

BEFORE THE INDIAN CLAIMS COMMISSION

THE WINNEBAGO TRIBE AND NATION OF	)	
INDIANS, THE WINNEBAGO TRIBE OF	)	
NEBRASKA AND FRANK BEAVER, MOSES	)	
WHITEBEAR, JOHN LITTLE WOLF, JAMES	)	
SMOKE, AND JOSHUA SANFORD, EX REL	)	
WINNEBAGO TRIBE AND NATION AND THE	)	
WINNEBAGO INDIANS OF WISCONSIN,	)	
MINNESOTA, NEBRASKA AND THE	)	
WINNEBAGO TRIBE OF NEBRASKA,	)	
	)	
Plaintiffs,	)	Docket Nos. 243,
	)	244 and 245
v.	)	
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: September 3, 1970

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

On July 31, 1970, the plaintiffs herein, and the defendant, filed a joint motion for consolidation of Docket Nos. 243, 244 and 245 for all purposes, and for approval of a proposed compromise settlement of the claims of the plaintiffs and all groups thereof in the above entitled dockets based on a "Stipulation for Entry of Final Judgment" filed along with said motion.

The matter having come on for hearing before the Commission on August 10, 1970 and the Commission having considered the record on file in Docket Nos. 243, 244 and 245 and the evidence presented, both oral and written at the hearing does hereby make the following findings of fact which are supplemental to the findings numbered 1 to 32, inclusive, heretofore made on the 10th day of August 1959 (8 Ind. Cl.

Comm. 78) and findings numbered 33 to 59, inclusive, heretofore made on the 13th day of October 1965 (16 Ind. Cl. Comm. 81).

60. In Docket No. 243, plaintiffs claim: compensation for lands (Royce Area 174) ceded by the treaty of September 15, 1832 (7 Stat. 370); compensation for lands (Royce Area 267) ceded by the treaty of October 13, 1846 (9 Stat. 878); compensation for lands (Royce Area 361) ceded by the treaty of February 27, 1855 (10 Stat. 1172); compensation for portion of Reservation (Royce Area 416) sold by the defendant pursuant to the treaty of April 15, 1859 (12 Stat. 1101); compensation for a portion of the Reservation (Royce Area 439) directed sold by Act of Congress of February 21, 1863 (12 Stat. 658); compensation for lands (Royce Area 468) ceded by the treaty of March 8, 1865; that the defendant should make a general accounting in respect to the considerations paid under the treaties and the management and disposition of plaintiffs' funds and other property and plaintiffs be compensated for amounts found to be due; and damages resulting from the methods used by the defendant in removal of plaintiffs from areas they occupied and possessed.

In Docket No. 244, plaintiffs claim: compensation for lands (Royce Area 149) ceded by the treaty of August 1, 1829 (7 Stat. 323); and that the defendant should make a general accounting in respect to consideration paid under the treaty and the management and disposition of plaintiffs' funds and other property and plaintiffs be compensated for amounts found to be due.

In Docket No. 245, plaintiffs claim: compensation for lands

(Royce Area 245) ceded by the treaty of November 1, 1837 (7 Stat. 544); and that the defendant should make a general accounting in respect to consideration paid under the treaty and the management and disposition of plaintiffs' funds and other property and plaintiffs be compensated for amounts found to be due.

61. By letters dated July 3, 1968 (Pl. Ex. S-1) and February 21, 1969 (Pl. Ex. S-3), Rodney J. Edwards, attorney of record for plaintiffs, submitted to the United States Department of Justice an offer of proposed settlement of all claims of plaintiff Winnebago Tribe and Nation of Indians in Docket Nos. 243, 244 and 245 for the net final judgment sum of \$4,600,000 in favor of the plaintiffs, subject to its ultimate approval by the Winnebago Tribe, the Secretary of the Interior or his authorized representative and this Commission.

62. By letter from the Department of Justice dated April 7, 1969 (Pl. Ex. S-9), the defendant accepted the said offer of settlement, stating that the settlement included all offsets claimed by the defendant accruing before February 21, 1969.

