Burley continued to challenge Interior's conclusions regarding tribal organization and governance, and mentioned the ISDA contract in support of her challenge to the planned course of action set out in the November 6 letter. In the February 27 letter she asked Interior to let her know if it intended to violate the ISDA contract and said if it did, she would request an informal conference. In the March 16 letter she said she believed Interior had violated the ISDA contract and the Tribe's sovereignty and she suggested a meeting to attempt to resolve the problems between the Tribe and Interior.

The April 2, 2007 decision said it resolved Ms. Burley's appeal from the November 6, 2006 letter and did not refer to the ISDA contract. The decision told appellant it could appeal to the Interior Board of Indian Appeals, which is not the same as the CBCA.

Ms. Burley's letters do not amount to a claim as that term is used in the CDA and the applicable regulations. The purpose of her letters was to challenge the plan for tribal organization set out in Interior's November 6, 2006 letter and her mention of the ISDA contract was in support of this challenge. In none of her letters did Ms. Burley make a demand to the awarding official for payment of a specific sum of money. In none of her letters did she make a demand to the awarding official for an adjustment or interpretation of the terms of the ISDA contract. In none of her letters did she make a demand to the awarding

official which stated a claim relating to the ISDA contract. The only requests her letters contained regarding the ISDA contract were for an informal conference and a meeting. Because Ms. Burley's letters do not amount to a CDA claim, the April 2 decision cannot amount to a decision upon such a claim. *Paragon Energy Corp. v. United States*, 645 F.2d 966 (Ct. Cl. 1981).

We lack jurisdiction to entertain this appeal because appellant never submitted a claim to the awarding official and there is no awarding official's decision upon a claim. If appellant wishes to pursue a CDA appeal at the CBCA, it needs to submit a claim to the awarding official which informs the awarding official of the relief appellant demands and which sets out the grounds for the claim. If the awarding official denies the claim, appellant can pursue an appeal from the awarding official's decision here at the CBCA. Before appellant decides whether to pursue a CDA appeal here, however, we strongly suggest it assure itself that we could provide the relief it wants.

Decision

The motion to dismiss for lack of jurisdiction is granted and the appeal is **DISMISSED**.

MARTHA H. DeGRAFF
Board Judge

We concur:

JOSEPH A. VERGILIO
Board Judge

CANDIDA S. STEEL
Board Judge