IOWA STATE BOARD
OF EDUCATION
(Cite as 5 D.o.E. App. Dec. 283)

In re Eugene Naberhaus, et al.	:	
Eugene Naberhaus, Dennis Gibson, Ricky St. Peter, Leonore Fiedler, J.W. Hermansen, Appellants,	:	
v.	:	DECISION
Board of Directors of Scranton Consolidated School District, Appellee.	:	[Admin. Doc. 934]

The above-captioned matter was heard on June 15, 1987, before a hearing panel consisting of Dr. Robert D. Benton, director of education and presiding officer; Mr. A. John Martin, chief, Bureau of Instruction and Curriculum; and Dr. Carol M. Bradley, administrator, Division of Instructional Services. Appellants were present in person and represented by counsel, Mr. Ronald Schechtman of Ames. Appellee was present in the persons of board members Allen Robson, Roger Nailor, Mark Hulsing, and Eldon Wright; Dean Gibson, president; and Superintendent Ray Gaul. Appellee was represented by Mr. Rick Engel, Hamilton & Engel, Fort Dodge. An evidentiary hearing was held pursuant to chapter 290 of the Iowa Code and departmental rules found at Iowa Administrative Code 670-51.

Appellants timely appealed two decisions of the board of directors (hereafter the Board) of the Scranton Consolidated School District (hereafter the District), which were consolidated at the hearing over the Board's objection. The first appeal was filed on April 23, 1987, and involved an April 1, 1987, decision made by the Board to enter into a whole-grade sharing agreement with the Jefferson Community School District (hereafter Jefferson). The second appeal was filed on June 10 and concerned a May 13, 1987, action agreeing to the terms of a contract to effectuate the April 1 decision. Appellants ask that the April 1 decision be overturned, thereby nullifying the contract entered into on May 13.

I.
Findings of Fact

The hearing officer finds that he and the State Board of Education have jurisdiction over the parties and the subject matter appealed.

The District had a 1986-87 enrolled student population of approximately 210 students in kindergarten and twelve grades. Jefferson, the Greene County Seat with an approximate 1986-87 enrollment of 1,050

students, lies eleven miles to the east of the District. Glidden-Ralston Community School District (hereafter Glidden-Ralston or G-R) is situated in Carroll County, eleven miles to the west of the District and has an enrollment of over 430 students. Paton-Churdan is contiguous to the District to the north.

In early 1986, the Citizens Advisory Committee appointed by the Board as mandated by Iowa Code section 280.12, was studying long and short range plans for the District. Although not in financial difficulty, the District, like so many others in the state, was continuing to experience a decline in enrollment. Several classes operated with five or fewer pupils at the secondary level. The District, prior to this hearing, had shared teachers and athletic programs with Jefferson, and teachers only with Bayard and Y-J-B school districts. General concern for the quality of the educational program and efficiency of operations generated discussions regarding future options.

The advisory committee asked the Board to commission a reorganization and sharing feasibility study to be conducted by the Department of Education. The boards of directors of Glidden-Ralston, Jefferson, and Payton-Churdan later asked to be included as participants in the request. The purpose of the study was to

(1) list alternatives and make recommendations as to possible restructuring activities,

(2) set down guidelines for the boards to use as they progress in their deliberations, and

(3) compile data for the school boards, staffs, and citizens of the districts to use as they plan and make decisions.

Appellee's Exhibit 1 at p. ii. Department consultants Guy Ghan and Stan Kerr gatnered and studied data regarding these districts and filed a complete report in early 1987.

A summary of the lengthy report included the following statements of recommendation:

A. The major recommendation is that the Scranton Community School District externally restructure itself with a neighboring district in order to expand and enhance its educational program. Its low enrollment prevents the district from offering a program equal in quality to a district large enough to provide a more comprehensive education.

B. For a short-term solution we recommend that Scranton enter into a whole-grade sharing arrangement for its junior and senior high students. The recommendation for a long-term answer is to reorganize.