63. The governing bodies of the Winnebago Tribe and Nation of Indians are the Tribal Council of the Winnebago Tribe of Nebraska and the Business Committee of the Wisconsin Winnebago Tribe. Both tribes are incorporated under the provisions of the Wheeler-Howard Act of June 18, 1934, 48 Stat. 984 (Pl. Exs. S-27, S-28 and S-29).

64. On May 26, 1969, Gordon C. Beaver, Chairman of the Winnebago Tribe of Nebraska and Myron Lowe, Chairman of the Wisconsin Winnebago Tribe, issued a notice of two meetings of the members of the Winnebago

Tribe and Nation of Indians, the first meeting to be held at Winnebago, Nebraska on June 14, 1969 and the second meeting to be held at Black River Falls, Wisconsin on June 21, 1969 for the purpose of considering and voting upon the proposed settlement (Pl. Ex. S-12). Copies of the notice were mailed between the dates of May 28, 1969 and June 6, 1969 to all adult known members of the Winnebago Tribe of Nebraska (Pl. Ex. S-21). The notice was published as a legal publication, and was mailed to radio and television stations and newspapers requesting they carry the meetings as a news item.

65. The proposed offer of settlement was presented to the members of the Winnebago Tribe and Nation of Indians at the scheduled meetings held on June 14, 1969 at Winnebago, Nebraska and June 21, 1969 at Black River Falls, Wisconsin. The meeting at Winnebago, Nebraska was attended by 263 members of the tribe who voted by secret written ballots and the result of the vote was 180 in favor of acceptance of the settlement, 39 against, 36 abstained and 8 invalid marked ballots (Pl. Ex. S-24). The meeting at Black River Falls, Wisconsin was attended by 110 members of the tribe who voted by secret written ballots and the result was 80 in favor of acceptance of the settlement, 27 against, 2 abstained and 1 void ballot (Pl. Ex. S-26). At both meetings a copy of a detailed written report of plaintiff's attorneys concerning the proposed settlement was distributed to each person. The attorney of record then made an oral report on the proposed settlement, reviewed the written report, explained the terms and recommended that the proposed settlement be accepted by the tribe.

Both meetings were then opened for questions which were answered by the attorney. An opportunity was given to each person present to make comments on the proposed settlement. Interpreters were used to explain in Winnebago language the terms of the settlement and the background facts, the questions, comments and the answers to the questions. Each of the meetings lasted over three hours.

66. At a meeting of the Tribal Council, the governing body of the Winnebago Tribe of Nebraska, held at Winnebago, Nebraska following the general meeting of members on June 14, 1969, with 7 members of its total membership of 9 present, a resolution was adopted to accept the proposed settlement by a vote of 6 in favor and one against (Pl. Ex. S-25).

67. The surviving Winnebago individual representative plaintiffs, Frank Beaver, John Little Wolf and James Smoke signed written approvals of the settlement (Pl. Ex. S-30, S-31).

68. The Business Committee, the governing body of the Wisconsin Winnebago Tribe, called three meetings on June 21, 1969, August 2, 1969 and August 16, 1969 to consider approval of the settlement, but a quorum was not present at any of said meetings and no action was taken.

69. The Commissioner of the Bureau of Indian Affairs was asked by attorneys for the plaintiff by letter dated November 11, 1969, to approve the proposed final settlement. (Pl. Ex. S-33). The Commissioner responded by letter on February 25, 1970, requesting that new meetings be held, (Pl. Ex. S-39). The pertinent portions of the Commissioner's letter are as follows:

"A review has been made of all of the information now before us. The concern expressed by some of the Winnebago Indians at the meetings and the motions made that the voting on the proposed settlement be postponed so that the Indians could have time to study the terms of the proposed settlement resulted in the voting at the meetings on conditions that further action would be taken. Specifically, the resolution of the Indians at the June 21 meeting was adopted with the understanding or condition that the Wisconsin Winnebago Tribal Business Committee would meet later and adopt a resolution setting out its views on the proposed settlement. Attempts to have the Business Committee hold a satisfactory meeting have been unsuccessful. During December of 1969, an election was held to elect members to the Wisconsin Winnebago Business Committee. However, as yet it has been unable to have a satisfactory meeting. The Nebraska Winnebagos voting appears to have been done on the condition that the Winnebago Tribal Council would notify all members of the Winnebago Tribe who were not present. This condition also has not been fulfilled.

