

IOWA STATE BOARD
OF EDUCATION

(5 D.o.E. App. Dec. 31)

In re Robert Dunn	:	
Robert Dunn, et al.,	:	
Appellants	:	
v.	:	DECISION
Villisca Community	:	
School District	:	
Appellee.	:	[Admin. Doc. #8581]

The above-captioned matter was heard on August 13, 1986, before a hearing panel consisting of Dr. Robert D. Benton, director, Department of Education, and presiding officer; Ms. Sharon Slezak, consultant, Internal Operations Bureau; and Mr. Bill Bean, assistant chief, Compensatory Education Bureau.

Appellant Dunn was present and represented himself. Appellee Villisca Community School District [hereinafter the District] was present in the persons of the former superintendent, Richard G. Dexter, Superintendent Robert Bush, and Board President Don Williams. The District was represented by Susan L. Seitz of Belin Harris Helmick Tesdell Lamson Blackledge McCormick P.C., Des Moines.

Appellant and others timely appealed a decision of the District board of directors [hereinafter the Board] made on April 24, 1986, to close the Nodaway Attendance Center.

I.
Findings of Fact

The hearing panel finds that it and the State Board of Education have jurisdiction over the parties and the subject matter of this appeal.

The District heretofore operated three attendance centers. Kindergarten through second grades were housed in the Enarson building located in Villisca; grades three, four, and five attended in the Nodaway building; and grades six through twelve were housed at the high school building in Villisca. The Nodaway building was erected in approximately 1924; the Enarson attendance center was built in 1958.

The student population for the 1985-86 school year was approximately 450. Projections by this department and the District indicate a future decline in enrollment to a total population of 435 or less by the 1990-91 school year. The current enrollment figure is considerably lower than it was ten years ago, so a downward trend is clear.

Apparently the high school building lacks the capacity to hold the current student body in its entirety, but if enrollment continues to decline to expected levels, the District projects that all students will attend that building by the early 1990's.¹ Appellants and the District are in agreement that as the numbers stand at present, the operation of these buildings is an inefficient use of District funds. One building needs to be closed at this time. The Board voted 4-1 to close the Nodaway building. Appellants firmly believe the Enarson building should have been closed instead.

By way of comparison, the Enarson and Nodaway buildings differ considerably. Nodaway, once housing an entire district population prior to its merger with Villisca, is a three-story structure with a kitchen, gymnasium, library, several rest rooms, and a large playground area. It housed approximately 100 students in the 85-86 school year. The Enarson building is a one-story structure, located about one mile from the high school building in Villisca, and served 122 students in the 1985-86 school year. Enarson was designed to handle pupil overflow and has seven classrooms, two restrooms, a large public playground and a small ballfield.

At the time the vote was taken to close Nodaway, no decision had been made as to which grades would be transferred to the high school building and which grades would attend at Enarson. Richard Dexter, then superintendent, had recommended to the Board, on February 4, 1986, that grades three, four, and five could be moved into the high school building in the fall of 1986. The Board subsequently voted in June, 1986, to move only fifth grade into the high school, leaving K-4 to attend Enarson. As that building cannot effectively house all K-4 students, a modular classroom was purchased for \$5,250² and was placed at the Enarson site. A combination of third and fourth grade will attend in the modular classroom, leaving K-2 in the Enarson building. Both parties realize the temporary nature of this plan, anticipating that Enarson, too, will be closed when the enrollment declines to a figure that the high school building can comfortably house.

It is clear that there are advantages and disadvantages to both the Nodaway and Enarson sites. The Board considered the condition and relative locations of each building and apparently concluded on the basis of the information available to them that more work needed to be done to the Nodaway building than to the Enarson building. Obviously, as a much older facility, Nodaway would need some rather extensive structural changes to meet the Fire Marshal's recommendations under the building code. Such things as relocating fire escapes, adding doors and windows, and making repairs to mechanical and electrical systems would need to be

¹ A Facilities Active Building Report completed by the District and forwarded to this department in January, 1986, estimates the high school building capacity to be 421, plus or minus 25. Consequently, its capacity in rough figures is 400-450.