C. The Department staff suggests that the Scranton board form an alliance with either the Jefferson or the Glidden-Ralston district. A Paton-Churdan sharing arrangement or reorganization is unlikely to "stand the

test of time." Jefferson is the potential partner most likely to result in a long-term arrangement. Compact geographical boundaries and quality of comprehensive educational program should be the overriding considerations in making this decision. Politics and personal feelings are poor standards for forming school districts.

D. It is logical for Paton-Churdan to enter into an alliance with a combined Scranton and Jefferson district. However, larger portions of territory may need to be excluded for geographical reasons.

Id. at p. 1. Mr. Ghan and Mr. Kerr advised that dissolution of the District would not be appropriate, but that whole-grade sharing or reorganization would be valuable tools for educational improvement. The relative legal methods and advantages to each solution were laid out. The criteria used to make recommendations were educational programs, long-term stability, and geography. Appellee's Exhibit 2 at p. 3.

Because the recommendations did not purport to direct the Board in a choice between Jefferson and Glidden-Ralston, instead pointing to the merits and detractions of each school district, some confusion was generated within the Scranton community as to which district Department personnel favored. Although testimony of some of the Board members at the hearing evidenced a belief by them that Mr. Ghan and Mr. Kerr had given the edge to Jefferson (see summary statement C, above), the Board sought clarification from those consultants as to a preference between the two districts. Appellee's Exhibit 2 contains a one-page follow-up statement. Applying the three major criteria led to the following conclusions by the consultants:

> From a geographical perspective, an alliance with either Glidden-Ralston or Jefferson is reasonable . . . . From the consideration of long-term stability, Jefferson is first . . . . In regard to educational program, Jefferson has the most comprehensive and must be considered as the potential partner that offers the best educational opportunity.

Id.

Prior to the receipt of the follow-up letter of clarification in March, the District received whole-grade sharing proposals from both Glidden-Ralston and Jefferson. The former laid out a simple proposition, including its district "end goal" that from 1990 forward it hoped to be reorganized with another district, presumably Scranton. This apparently was too candid an approach for the Scranton Board and community, for the G-R board was asked to remove the reference to reorganization from their proposal, which was done. Glidden-Ralston's proposal was that each district would maintain a K-6[1] elementary building, all seventh and eighth grade students would attend in Scranton, and the senior high students would attend school in G-R. Jefferson also provided a proposal

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1 Scranton's current structure is a K-5 elementary program.

in early 1987, which was revised in mid-February as a result of a District committee meeting with the Jefferson board. The revision generated a counter-proposal from Scranton which was accepted in part and rejected in part. Negotiations continued.

Five board meetings were held in the month of February where the proposals and counter-proposals were discussed openly. Subcommittees met with the boards of G-R and Jefferson. Board members visited schools and facilities in both districts. At the February 18 meeting, Board Secretary Judy Gibson read a letter signed by 25 District staff urging the Board not to act in haste in making such a very important decision, and suggesting that a survey of the patrons of the District be undertaken. No action was taken upon the staff request. On February 23 Appellant Naberhaus read an "open letter" to the Board, this time giving them an ultimatum: If the Board did not conduct a survey within the next seven days and make the results public prior to a voted decision, "the citizens of the community will do so." Appellants' Exhibit J. No action was taken that evening.

On March 1, 1987, the Board hosted a public hearing to lay out the proposals of the two districts under consideration. Approximately 200-300 people attended this well-publicized two-hour session. At a special meeting the next night, the Board voted to create a survey to be sent to all adults in the District and to students in grades 7-11, with a directive that the questionnaire be printed in such a way as to discourage duplication and assure, as much as possible, valid results.

Also at that meeting a motion was made and passed to whole-grade share, without naming the sharing partner-district, for the 1987-88 school year. The motion was later rescinded as the agenda for that meeting did not include the possibility of that action. The Board did, however, vote to terminate[2] all positions serving grades six through twelve "and cross-over staff." This was done at this time because under the timelines of Iowa Code section 279.15 notices of intent to terminate must be given to certificated staff prior to March 15. The board realized that whole-grade sharing was a very real possibility for 1987-88 and if so, they needed to terminate positions in the 1986-87 school year or be financially responsible to honor those continuing contracts. At that same meeting the Board voted to visit the Central Webster-Dayton districts and the Havelock-Plover districts who were currently involved in whole-grade sharing.

