

**Iowa State Board
of Education**
(Cite as 10 D.O.E. App. Dec. 189)

In re Rawn Weston

Rawn Weston,
Appellant

v.

Farragut Community
School District
Board of Directors,
Appellee.

:
:
:
:
:

DECISION

[Admin. Doc. #3188]

The above-captioned matter was heard on July 2, 1992, before a hearing panel comprising June Harris, consultant, Bureau of Instruction and Curriculum; Lee Crawford, consultant, Bureau of Technical and Vocational Education; and Kathy L. Collins, legal consultant and designated administrative law judge, presiding. Appellant was present in person and unrepresented by counsel. Appellee Farragut Community School District Board of Directors [hereafter, the Board] was present in the persons of Board President Jim Anderzohn, directors Harmon, Jardon, Heaton, and Spears, and was represented by Mr. Gary Gee, attorney from Hamburg.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code 6. Authority for the appeal lies in Iowa Code chapter 290. Appellant sought reversal of a decision of the Board made on March 11, 1992, to terminate a sharing agreement with Hamburg for the services of superintendent Leo Humphrey.

**I.
Findings of Fact**

The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and the subject matter of this appeal.

Beginning in school year 1987-88, the Farragut Community School District [hereafter "the District"] began sharing its superintendent, Leo Humphrey, with the Hamburg Community School

District ("Hamburg").¹ Both districts benefited financially from the five-year statutory incentives for sharing administrators. For the first four years (1987-88 through 1990-91) the District held Superintendent Humphrey's contract and Hamburg paid the District 50% of its costs. Just prior to the fifth year of sharing, the District Board apparently decided not to renew his contract; it was suggested that the arrangement be changed so that Hamburg held the contract. Hamburg agreed and offered Superintendent Humphrey a three-year contract, which he signed. Toward the end of the fifth year, the District Board voted to terminate the sharing agreement for the two administrators.²

With financial incentives and the extra dollars each district realized due to paying for only half of the cost of a superintendent, the District clearly saved money during this period. Superintendent Humphrey computed the dollar benefit to the District as \$254,794 through the 1992-93 school year (less the new superintendent's salary). Appellant's Exhibit 2 at p. 2. At approximately the same time, the District's unspent balance as of June 30, 1991, was \$249,870. Obviously, nearly the whole balance was due to the savings realized from the sharing agreement.

Appellant, a former Board member who resigned when she moved out of her director district in early 1991, has appealed on behalf of herself and a number of District residents who object to the termination of the sharing agreement on the ground that the Board's decision to hire a new full-time superintendent and business manager was fiscally unsound. She (and presumably those who signed a number of petitions) fear the potential tax consequences as resident taxpayers. As Appellant testified, "The economy [in this geographic area] can't stand a tax increase." She also believes that the Board's decision was motivated by a desire to get rid of Superintendent Humphrey regardless of the cost or other factors, such as his above-average evaluations from the Board.

On March 9 the Board heard public comments on the issue of continuing the sharing agreement for the superintendent. Appellant's Exhibit 1. Several persons spoke, including one who advocated for a full-time leader to deal with anticipated changes in education from the legislature. *Id.* Others spoke for a need for peace within the community. The petitions were presented to the Board that evening, and one speaker suggested that the directors were bound by those petitions and were

¹ A business manager, Ms. Judy Crain, was also a shared (50-50) employee of the District and Hamburg beginning in 1988-89, and the sharing agreement for her employment was also terminated on March 11 but Appellant is not seeking review of that aspect of the decision.

²

² See note 1, *supra*.

obligated to vote the will of the people the directors were elected to represent.

On March 11, the Hamburg Board and District Board met jointly with the only agenda item being the sharing contract. Public comment was taken at the outset and again after discussion was had among the directors. The Hamburg board unanimously passed a motion to continue to share the services of Superintendent Humphrey, 5-0. At that point, the District Board took up the issue.

King moved that "Farragut does not share the superintendent and business manager" with Hamburg. Harmon seconded. The motion was not reiterated. A roll call vote was taken, with the directors voting as follows:

- Heaton: "Not to share." Appellant's Exhibit 1 (video tape) (recorded as "Nay" by Board Secretary Pam Nebel).
- Harmon: "I vote not to share." Appellant's Exhibit 1 (recorded as "Nay").
- James: "Not to share." Appellant's Exhibit 1 (recorded as "Nay").
- Jardon: "Yes." Appellant's Exhibit 1 (recorded as "Aye").
- King: "Not to share." Appellant's Exhibit 1 (recorded as "Nay").
- Spears: "No." Appellant's Exhibit 1 (recorded as "Nay").
- Anderzohn: "No." Appellant's Exhibit 1 (recorded as "Nay").

II. Conclusions of Law

Although the State Board of Education has the authority and responsibility under Iowa Code to hear appeals from a "person aggrieved" by a school board decision "in a matter of law or fact," Iowa Code §290.1, the State Board has made clear that the burden of proof is on the Appellant. He or she must allege and prove that the decision appealed was made upon error of law, arbitrarily or capriciously, without authority or basis in fact, or constitutes an abuse of the school board's discretion. In re Jerry Eaton, 7 D.o.E. App. Dec. 137, 141 (1987).

Initially, the idea of district residents appealing a decision of the Board to terminate the superintendent's contract does not seem to be one that "aggrieves" a citizen. In fact, we

have rejected appeals involving a straight decision not to renew a superintendent's contract because the terminated superintendent did not appeal and he was the only person with legal standing to appeal. See In re Kathy Beck et al. v. Clarence Lowden CSD, 8 D.o.E. App. Dec. 427 [#3121] (1991).