"It is our position in the matter of the proposed settlement, which is an important one, that the Indians should reasonably understand the terms of the proposed settlement before voting on it and that the voting should not be on the basis of conditions to be met at a later date.

"Our consideration of the matter has not led us to a resolution of the conditional nature of the voting other than to call new meetings. Such meetings should be publicized in the usual manner. Notices, together with copies of your explanation of the terms of the proposed settlement, should be sent to all known Winnebago Indians at the last known address at least 20 days prior to the date of the earliest meeting. If this is done, the Winnebago Indians would have time to study the proposed settlement before the meetings and could adopt the resolutions setting forth their views free of any condition or understanding to be satisfied later."

70. Consequently, the Business Committee of the Wisconsin Winnebago Tribe held a meeting at Black River Falls, Wisconsin on

April 11, 1970 with 10 members of its total membership of 11 present, and adopted a resolution to accept the proposed settlement by a vote of 10 in favor and none against. The resolution also provided and directed: that a meeting of the members of the Wisconsin Winnebago Tribe be held at Black River Falls, Wisconsin on May 16, 1970 for the purpose of having the members vote on the proposed settlement; that the meeting be publicized and notices, together with copies of the attorney's report on explanation of the proposed settlement, be mailed to all known members of the Wisconsin Winnebago Tribe; and for voting places where members of the Wisconsin Winnebago Tribe could vote on approval of the settlement. (Pl. Ex. S-40).

71. The Tribal Council, the governing body of the Winnebago Tribe of Nebraska, held a meeting at Winnebago, Nebraska on April 18, 1970 with 8 members of its total membership of 9 present, and adopted a resolution to accept the proposed settlement by a vote of 8 in favor and none against. The resolution also provided and directed: that a meeting of the members of the Winnebago Tribe of Nebraska be held at Winnebago, Nebraska on May 23, 1970 for the purpose of having the members re-vote on the proposed settlement; that the meeting be publicized and notices, together with copies of the attorney's report on explanation of the proposed settlement, be mailed to all known members of the Winnebago Tribe of Nebraska; and for voting places where members of the Winnebago Tribe of Nebraska could vote on approval of the settlement. (Pl. Ex. S-41).

72. On April 20, 1970, Gordon C. Beaver, Chairman of the

Winnebago Tribe of Nebraska, and Myron Lowe, Chairman of the Wisconsin Winnebago Tribe, issued a notice of the two meetings of the members of the Winnebago Tribe and Nation of Indians to be held at Black River Falls, Wisconsin on May 16, 1970 and at Winnebago, Nebraska on May 23, 1970 for the purpose of considering and voting upon the proposed settlement. The notice also informed the members that they could vote on approval of the settlement at either of said meetings or on May 18, 1970 at voting places designated in Chicago, Illinois; St. Paul, Minnesota; Los Angeles, California; and in Wisconsin at Wisconsin Dells, Black River Falls, Wisconsin Rapids, Tomah, Wittenberg and Milwaukee (Pl. Ex. S-42). Copies of the notice, together with copies of the attorney's report on explanation of the proposed settlement, were mailed on April 22, 1970 to all adult known members of the Winnebago Tribe of Nebraska and the Wisconsin Winnebago Tribe (Pl. Ex. S-44, S-45). The notice was published as a legal publication in Minnesota, Nebraska, Iowa and Wisconsin, and was also mailed to radio and television stations and newspapers requesting they carry the meetings as a news item (Pl. Ex. S-48). News accounts concerning the proposed settlement and the scheduled meetings were extensively reported.