² This expenditure was made from the Schroeder Scholarship fund rather than the schoolhouse or operating funds.

accomplished before students could safely attend there. Furthermore, the distance from Nodaway to the main high school building is approximately six miles, where Enarson is only one mile away from the main building. These are the types of things taken into account by the Board prior to the voted decision in this case. It was not purely a dollars and cents issue to the directors.

Testimony by the former superintendent and the current Board president evidenced the fact that the decision to close Nodaway has been discussed for at least ten years. In 1982-83, a year-long study of District facilities was undertaken which led to a recommendation by a community committee to hold a bond issue to raise money for an addition to the Enarson building, and to close Nodaway. Appellee's Exhibit 4, at p. 1. Public hearings were held prior to the special election in the spring of 1984. *Id.* A packet entitled "Important Voter Information" was disseminated explaining the Board's support of the bond issue and addressing such issues as "Why not renovate the Nodaway Facility?" Appellee's Exhibit 5, at p. 2. The bond issue was soundly defeated. Both parties agree that money rather than overwhelming support for maintaining the Nodaway building was the primary reason for voter disapproval.

Needless to say, the failure of the bond issue left the facilities situation in need of action. Regional consultant Bill Hansen of this department spoke at an October 15, 1985, Board meeting on behalf of the Curriculum Review Committee, composed of departmental consultants who worked with District staff. Appellee's Exhibit 7, at p. 1. Mr. Hansen asked the Board to again think about closing the Nodaway facility "when you can house these students in the facilities you now have." *Id.* at p. 2. He encouraged the Board to appoint an advisory committee to look at the educational program. *Id.* Mr. Hansen followed his oral report with a written report on December 27. Appellee's Exhibit 8. He again stated, "It is recommended that a room utilization study be made of the secondary (6-12) building. In the future decisions will have to be made with respect to the continued usage and maintenance of the Nodaway building." *Id.* at p. 2, "F." At the regular November meeting, the Board voted to seek departmental assistance to perform the room utilization study. Appellee's Exhibit 9, at p. 1.

In mid-January, Mr. C. Milton Wilson of this department visited the District to conduct a room utilization study. He submitted a letter report to Superintendent Dexter. Appellee's Exhibit 11. He made several suggestions as a result of his study, including moving more students to the high school facility and possibly adding students to the Enarson building. *Id.*

Superintendent Dexter's recommendation followed on February 10, as stated earlier. Discussion ensued, with a tour of the facilities scheduled for Thursday, February 13. Appellee's Exhibit 2. At the February 10 Board meeting, Superintendent Dexter made additional cost-cutting recommendations such as staff reduction, program reduction, and increased student fees. *Id.* at p. 2.

At the next regular Board meeting, on February 24, Board President Williams asked the superintendent to "get together all [remodeling and moving] costs involved so that the Board can deal with this as soon as

possible." Appellee's Exhibit 15, at p. 1. At this meeting, two staff members spoke introducing the idea of portable classrooms. Id. at p. 2. Directors Shipley and Rosten asked for cost estimates and further information. Id. These were provided later.

The minutes of the March 10, 1986, meeting show that Superintendent Dexter informed the Board that he wished to conduct a public hearing on his proposal (to close Nodaway and house grades 3-5 in the high school facility). Appellee's Exhibit 16, at p. 2. He also asked that the Board make its decision on April 14. Id. Thus a timeline was established in advance at an open public meeting.

Notice of the public hearing was printed in the Villisca Review, with a lengthy article explaining the proposal to close Nodaway and move its students to the high school building. Appellee's Exhibit 17. Appellants Dunn and Susan Frey were among twelve to fifteen persons speaking against the proposal at the public hearing. Their comments, as reflected in the minutes, were philosophical in nature, as compared to a subsequent presentation by Mr. Dunn on April 21 in which he "presented figures and diagrams of the rooms at the Nodaway and Enarson attendance centers." Appellee's Exhibit 24.