Using voter registration lists, a District newsletter recipient list, the local telephone directory, and student enrollment information, the survey requested by District staff and citizens was sent out on March 10, 1987. Responses were requested by March 20. The questionnaire asked whether or not respondents had or would have children in the school system currently and within the next five years; whether reorganization, whole-grade sharing, or "other" type of restructuring was preferred; which

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2 The Board voted to terminate positions, not individual staff members. This was done only to enable Superintendent Gaul to provide notices to the teachers in those positions that the Board would consider terminations. See Iowa Code § 279.15 (1987).

of two districts (G-R or Jefferson) was favored as a sharing or reorganization partner; and whether the whole-grade sharing, if undertaken, should begin in the 1987-88 or 1988-89 school year. There was also a space available for concerns. Appellants' Exhibit M.

From 772 surveys sent to adults in the District, 584 responses were received, for a 75.6% response rate. Forty-seven of 72 students replied, for a 65% rate. Appellants' Exhibit O. Whole-grade sharing was the overwhelming preference of restructure options by both groups polled. The students favored Glidden-Ralston as a sharing partner in a vote of 25-21 over Jefferson. The adults also favored G-R, but by a greater (21%) margin. Appellants' Exhibit P. The vote was closest on the "when" question; 298 preferred sharing beginning in 1988-89 over 247 who preferred starting this fall. Id. The results were tallied by the Citizens Advisory Committee.

The Board reviewed the results and the individual comments made at a meeting held on March 24. Also at that meeting the Board set April 1 as the date on which a decision would be made whether or not to share, what the next step would be, and a resolution to negotiate an agreement.

The decision was indeed made on April 1, 1987. Unanimously, the Board voted to whole-grade share for 1987-88.[3] On a 3-2 vote, a second decision was made to share with Jefferson. Subsequently, a joint meeting with the Jefferson board was held where some resolutions were reached and other issues related to the sharing agreement were placed on the table for discussion and negotiation. Agreement as to the duration of the sharing action was achieved; the districts would enter into a four-year contract concluding in the 1990-91 school year. Grades four through twelve would be shared, with grades 1-3 taught in their respective districts, grades 4 and 5 taught in Scranton, and grades 6-12 in Jefferson. Separate arrangements would be made for students receiving special education.

Negotiations continued through April and into May. A fourth draft of a binding contract with attached, incorporated addenda was signed by the Jefferson board president in the first week of May and forwarded to the District Board where it was signed by Board President Dean Gibson, on May 13, 1987.[4] The contract was entered into under the authority of Iowa Code section 256.13 (1987) and Iowa Code chapter 28E. Appellants' Exhibit T.

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[3] Although the decision to begin the sharing this fall instead of in the fall of 1988 was criticized as unnecessarily hasty, Board member Allen Robson's explanation answered that criticism. He testified that the teachers might not sign and return their contracts in the spring of '87 if they knew their jobs would only last another year, choosing to look for a more secure position. This is quite feasible. If it occurred, the District would have been in the difficult position of advertising for one-year positions only and may not have been able to fill them.

[4] This action was the subject of the second affidavit of appeal filed in this case. One original Appellant, J.W. Hermansen, did not join in the second appeal.

On May 12, the day before President Gibson signed the contract, a Petition for Reorganization was filed with both the Area V Education Agency and the Area XI Education Agency by Glidden-Ralston and Scranton residents. The petition seeks to legally merge the two districts. Iowa law requires that "at least twenty percent of the number of qualified electors" in each district sign the petition. See Iowa Code § 275.12(1) (1987). In this case, over 43% of the eligible Scranton voters appear to have signed the petition. Appellants' Exhibit S. Those signators in Glidden-Ralston also exceeded the required number. Id. at p. 2. At the time of hearing, no official action had been taken on the petitions by the respective AEAs.

II.
Conclusions of Law

In two affidavits of appeal and upon the hearing, several issues have been raised. We shall address them individually as they were presented.

