

In their Complaint, the Plaintiffs assert that over a period of years the Defendants have ignored the Constitution and Bylaws of the Shakopee Mdewakanton Sioux Community ("the Community"), the Indian Civil Rights Act of 1968, 25 U.S.C. §1302 (1988), and various other laws of the Community and of the United States, by allowing persons to participate in the Community's governmental and business affairs who are, the Plaintiffs allege, not qualified by their ancestry to be members of the Community. The Plaintiffs allege that such persons have been permitted to vote in the Community's General Council, serve in the Community's government, vote and participate in the affairs of the Community's businesses, and receive the so-called "per capita" payments which the Community makes from its business revenues to its members. The Plaintiffs sought an Order restraining all such activity by "any and all unqualified persons".

Counsel for the Community responded by noting that although they had received copies of the Plaintiffs' pleadings and supporting materials late on February 3, 1994, the Community had not, at the time of the hearing, been served with process; and counsel argued that the Plaintiffs' supporting materials were sketchy, conclusory, and lacked the force that would be required to justify an Temporary Restraining Order which would have vast consequences to the Community.

During the course of the hearing, it developed that counsel for neither party was aware of any scheduled meetings of the Community's General Council in the next week, and that no action would be taken to make either "per capita" payments or payments

into the minors' trust before February 12, 1994 (when the list would be finalized for the payments to be made on February 15, 1994). Plaintiffs' counsel called the Court's attention to the fact that a list has been posted at the Community's government center, and that the list contains some seventy names of minors who may be added on February 15, 1994 to the children for whom funds are held in trust by the Community. The Community's counsel responded by arguing that the posting of a list is part of a process whereby comments are solicited as to a child's eligibility to participate as a beneficiary of the trust, and that that process should be permitted to run its course. The Community's counsel also stated that the amount paid to the minors' trust is constant--that it does not change from month to month depending upon the number of children who are eligible to participate therein, so the addition of a child, or seventy children, to the list would make a difference to the trust only if and when an added child becomes eighteen years of age and is eligible to withdraw funds from the trust; and in any case, no action on the posted list would take place before February 14, 1994.

In Ronald Welch v. Norman Crooks, No. 003-88 (Shak. Md. Comm. Ct., decided December 16, 1988), this Court adopted the test, for preliminary relief, established by the United States Court of Appeals for the Eighth Circuit in Dataphase Systems, Inc. v. C.L. Systems, Inc., 640 F.2d 109, 114 (8th Cir., 1981). Under that test, the absence of irreparable harm to the moving party makes the grant of a Temporary Restraining Order inappropriate.

On the basis of the pleadings and the argument during the

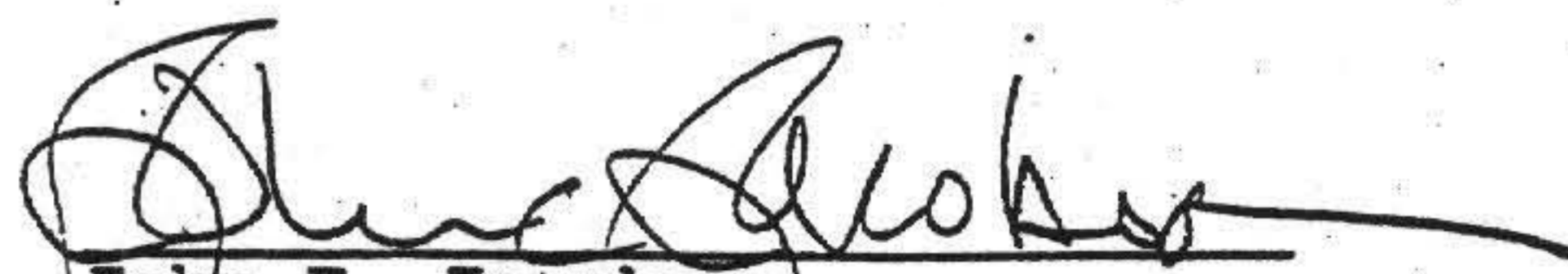
hearing, the Court denied the Plaintiff's motion on the grounds that, whatever may be the Plaintiffs' likely success on the merits, they had not demonstrated that any irreparable harm would be worked if the requested Order were not granted. Specifically, the Court found that no votes of the General Council--the law-making body of the Community--were scheduled during the ten-day period that the Order would be effective, no payments would be made during that period, and no commitments to make payments would be made during that period. Hence, even if the Plaintiffs were correct in all their claims, there was no indication that they would be harmed by the absence of a Temporary Restraining Order.

The Court then scheduled a hearing on February 10, 1994, on the Plaintiffs' request for preliminary injunctive relief.

ORDER

For the foregoing reasons, the Plaintiff's Motion for a Temporary Restraining Order is denied; and a hearing on the Plaintiff's request for preliminary injunctive relief shall commence at 9:30 a.m., February 10, 1994, at the Courtroom of the Shakopee Mdewakanton Sioux Community.

February 4, 1994


John E. Jacobson
Associate Judge

086-38