(Tr. 21-22, 27)

73. Explanation of the proposed offer of settlement was presented to the members of the Winnebago Tribe and Nation of Indians at the scheduled meetings held on May 16, 1970 at Black River Falls, Wisconsin and May 23, 1970 at Winnebago, Nebraska. Each adult member who voted by secret written ballot at the meetings and the voting places



designated on May 18, 1970 was verified as to his or her membership, and of the 602 members who voted, 480 voted in favor of acceptance of the settlement and 122 against the settlement (Pl. Exs. S-51, S-52, S-53). At both meetings additional copies of the detailed written report of plaintiffs' attorneys concerning the proposed settlement were made available. The attorney made an oral report on the proposed settlement, reviewed the written report, explained the terms and recommended that the proposed settlement be accepted by the tribe. Both meetings were opened for questions which were answered by the attorney. An opportunity was given to each person present to make comments on the proposed settlement. The number of members who voted on the proposed settlement was substantially greater than the number who usually vote on other tribal matters. Winnebago tribal representatives at the hearing testified that the usual number who voted on other tribal matters of the Wisconsin Winnebago Tribe was about 40 and on other tribal matters of the Winnebago Tribe of Nebraska was about 120. Each of the meetings lasted over three hours. (Tr. 25-40; 46-65).

74. The resolutions of the Business Committee of the Wisconsin Winnebago Tribe adopted April 14, 1970 and of the Tribal Council of the Winnebago Tribe of Nebraska adopted April 18, 1970 accepting the proposed settlement, certified tallies of the votes cast by the members on May 16, 18 and 23, 1970 (Pl. Exs. S-40, S-41, S-51, S-52, S-53) were submitted to the Commissioner of the Bureau of Indian Affairs along with reports of the meetings by the attorney and field

representatives of the Bureau of Indian Affairs who attended the meetings and assisted in supervision of the voting (Pl. Ex. S-57). On July 23, 1970, Louis R. Bruce, Commissioner of the Bureau of Indian Affairs, approved the resolutions of the tribe accepting the settlement and approved the settlement by letter to Hoag and Edwards, attorneys for the plaintiffs (Pl. Ex. S-58). The aforementioned resolutions and tallies were submitted in evidence to the Commission and are part of the record.

75. The parties have entered into a stipulation, made a part of the record herein, which reads as follows:

STIPULATION FOR ENTRY OF FINAL JUDGMENT

It is hereby stipulated between the attorneys for for the parties in the above-captioned dockets, as follows:

1. Docket Nos. 243, 244 and 245 shall be consolidated for all purposes.

2. There shall be entered in the said consolidated cases, after all allowable deductions, credits and offsets, a net judgment for plaintiffs, for and on behalf of the Winnebago Tribe and Nation of Indians, in the amount of FOUR MILLION SIX HUNDRED THOUSAND (\$4,600,000.00) DOLLARS.

3. Entry of final judgment in said amount shall finally dispose of all rights, claims or demands which the plaintiffs and all groups thereof have asserted or could have asserted with respect to the subject matter of these claims, and plaintiffs and groups thereof shall be barred thereby from asserting any such rights, claims or demands against defendant in any other or future action.

4. Entry of final judgment in the aforesaid amount shall finally dispose of all rights, claims, demands, payments on the claim, counter-claims or offsets which the defendant has asserted or could have asserted against plaintiffs and any group thereof under the provisions of Section 2 of the Indian Claims Commission Act (c. 949,

60 Stat. 1049) accruing before February 21, 1969, and defendant shall be barred thereby from asserting against plaintiffs and any groups thereof in any other or future action, any such rights, demands, payments on the claim, counterclaims or offsets attributable to such period. It is agreed that defendant shall not be barred by this stipulation or by entry of judgment pursuant thereto from claiming in any other or future action offsets accruing on or after February 2, 1969.