In this case, the Board's decision not to renew the sharing agreement for the superintendent's services involved more than a personnel decision. Although the statutory incentives for administrator sharing expired for the District with the 1991-92 school year, a decision to continue sharing would have meant an annual savings of between \$25,000 and \$30,000 for the two positions. Appellant bases her appeal on this fact, coupled with an inability to fathom why the Board would let go of an experienced, "above-average" in performance, relatively inexpensive superintendent. Mere disagreement with a school board decision, or even a belief that another decision would have been better, is not sufficient to overturn that decision.

Was the decision based upon an error of law? No. The law permits but does not require the sharing of administrators. For the same reason, Appellant cannot say the decision made was lacking in legal authority. Was it arbitrary or capricious? One cannot say that the reason expressed by several of the directors during their discussion (that the benefits to the students of having a full time administrator outweigh the \$22,000 savings) is baseless, whimsical, or frivolous. "Arbitrary and capricious" means without any reason or, in essence, "for the heck of it." Although Appellant might disagree with the Board's reasoning, she cannot say that they did not articulate reasons. From the full-time commitment issue, to the expiration of the financial sharing incentives (which had not led to whole-grade sharing as many suggest they were designed to do), to the concern that even a half-time superintendent isn't really half-time when one considers his or her travel time and routine absences from the school due to meetings, conferences, and in-service training, the Board members articulated *some* reasons, even if those reasons did not override the financial ones in her mind.

The Board's reasons are based in reality; therefore they do not lack a factual basis. Did the decision constitute an abuse of discretion? The hearing panelists do not think so. Reasonable minds may differ on the wisdom of a decision but that does not lead to the conclusion that the Board abused its discretion in reaching the decision it did. After all, even a school board's loss of confidence in its superintendent is grounds for termination of a superintendent's contract. Wedergren v. Board of Directors, 307 N.W. 2d 12, 21-22 (Iowa 1981). Therefore a decision not to renew a sharing agreement-- which had no impact on Superintendent Humphrey's contract with Hamburg -- based on a desire to have a full-time superintendent and a different superintendent is sufficient reason to act to

end the sharing arrangement, and it is not an abuse of discretion.

As Appellant and other residents have raised the issue, a word or two on the value of petitions may be helpful. Iowa Code chapter 278 ("Powers of Electors") details the primary situations where voters of a school district may use the petition process to effectuate a change in the schools. There is a finite list of only nine items, none of which is related to personnel. There are other statutes in the Code of Iowa that give power to the petition, but without statutory authority behind it, a petition means little more than a straw poll, and may be less accurate.

A few citizens in the District seemed to hold the belief that the petitions should be binding on the vote of their elected school board members. Our form of government is really a representative democracy, and there are at least two schools of thought regarding the elected individual's responsibility to his or her constituents. One theory is that each vote cast should be based upon the will of the people whom the director represents, and that he or she is powerless unless he or she knows how the constituents feel. This is probably the ideal form of representative democracy, but it is largely impractical. How could a director canvas the entire director district on every voted issue?

The second form is more widely held, and that is that the citizen exercises the franchise carefully, voting for someone who most closely shares the voter's views, or who has the intellect, morality and ethics worthy of the voter's trust. Following the election, the voter keeps a mental or other tally of the elected representative's votes, communicates with him or her on issues of importance to the voter, and hopes that the board member votes the way the voter desires, all the time realizing that the board member will almost always have more information on an issue than the voter. The ultimate recourse for a displeased citizen is the ballot box. We do not blame the board members for voting their consciences as opposed to voting the way a group of petitioners has indicated.

We might offer one suggestion to the Board and secretary regarding the form of motions especially in light of the awkward voting done on this issue. A motion stated in the negative (such as "I move we not share the superintendent") creates potential problems for directors in casting votes. An "aye" vote means "I am in favor of the motion," and "nay" means "I vote against the motion." In this case, apparently Ms. Nebel, the Board secretary, knew what the directors intended, for she determined the vote was 6-1 not to share. However, a literal reading of the "ayes" and "nays" leads to a different result. Specifically, it looks as though directors Spears and Anderzohn, in voting "no" were against the motion, which means it could not

have been a 6-1 decision. Did director Jordon's "yes" mean favoring the motion or "I think we *should* share the superintendent"? Given the fact that the Hamburg board president announced the results of the vote (actually he announced that there was "a motion" only) rather than the District Board president, and the fact that the meeting immediately adjourned, confusion over the final action taken is understandable. We recommend more thoughtful phrasing of a motion and careful responses (aye or nay) by directors in the future.

In conclusion, we agree with Appellant that the District would have saved money by continuing the sharing agreement. We also agree that it is unusual to let an employee go who has done a good job for the district and whose evaluations were above average. Nevertheless, Appellant has not carried her burden to prove that the decision made was arbitrary or capricious, an abuse of discretion, without basis in law or fact, or in excess of the board's legal authority. Thus, the decision must be affirmed.

Any motion or objections not previously ruled upon are hereby denied or overruled.

III. Decision

For the above-stated reasons, the decision of the Farragut Community School District board of directors not to renew the 28E sharing agreement with Hamburg for the services of the superintendent is hereby recommended for affirmance by the State Board of Education. Costs, if any, are assigned to Appellant pursuant to Iowa Code §290.4.

May 21, 1993
DATE

Kathy L. Collins
KATHY L. COLLINS, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered. Appeal dismissed.

June 10, 1993
DATE

Ron McGauvran
RON MCGAUVRAN, PRESIDENT
STATE BOARD OF EDUCATION