Following the public hearing, two "work session" meetings were held by the Board, on April 7 and 8. Appellee's Exhibit 20. These were lengthy sessions called for the purpose of studying the costs and program ramifications of the proposal. On the 8th, the minutes state

After much discussion, [summarized by topic in these minutes] it was decided that each board member will research the costs involved and prepare information to be presented at the board meeting on April 14. Topics involved included: Transportation costs and bussing [sic]; Hot Lunch; remodeling costs involved in the shop area and Enarson building; Fire Marshal's recommendation; Operating Costs; and problem areas: Playgrounds and Library. Another topic was initiated on modular buildings and foundation costs for them.

It was decided that another special board meeting will be held Friday night to assemble and further discuss these topics mentioned and also to hold a strategy meeting with the teachers.

Appellee's Exhibit 20, at p. 2.

Four of the five Board members were present at the April 7 meeting. Directors Shipley and Sperry delivered preliminary reports on modular classrooms and the Fire Marshal's recommendation respectively. Appellee's Exhibit 22. The Fire Marshal's representative indicated he would have "serious reservations about the safety of the Nodaway building if it is to be used by K-5." Id. Other reports would be made at the next meeting, to be held on April 14. Although that was the meeting originally targeted for decision making, the Board decided to postpone the vote until

April 24. A newspaper article quoted Superintendent Dexter as saying that following the public hearing and the three special work sessions, the Board decided to take more time to study the plan and consider numerous suggestions made at the hearing and in letters to the editor of the Villisca Review. Appellee's Exhibit 21.

At the April 14 meeting, President Williams summarized the options being studied by the directors.

1. K-3 at Enarson
4-12 at High School
There would be some remodeling at both facilities.
2. K-4 at Enarson
5-12 at High School
Some remodeling at Enarson -- very little at High School with portable classroom being used at Enarson.
3. Close Enarson and move all elementary students to Nodaway. This would involve some remodeling at Nodaway and some changes at the High School.
4. Leave all the buildings as they are with the three attendance centers.

Appellee's Exhibit 23, at p. 2.

Following Mr. Williams' summary, each Board Member gave his topic report. Id. at pp. 2-5. The public was then permitted to ask questions of the directors, who answered them individually. Id. at pp. 5-6.

A "Needs Assessment Survey" had been conducted earlier in the District by a committee appointed by the Board. Students, teachers, parents, and administrators constituted the committee. One of the questions on the survey related to the proposal to move grades three, four and five to Villisca. The survey results were summarized at the April 14 meeting. Id. at p. 6. Of those responding, 32% of the students and 70% of the adults favored the proposal. Appellee's Exhibit 26.

Another special board meeting was called for April 21, in part to continue discussion of the school closing issue. Appellee's Exhibit 24. This was the session at which Appellant Robert Dunn gave his lengthy and in-depth presentation for the Board's consideration. Id. A portion of the savings (\$20,000) Appellant projected would be realized from closing Enarson instead of Nodaway included savings resulting from changing the kindergarten schedule.

On Monday, April 24, 1986, at 7:30 p.m., the Board met in regular open session. The posted agenda indicated that the first item of business was to be "Discussion of closing an attendance center. Vote." Appellee's Exhibit 27, at p. 1. Mr. Dunn again addressed the Board, focusing on his plan for kindergarten and on his conversation with the Fire Marshal's

office. He also corrected a misstatement from his earlier presentation. Id. at p. 2. Following Mr. Dunn's remarks, others were given an opportunity to pose questions or make comments before a vote was taken. The motion addressed only the school closing action, and was silent as to which attendance center Nodaway students would be moved to. The motion to close Nodaway passed 4-1. Id. at p. 3. This appeal followed.

II. Conclusions of Law

A district board of directors is empowered by law to determine boundary lines and attendance centers and assign pupils thereto. Iowa Code § 279.11 (1985). The closing of a building is therefore not a decision to be made by the electorate. See, e.g., Iowa Code chapter 278. Because these decisions are of such magnitude and importance to the constituents of a community, we have consistently recommended that sufficient research and study be made prior to the decision making, and that the public be both informed and involved in the events leading to the decision. See In re Norman Barker, 1 D.P.I. App. Dec. 145.