5. The final judgment entered pursuant to this stipulation shall be by way of compromise and settlement and shall not be construed as an admission by either party for the purposes of precedent or argument, in any other case.

6. The final judgment of the Indian Claims Commission pursuant to this stipulation shall constitute a final determination by the Commission of the above-captioned cases, and shall become final on the date it is entered, all parties hereby waiving any and all rights to appeal from or otherwise seek review of such final determination.

7. The parties agree to execute and file with the Commission a joint motion for entry of final judgment pursuant to this stipulation, submitting a proposed form of final order for the approval of the Commission.

8. Filed herewith and incorporated herein by reference are Plaintiff's Exhibits S-1 through S-58, among which are: (a) Resolutions adopted by the governing tribal council of plaintiff Winnebago Tribe of Nebraska and governing Business Committee of Wisconsin Winnebago Tribe and of the members of the Winnebago Tribe and Nation of Indians, each approving the settlement on the basis of the terms set forth in this stipulation and authorizing attorneys for plaintiffs to enter into and execute the Stipulation; namely, a Resolution adopted by the Tribal Council of the Winnebago Tribe of Nebraska on June 14, 1969 (identified as Plaintiffs' Exhibit S-25) and a Resolution dated April 18, 1970 (identified as Plaintiffs' Exhibit S-41); a Resolution adopted by the Business Committee of the Wisconsin Winnebago Tribe on April 11, 1970 (identified as plaintiffs' Exhibit S-40); a Resolution adopted at a general meeting of the members of the Winnebago Tribe and Nation of Indians, which include persons of Winnebago Indian descent residing in Wisconsin, Minnesota, Nebraska and elsewhere, held at the Winnebago Indian Reservation, Winnebago, Nebraska on June 14, 1969 (identified as Plaintiff's Exhibit S-24); a Resolution adopted at another general meeting of the members of the Winnebago

Tribe and Nation of Indians, which include persons of Winnebago Indian descent residing in Wisconsin, Minnesota, Nebraska and elsewhere, at Black River Falls, Wisconsin, held on June 21, 1969 (identified as Plaintiff's Exhibit S-26); (b) an approval of the settlement signed by the three surviving individual representative plaintiffs (identified as Plaintiff's Exhibits S-30 and S-31); (c) petitions signed by 345 Winnebago Indians requesting approval of the settlement (identified as Plaintiff's Exhibit S-35); (d) tabulations and Certifications of Votes Cast approving the settlement by members of the Winnebago Tribe of Nebraska and members of the Wisconsin Winnebago Tribe, which included persons of Winnebago Indian descent residing in Wisconsin, Minnesota, Nebraska and elsewhere at general meeting held at Black River Falls, Wisconsin, on May 16, 1970 and general meeting held at the Winnebago Indian Reservation, Winnebago, Nebraska on May 23, 1970 and at designated voting places on May 18, 1970 at Wisconsin Rapids, Wisconsin; Black River Falls, Wisconsin; Wittenberg, Wisconsin; Wisconsin Dells, Wisconsin; Chicago, Illinois; Los Angeles, California; St. Paul, Minnesota; Tomah, Wisconsin and Milwaukee, Wisconsin (identified as Plaintiff's Exhibits S-51, S-52 and S-53); and (e) Report on Approval of Settlement dated July 23, 1970 of the Commissioner of Indian Affairs, U. S. Department of the Interior (identified as Plaintiff's Exhibit S-58).

9. This Stipulation is executed by the attorneys for the parties, subject to final approval of the settlement by the Indian Claims Commission.

For the Defendant:

/s/ Shiro Kashiwa  
Asst. Attorney General of  
the United States

/s/ David M. Marshall  
Attorney for the Defendant

For the Plaintiffs:

/s/ Rodney J. Edwards  
RODNEY J. EDWARDS

APPROVAL BY CONTRACT ATTORNEYS

The foregoing "Stipulation for Entry of Final Judgment" in Docket Nos. 243, 244 and 245 is hereby approved by the undersigned contract attorney for plaintiffs in said dockets.

