STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1003

Save Our Children, et al.,
Relators,

vs.

Minneapolis Public Schools,
Special School District No. 1,
Respondent.

Filed May 20, 2008
Affirmed
Harten, Judge[*]

Minneapolis Public Schools, Special School District No. 1

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Considered and decided by Kalitowski, Presiding Judge; Peterson, Judge; and Harten, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

HARTEN, Judge

Relators challenge the decision of respondent Minneapolis Public Schools, Special School District 1 (the district), to close five of its schools. Because the decision is supported by substantial evidence and the district complied with the statutory requirements for giving notice of a public hearing, we affirm.

FACTS[1]

By February 2007, the district was aware of several facts indicating a need for improvement in the schools serving north Minneapolis. Between 2000 and 2006, student enrollment in the north quadrant of Minneapolis had declined by 4,041 students in kindergarten (K) through fifth grade; this was 60% of the total decline within the district. The north quadrant had excess classroom space amounting to nearly 50%. Budget shortfalls resulting from the decline in enrollment were likely for the next three years. Moreover, the district risked incurring penalties because 11 of the 16 schools in the north quadrant were not making Adequate Yearly Progress (AYP) under the No Child Left Behind law.

[1] The district provided factual data in the form of exhibits of affidavits from its chief academic officer, from its director of communications, and from its board and community liaison. In its brief, the district cites these exhibits as support for the facts. *See* Minn. R. Civ. App. P. 128.03 (requiring references to particular part of record referred to in brief). At oral argument, counsel for relators challenged the inclusion of some of these items, alleging that they might not be part of the record. A party may move to strike items not properly before this court because they were not part of the record under Minn. R. Civ. App. P. 110.01 (limiting record on appeal to papers filed with trial court, exhibits, and transcript). Relators did not move to strike any of the items referred to in the district's brief. We therefore consider these items to be part of the record.

The minutes of the district's 27 February 2007 board meeting reflects that administrators presented three options for restructuring the 16 north quadrant schools. Plan A involved (1) one K-5 school of 600, (2) three K-8 schools of about 920 each, (3) one dual campus of 950, and (4) two grade 9-12 schools of about 950 each; seven or eight schools would be closed and 1,800 students reassigned. Plan B involved (1) three K-5 schools of about 360 each, (2) three K-8 schools of about 620 each, (3) one dual campus of 880, (4) one grade 6-12 school of 950, and (5) one grade 9-12 school of 1,200; four or five schools would be closed and 1,100 students reassigned. Plan C involved (1) three K-5 schools of about 250 students each, (2) six K-8 schools of about 450 students each, (3) one dual campus of 850, (4) one grade 6-8 school of about 100 students, and (5) two grade 9-12 schools of about 950 each; two schools would be closed and 200 students reassigned. Plan C involved a longer time frame, and it was noted that "delaying the inevitable has a negative impact on school morale, student achievement and enrollment." One board member favored Plan A, two were undecided between A and B, and four supported Plan B. On 14 March 2007, the district began a series of meetings to obtain community input on the proposed school closings.

At the board meeting on 20 March 2007, the superintendent presented a report. The minutes of that meeting show that the superintendent first identified four problems that the status quo in north Minneapolis had failed to solve: an academic achievement gap between white students and students of color; an estimated budget shortfall of $16 million for 2007-2008; a significant decline in enrollment because families were

choosing to send children to charter or private schools; and an excess of classroom capacity that resulted in diffused resources.

The chief academic officer then presented a recommendation of Plan B. She first explained the academic, geographic, facilities, and financial criteria used in formulating the recommendation.[2] The recommendation involved continuing three preK-5 programs; "revisioning" three preK-8 programs; continuing one preK-8 program; moving the Afrocentric Academy intact to a high school campus that would become a grade 6-12 campus; moving the Hmong International Academy to one of the "revisioned" preK-8 schools; continuing one high school; and closing five schools: W. Harry Davis, Jordan Park, Lincoln, North Star, and Shingle Creek.

On 21 March 2007, a general announcement of the proposed closings appeared in the *Minneapolis Star-Tribune* newspaper. In addition, parents and guardians of students in north Minneapolis schools received individual letters from the schools' principals describing the proposed school closings.

As required by Minn. Stat. § 123B.51, subd. 5 (2006), the district scheduled a public hearing on the proposed closings and published notice of the hearing twice in the district's official newspaper, *Finance and Commerce*. The hearing was scheduled for 10 April 2007; the notices appeared on 22 and 29 March. The district also published an

[2]Academic criteria were instructional arrangements, consideration of pathways to offer students, greater choice in response to demand, maximizing productive community partnerships, and AYP performance; the geographic criterion was the proximity of schools to neighborhoods; the facilities criterion was the best utilization of available space; and the financial criterion was attracting enough students to generate dollars to support a quality program.

advertisement announcing the hearing in the 2 April 2007 edition of a free local newspaper, *Insight News.*

The public hearing lasted more than three hours. It was attended by the entire school board and by 150 to 200 other people, of whom about 50 made oral presentations. Two days later, the district voted to approve the administrators' recommendation to close the five schools. The minutes of this meeting show that the superintendent, after acknowledging that "[c]hange is . . . hard to endure because it is often about losing something familiar[,]" but also that "[d]oing nothing does nothing good for our kids[,]" put forth the recommendation, and a motion was made and seconded for the adoption of Plan B.