1. The Board requested and adopted a feasibility study and did not follow several considerations (guidelines) therein.

The major considerations contained in Mr. Ghan and Mr. Kerr's report and referred to in the first allegation of error are laid out on pages 23 and 24 of the Appendix to the feasibility study report, Appellee's Exhibit 1. They constitute advice from two consultants in the department who are quite familiar with the advantages, disadvantages, and areas to watch for with respect to school district reorganization and sharing. They are given with every feasibility study conducted by Mr. Ghan as part of a service to school districts and boards undertaking a study of ways to improve the district's total educational program. They are legally summarized as procedural due process. They are also reflective of the seven-step guidelines announced in In re Norman Barker, 1 D.P.I. App. Dec. 145 (1977), a school closing decision.

We recognize that the Barker recommendations represent the State Board's advice to boards contemplating major decisions such as school closings. We also recognize that a sharing or reorganization-related decision is a major decision. But we have held that strict observance of the Barker guidelines in sharing decisions, as a principle of stare decisis or precedent, is not required. In re Thomas Miller, 4 D.P.I. App. Dec. 109, 116 (1985). See also In re James Darst, 4 D.P.I. App. Dec. 250 (1986).

The State Board's rationale for distinguishing the Barker school closing guidelines from a sharing situation was the absence of a statutory scheme in the school closing cases which is present in sharing decisions. Compare Iowa Code § 279.11 and Iowa Code §§ 256.13, 282.7 (1987). Moreover, no evidence was offered to prove non-compliance with the recommendations for due process. A bare allegation is insufficient to meet Appellants' burden of proof.

2. The Board, or a majority thereof, thereafter requested a follow-up recommendation, which was used as a later substitute for its discretion and which was not a part of any of the previous considerations.

The notion that an outside study and recommendations later followed was a "substitute" for Board discretion is simply not true in this case. As was pointed out in the Findings of Fact, the Board requested a frank recommendation from Mr. Ghan to address citizens' response to the first report. Because each of the potential partners offered some advantages, District patrons desiring to go in one direction were able to pull out of the report statements to support their position. Several Board members testified that they felt certain on the first reading of the report that the overall recommendation was to go toward Jefferson. They sought clarification from Mr. Ghan to answer the citizen's opinions, not to bolster their preference. There is no merit in this contention.

3. The Board agreed to whole-grade share grades 4-12 for four years, whereas the feasibility study recommended a short-term solution of grades 7-12 only.

First, we view four years as a short period of time, particularly when compared to the relative permanence of a reorganization study. As Appellee pointed out, four years is the remaining term for a district to avail itself of the financial incentives for sharing. See Iowa Code § 442.39(2)(1987). In addition, the four-year period allows one whole class (the class of 1991) to proceed through the high school without being uprooted. Moreover, to test fairly a whole-grade sharing plan, more than one or two years is advisable for obvious reasons. The fact that negotiations produced a grades 4-12 sharing contract rather than a 7-12 agreement as originally suggested in the study is legally insignificant.

4. The decision to whole-grade share is tantamount to a reorganization without an election.

This argument is not new and is best answered by pointing to the statutes that authorize whole-grade sharing without a vote of the people. See Iowa Code § 282.7; H.F. 499 §§ 60-62 (to be codified at Iowa Code §§ 282.10-.12)(adding only a public hearing provision for whole-grade sharing effective July 1, 1987 for agreements not already in effect on that date). As Appellee pointed out, this argument is better made to the legislature.

5. The Board did not significantly utilize the Citizen Advisory Committee.

The committee, established pursuant to Iowa Code section 282.12(2), is only charged with making recommendations to the local school board. This was done in 1986. Their work included a survey in which the issues of sharing and reorganization were addressed. Appellants' Exhibit B. This constituted proper utilization of the advisory committee.