In the Barker case we were presented with a factual situation which evidenced little or no planning, research, study, or even discussion by the board prior to voting to close an elementary attendance center. Id. Consequently, we reversed the board's decision in that case. Id. at p. 150. In so doing, the hearing panel and the State Board of Public Instruction laid down seven steps to guide local boards in making school closing and equally important decisions. Id. at 149-150. Those seven steps are as follows:

1. A timeline should be established in advance for the carrying out of procedures involved in making an important decision. All aspects of such timelines would naturally focus upon the anticipated date that the board of directors would make its final decision in the matter.
2. All segments of the community in the school district should be informed that a particular important decision is under consideration by the board of directors.
3. The public should be involved in providing sufficient input into the study and planning involved in important decision making.
4. Sufficient research, study and planning should be carried out by the board and groups and individuals selected by the board. Such things as student enrollment statistics, transportation costs, financial gains and losses, program offerings, plant facilities, and staff assignment need to be considered carefully.

5. There should be an open and frank public discussion of the facts and issues involved.
6. A proper record should be made of all the steps taken in the making of the decision.
7. The final decision must be made in an open public meeting and a record be made thereof.

Id.

It is against those seven steps we measure the facts in this case to determine whether or not the Board's action was arbitrary or capricious. In re C. Donald MacCormack, 5 D.o.E. App. Dec. 1, 5. Despite the thrust of Appellant's presentation concerning which of the two schools should have been closed, our inquiry is confined to the process employed by the District rather than the substance or merits of the decision itself. In re Elizabeth Cott, 4 D.P.I. App. Dec. 231.

Application of the Barker guidelines reveals no basis on which to overturn this decision. A timeline was established in advance. On March 10, Superintendent Dexter asked the Board to make its decision on April 14. It was later postponed ten days, to give the Board additional time to study the issue. The Villisca Review assisted the Board and administration in notifying the public that "a particular important decision is under consideration" as suggested by step two of Barker.

Appellant questions the fulfillment of steps three and four by the Board, but we have no difficulty concluding that these were met. The public, including Appellant Dunn, was involved in providing "sufficient input" when a hearing was held devoted to that purpose. We find it significant that the Board scheduled a total of eleven meetings, all open to the public, between February 10 and April 24. Furthermore, the public was involved in other ways, aside from having the opportunity to make comments, offer suggestions and proposals. The 1982-83 facilities study and community committees examined District needs, and those groups included Villisca and Nodaway citizens. The appointment of a special task force, while a common practice, is not mandated. In re Wayne Newton, et al., 2 D.P.I. App. Dec. 346 [Admin. Doc. 595] (11/81).

Further, we took note of the extensive personal study of the issue by individual board members. Instead of relying on the administration or a separate study committee to research and gather estimates, individual directors carried out the task themselves. Their work sessions took place in open, public meetings. Although comments from the general public were not solicited at the work sessions, District patrons were free to sit in on board discussions. The combination of public input and board research in this case satisfies Barker steps three and four.

The well-documented minutes taken by Board Secretary Roberta Dickey establish the open and frank nature of the discussions held on several occasions during the exploratory period in the Board's deliberations. It was the Board's willingness to listen to non-Board members that gave rise to the subsequent Board decisions not to move the third and fourth grades to the high school facility, and to add a portable classroom at Enarson instead. This is prima facie evidence that the Board remained open-minded and receptive to alternative proposals.

Ms. Dickey's minutes also belie any allegation that a proper public record was not made and recorded of all the steps taken in this case. Finally, even Appellant agrees that the final decision was made in open public meeting and properly represented in the minutes.

In sum, the Barker guidelines having been satisfied, our inquiry ends. All motions or objections not previously ruled upon are hereby denied and overruled.

III.
Decision

The hearing panel finds that no basis exists on which to overturn the decision of the Villisca Community School District Board of Directors. The decision to close the Nodaway facility is hereby affirmed. Costs of this appeal, if any, are hereby assigned to Appellants.

Aug. 27, 1986
DATE

Aug 28, 1986
DATE

Lucas J. DeKoster
LUCAS J. DEKOSTER, PRESIDENT
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