

# TCC sues BIA, other non-profits

by Jim Benedetto

Times Editor

A lawsuit by the Tanana Chiefs Conference, Inc., is forcing non-profit Native corporations, whose reason for existence is to provide needed health and educational services to Native communities, to instead devote already limited resources to paying high-priced attorneys to fight off a lawsuit.

The suit, against Jake Lestenkof of the Bureau of Indian Affairs, the United States, and five Native non-profit corporations, seeks an injunction restraining the defendants from expending Indian Child Welfare grant monies awarded by the BIA in FY 1985. The suit also seeks to prohibit the Bureau of Indian Affairs from using non-BIA personnel as "readers" on the boards which determine grant awards, a practice Tanana Chiefs claims is unlawful under Title II of the Indian Child Welfare Act.

The five Native non-profit corporations—Kodiak Area Native Association (KANA), Fairbanks Native Association, Sitka Community Association, Copper River Native Association and United Crow Band, all applied for ICWA grants, as did Tanana Chiefs Conference; TCC's grant proposal, however, was turned down.

Jake Lestenkof of the Bureau of

Indian Affairs was unaware of the suit when contacted by the *Tundra Times*, but was not too surprised.

"In this job," said Lestenkof, "you get a lot of flack." Lestenkof said that he "always found them (TCC) to be very, very responsible," adding that TCC was one of the first contractors here with the BIA.

The Indian Child Welfare Act (ICWA) authorizes special grants to Indian tribes to prevent the break-up of Indian families and to protect Indian children. The program is administered by the BIA on behalf of the Secretary of the Interior.

The problem arises from the fact that ICWA grants are awarded on a competitive basis. Theoretically, this means that wherever the need for the funds is greatest, so go the grants. But in practice, this often means that those organizations with the best grant proposal writers get the grants.

The BIA uses readers from within the health care field to help in the evaluation of the grant proposals, because it is felt that their particular expertise is invaluable. It is precisely this practice which TCC's lawsuit seeks to prohibit.

When asked what he thought of awarding the ICWA grants on a competitive basis, Lestenkof said,

"For some time now, I have not been completely comfortable with how these grants are awarded here in Alaska...I don't think it is a fair method. We should take a close look at the program (under competitive grants)...one region could conceivably get all the grants." Lestenkof added that such monies should ideally be available statewide, wherever they are needed, but that budgetary constraints prevent funding at the full-need level.

When questioned about the BIA's use of readers, Lestenkof said that it was common practice, and that as far as he knew, well within the legal guidelines of ICWA.

Most representatives of the non-profits were understandably reluctant to discuss the lawsuit.

Andy Hope III of Sitka Community Association would say only that, "our attorney is in the process of working up a response."

The program analyst of Copper River Native Association said that the papers had been referred to their attorney.

Gordon Pullar, president of KANA, was able to respond to some of our questions. When asked whether the lawsuit would prevent the disbursement of needed services to the Kodiak Island

area, Pullar responded, "we're hoping it doesn't go that far." Pullar is not happy with the procedure of awarding the grants on a competitive basis either, despite the fact that KANA received a grant.

"I think it's too bad that the system promotes this type of action. I really don't think it should be a competitive system; we're dealing with the basic needs of Native children," said Pullar.

KANA does not have the luxury of an in-house attorney; they are spending close to \$200/hour in order to prepare an initial response to the suit. Of the other non-profits contacted who chose to respond, the lowest hourly rate paid to an attorney was \$125/hour.

Lucy Carlo, special projects manager with Fairbanks Native Association said that FNA has an attorney on retainer, and that FNA is "spending lots of time and money" to respond to the suit.

When asked about the practice of using non-BIA readers on the board which evaluates grant proposals, Carlo said, "It's a competitive system; we're happy with the BIA system for evaluating the grants. We're proud of our ICWA program," said Carlo, "we have a very low indirect rate,

which means that most of our funds go directly to the Native people we're serving."

Carlo was quick to question TCC's sudden dissatisfaction with the BIA's program, stating, "They've used the competitive grant system in the past, and they've made no complaint. Now, when they didn't receive a grant, it appears as if it's sour grapes."

Carlo is clearly unhappy with the turn of events; "TCC is supposed to act on behalf of all of the villages within their region, yet they've chosen to sue FNA and United Crow Band, which is composed of Tanacross, Tok, Tetlin, Northway and Mentasta. TCC could have handled this better. It's just bad politics."

Mike Walleri, attorney for the Tanana Chiefs Conference, refused comment; William "Spud" Williams could not be reached.

KANA's president, Gordon Pullar, may have provided the bottom line perspective on this issue with his closing comment:

"In this day of budget cuts and diminished resources, Native people need to stand together across the state and not be led into conflicts amongst themselves. In the long run, it's just going to hurt all of us."