6. The Board did not consider the wishes of District patrons evidenced in the March, 1987 survey.

Initially, we note that the survey was the result of pressure from the community. It was not done at the Board's initiation but rather forced upon them by ultimatum. Secondly, without demeaning the ability of citizens of a district to evaluate objectively the best options available, we nevertheless recognize that emotional factors rather than what is necessary in the best interests of education often sway voters. This concept is perhaps best exemplified by a statement printed in the Scranton

Journal made by Glidden-Ralston patrons: "You would be equal with Glidden, not swallowed up by the County Seat School." Appellants' Exhibit U. As we have often said, the board of directors of a school district is elected by the people and responsible for making tough decisions which may not always be popular decisions. The best avenues of recourse for a dissatisfied citizen are through the 290 appeal process and, if unsuccessful, at the ballot box. In this case there is clear evidence that the Board did consider the survey results. They just didn't vote for Glidden-Ralston as a sharing partner.

7. The Board, because it sent out the survey, implied that the survey results would be utilized in its decision.

Again, this argument smacks of pure dissatisfaction with the decision. Moreover, testimony evidenced the fact that the Board did consider, and to a degree some directors felt guilty about, the rejection of the public's wishes. Two of the five directors did not vote to share with Jefferson. The others felt, apparently, that the students would be better served in a partnership with Jefferson despite the wishes of the majority. This is what tough decision-making requires at times.

8. The Board in deciding to whole-grade share acted upon an assumption that pending legislation would pass eliminating small districts from operation, although this did not occur nor is it imminent.

There was simply no evidence to support this allegation. Additionally, it is clear that the General Assembly has, at least for the time being, opted to encourage more sharing and reorganizing, creating new and expanding upon existing sharing provisions and adding financial incentives to motivate more reluctant school corporations into taking action to improve their educational programs. Appellants' argument only thinly veils its underlying proposition that the Board shouldn't have done anything until the General Assembly forced them to, an educationally unsound principle of governance which we wholeheartedly reject. Accord In re Ron Puhrmann, 5 D.o.E. App. Dec. 10, 16 (1986).

9. The majority of the Board did not give equal investigation, consideration or merit to the Glidden-Ralston proposal as compared to the Jefferson proposal.

The evidence at hearing illustrated that the only difference in the treatment between Jefferson's and Glidden-Ralston's proposals was that the Board never met formally in joint session with the G-R board. Both proposals were studied; negotiations with Jefferson were more extensive than with G-R, but this was explained by the difference in the complexity of the two proposals. Glidden-Ralston's offer was clear and except for the reorganization goal stated therein (which at the time may have scared the Board because the 1986 public survey revealed that reorganization was not favored) no features of the proposal created a necessity for negotiations. The Board visited both sites and toured facilities in both towns. There is simply no merit to this contention in light of testimony by three directors to the contrary. Both proposals were considered.

In the second affidavit of appeal from the decision to execute a contract with Jefferson, the thrust of Appellants' argument is that the Board should not have signed the agreement knowing that a reorganization petition was on file. There is an absence of legal precedent on this

issue. No statutory provision exists suggesting that the filing of a petition for reorganization stays or enjoins any other actions contemplated or in effect. Furthermore, one could argue, albeit equally unpersuasively, that the citizens should not have filed a reorganization petition knowing the Board had decided to whole-grade share. Nevertheless, the two options do not appear to be mutually exclusive acts. Reorganization is a time-consuming legal action, as it rightly should be considering its impact and seeming permanence. It may be that the petition will proceed through the complete statutory process and conclude simultaneously with the four-year agreement with Jefferson. There is no basis on which to stop either process without going to court in an attempt to obtain an injunction. The State Board has no authority, absent a finding that the sharing decision should be reversed due to arbitrary action on the part of the District Board, to halt the process, which is what Appellants have asked us to do. Because we do not make such a finding, the reorganization petition will run its course without interference from us.

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

III.
Decision

For the foregoing reasons, the decisions made on April 1 and May 13 by the Scranton Community School District board of directors are hereby affirmed. Costs of this appeal, if any, under chapter 290 are assigned to Appellants who shall forward proof of those costs to the Department of Education for filing under Iowa Code § 290.4 (1987).

August 21, 1987
DATE

LUCAS J. DEKOSTER, PRESIDENT
STATE BOARD OF EDUCATION

August 10, 1987
DATE

ROBERT D. BENTON, Ed.D.
DIRECTOR, DEPARTMENT OF EDUCATION
AND PRESIDING OFFICER