Extensive discussion ensued among the board members; two other motions and two amendments were proposed. First, it was moved and seconded to postpone the decision; it was then noted that the Plan B motion was already on the floor and only motions amending or indefinitely postponing it could be considered. A motion to rescind then failed for want of a second. One proposed amendment was removing Lincoln School from the list of schools to be closed; the amendment was rejected. The other proposed amendment was that district staff be directed to find a K-8 option for the lower north side; this was also rejected. The original, unamended Plan B motion was voted on: the vote was six in favor, one opposed. The minutes also show that delegations from the public were invited to address the board and "were accepted . . . until all those who signed up had spoken," but each public comment was limited to two minutes. The board heard from 37 delegations.

Relators challenge the district's decision to adopt the recommendation to close five schools, arguing that it is not supported by substantial evidence and that the district did not comply with notice requirements for the public hearing.[3]

D E C I S I O N

Standard of Review

This court will reverse a school board's decision only after concluding that it is "fraudulent, arbitrary, unreasonable, unsupported by substantial evidence, not within its jurisdiction, or based on an error of law." *Dokmo v. Indep. Sch. Dist. No. 11*, 459 N.W.2d 671, 675 (Minn. 1990). When a decision is supported by substantial evidence and has been made by following the appropriate statutory procedure, it must be upheld even in the face of strong opposition. *Moberg v. Indep. Sch. Dist. No. 281*, 336 N.W.2d 510, 515-16 (Minn. 1983). Review is limited to the record made by the school board. *DeGeorgeo v. Indep. Sch. Dist. No. 833*, 563 N.W.2d 755, 756 (Minn. App. 1997), *review denied* (Minn. 28 July 1997). Finally, great deference is given to a school board's decision to close a school. *Kelly v. Indep. Sch. Dist. No. 623*, 380 N.W.2d 833, 836 (Minn. App. 1986).

[3] For the first time on appeal, relators claim that, because the schools closed had low percentages of white students, closing them was discriminatory. They argue that this case should be transferred to district court for findings as to the district's motives in closing the schools, but cite no authority for this procedure. Addressing a discrimination claim made for the first time on appeal is beyond the scope of this court's review of school board decisions. *See Dokmo v. Indep. Sch. Dist. No. 11*, 459 N.W.2d 671, 674-75 (Minn. 1990).

1. Substantial Evidence

Minn. Stat. § 123B.51, subd. 5 (2006), requires a public hearing on "the necessity and practicability" of a proposed school closing, at which those wishing to testify for or against the closing may do so. Relators argue that the district's decision is not supported by substantial evidence because the district failed to make a record of the public hearing. For this argument, relators rely on *Kelly*. This reliance is misplaced. *Kelly* does not mandate, or even address, having a record of the public hearing; it holds that having the hearing after the formulation of a proposal to close a school does not violate the statute. *Id.* at 835. Here, the district asserts, and relators do not dispute, that the hearing lasted three and one-half hours, that between 150 and 200 people attended it, and that more than 50 people addressed the board. Relators offer neither statutory nor caselaw support for their view that a public hearing must be recorded.[4]

Moreover, *Kelly* is distinguishable. It considered a situation in which one of two very similar high schools had to be closed; the challenge was not to the closing of a school but to the closing of a particular school. *Id.* at 836. This court concluded that "[t]he majority of the data in the record is directed at the feasibility of closing *a* high school . . . . The data itself does not reflect any obvious reasons for choosing to close one facility rather than the other," *id.* at 837, and reversed and remanded for "articulation of

[4] Relators claim in their reply brief that "case law . . . strongly supports the principle that where a hearing is required by statute, a verbatim record is required." But the only case they cite, *Johnson v. Village of Cohasset*, 263 Minn. 425, 116 N.W.2d 692 (1962), is readily distinguishable: it concerned not a school district public hearing on the closing of a school but a termination of employment hearing required by the Veterans Preference Act.

the specific [data] upon which the School Board based its decision" to close that particular school, *id.* at 838. Here, minutes of the school board meetings reflect that the board considered specific reasons for closing particular schools.

The record shows that the five closed schools were not performing as well as other schools: the selected five were among seven in the north quadrant that "failed to meet their performance targets" and none of the five made AYP for at least two years. Attendance at three schools was especially problematic, as reflected in the difference between the number of students living in the area and the number enrolled, and in the difference between the school's capacity and its number of students. One school had 771 students living in the area, of whom 173 were enrolled at that school; its capacity was 986, and it had 531 students. Another school had 884 students living in the area, of whom 280 were enrolled at that school; its capacity was 1027 and it had 472 students. A third school had 260 students living in the area of whom 54 were enrolled at that school; its capacity was 698 and it had 361 students. Information from an annual survey of students and staff disclosed specific problems at the schools to be closed.

We conclude that substantial evidence supported the district's decision to close these five schools.

2. Notice

Minn. Stat. § 123B.51, subd. 5, provides that "[p]ublished notice of the hearing shall be given for two weeks in the official newspaper of the district." Here, two weeks' public notice was given in *Finance and Commerce*. Relators argue that *Finance and Commerce* is not the official newspaper of the district. But the school board designated it

as the official newspaper, and it meets the standard as a "legal newspaper of general circulation within the district." Minn. Stat. § 123B.95, subd. 4 (2006). It has been the official newspaper for several years and, as such, has published hundreds of district notices. In addition to the notices in *Finance and Commerce*, however, the district purchased advertising in a widely circulated free newspaper and sent letters to parents and guardians of all students. We conclude that the district provided lawful public notice of the board hearing.

Affirmed.