Dated Dec. 3, 1969

/s/ G. Arthur Johnson  
G. ARTHUR JOHNSON

/s/ Jay H. Hoag  
JAY H. HOAG

76. At the hearing held by the Commission on August 10, 1970 on the proposed settlement, testimony of ten Winnebago witnesses and the Tribal Operations Officer of the Great Lakes Agency, Bureau of Indian Affairs was received in addition to the statements of counsel, and exhibits were admitted. The witnesses were officers and tribal council members of the Winnebago Tribe of Nebraska, including Sterling Snake, Tribal Council member assigned by the council to be in charge of arranging for the membership meetings of June 14, 1969 and May 23, 1970 at Winnebago, Nebraska who also attended the membership meeting of May 16, 1970 at Black River Falls, Wisconsin; Gordon Beaver, Tribal Council member and Chairman; Edward Blackwell, Tribal Council treasurer and presiding chairman of the membership meetings of June 14, 1969 and May 23, 1970 at Winnebago, Nebraska; and officers and Business Committee members of the Wisconsin Winnebago Tribe including Myron Lowe, Chairman and member of the Business Committee and also presiding chairman of the membership meetings of June 21, 1969 and May 16, 1970 at Black River Falls, Wisconsin. The testimony of these witnesses confirms that the terms of the proposed compromise settlement and background information on the claims was carefully explained at the Tribal Council meetings, Business Committee meetings and all four meetings of the members of the Winnebago Tribe; that there was a full and free discussion at the meetings; and that the officials and the members of the tribe had an opportunity to understand, at least by the time of the 1970 meetings, the terms of the proposed settlement and that entry of the final judgment in Docket Nos. 243, 244 and 245

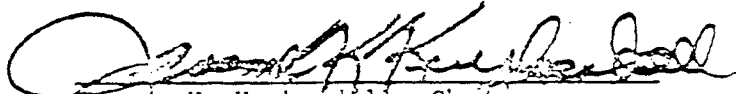
would constitute a final determination of the claims against the defendant (Tr. 20-68).

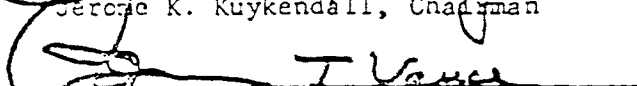
77. At the hearing the Commission heard testimony by witnesses about disagreement among members of the Winnebagos concerning the settlement, and the testimony of Mr. Gilman Lincoln, a member of the Business Committee opposed to the settlement. Witnesses testified that they felt that disagreement in the tribe was not concerned with the terms of the settlement per se, but with personalities and with the internal question of disposal of the funds. Mr. Lincoln testified that he thought there was "a lot of misunderstanding" among the Winnebagos, and that a majority did not understand the settlement. But he added that he did not think a majority could be made to understand, because they had "already made up their mind what they want". Mr. Lincoln was alone among the witnesses in his feeling that there was substantial misunderstanding among the Winnebagos concerning the settlement. (Tr. 50-52, 59-65).


78. The Commission finds, based upon all the evidence, that the members of the Winnebago Tribe and Nation of Indians and the Business Committee of the Wisconsin Winnebago Tribe and Tribal Council of the Winnebago Tribe of Nebraska were afforded ample opportunity to discuss and understand the settlement and did voluntarily and freely approve it.


79. The Commission finds, based upon the entire record and all the evidence in the proceedings, the prior findings of fact and decisions of the Commission and Court of Claims heretofore entered,

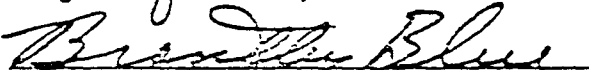
and evaluation of the remaining issues to be decided in Docket Nos. 243, 244 and 245, that the compromise settlement is fair and just to the Winnebago Tribe and to the United States, and that approval of the settlement will eliminate the need for considerable additional litigation expenses as well as delay in payment of final award.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarnborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner