

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE BOARD OF EDUCATION
INDEPENDENT SCHOOL DISTRICT NO. 38
RED LAKE, MINNESOTA

In the Matter of the Proposed
Placement of Diane Schwanz,
Roberta Ball and Marilyn Norby
on Unrequested Leave of Absence.

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on before Administrative Law Judge Steve Mihalchick, duly appointed as an Independent Hearing Examiner for the Board of Education, Independent School District No. 38, Red Lake, Minnesota, on May 11, 1993, in the Title V Building of the Red Lake Public Schools. The record closed on May 18, 1993, upon receipt of the last post-hearing submission.

Margaret Seelye Treuer, Attorney at Law, 435 Swenson Road N.E., Bemidji, Minnesota 56601, appeared representing Independent School District No. 38 (District). Bruce P. Grostephan, Attorney at Law, Peterson, Engberg & Peterson, 700 Title Insurance Building, Minneapolis, Minnesota 55401-2498, appeared representing Roberta Ball. Diane Schwanz, Box 238, Pinewood, Minnesota 56601, and Marilyn Norby, 922 11th Street, Bemidji, Minnesota 56601, appeared with counsel.

This Report is a recommendation, not a final decision. The Board of Education, Independent School District No. 38, Red Lake, Minnesota, will make the final decision after a review of the record which may adopt, reject, or modify the Findings of Fact, Conclusions and Recommendation contained herein. Pursuant to Minn. Stat. § 125.12, subd. 10, the Board of Education must issue a written decision and order. Parties should contact Edward Kroenke, Superintendent, Independent School District No. 38, to ascertain the date and time of the Board meeting at which this Report will be considered and to ascertain the procedure, if any, for filing exceptions with or presenting argument to the Board.

STATEMENT OF ISSUE

Whether the District may place Diane Schwanz, Roberta Ball and Marilyn Norby on unrequested leave of absence due to discontinuance of positions and financial limitations pursuant to Minn. Stat. § 125.12, subd. 6b.

Based upon the record herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Background

1. The District is a school district of the State of Minnesota and its boundaries are entirely within the Red Lake Indian Reservation. Testimony of S. Desjarlait.

2. Diane Schwanz, Roberta Ball and Marilyn Norby are tenured teachers of the District. Ex. 8.

3. Almost all of the District's approximately 1000 pupils are American Indian children. Testimony of S. Desjarlait.

4. On March 29, 1993, the District's Board of Education (the Board) passed a resolution reciting the District's financial difficulties and discontinuing the positions of Project Preserve Teacher/Director, Project Pride Theater, Day Care Teacher/Coordinator and another position not relevant here. The Project Pride position was half-time, the others were full-time. Ex. 20.

5. On March 29, 1993, the Board also passed resolutions proposing that Schwanz, Ball and Norby be placed on unrequested leave of absence (ULA). Ex. 20. They are the teachers holding the three positions that had been discontinued. Because Ball was the Project Pride Theater Teacher, she was proposed to be placed on ULA for one-half time, which would allow her to retain her one-half time English position the following school year.

6. On March 30, 1993, Schwanz, Ball and Norby were served by mail with written notice of the Board's action and copies of the individual resolutions affecting each of them. Exs. 2, 4 and 6. Each notice stated that the teacher was entitled to a hearing on the matter if a request for hearing was made within fourteen days of receipt of the notice.

7. Requests for hearing from Schwanz and Ball were received within fourteen days of the notice.

8. Norby's notice was received at her home on March 31, 1993. On April 12, 1993, Norby mailed a notice to the Board requesting a hearing and sent copies to Barb Garrigan, the Acting Manager of the day care center, and Dennis Grace, the Union President. That notice was never received by the District. On May 6, 1993, Grace gave Edward D. Kroenke, Superintendent of the District, a copy of Norby's request for hearing. Ex. 32; testimony of M. Norby and S. M.

9. On May 3, 1993, Schwanz, Ball and Norby were served with written notices of the hearing. Exs. 1, 3 and 5.

10. The Master Agreement between the District and the teachers bargaining unit, Red Lake Federation of Teachers Local 2007, was signed by the parties December 16, 1991, and does not contain a negotiated plan for the placement of teachers on unrequested leave of absence. The agreement does contain language relating to unrequested leave of absence. However, the language essentially reiterates the provisions of Minn. Stat. § 125.12, subd. 6b, and provides a method for breaking ties in seniority. Ex. 7, Art. XV.

Financial Limitations

11. The District's unreserved general fund balance as of June 30, 1990 was a deficit of \$475,931. Its special revenues funds were in a combined deficit of \$141,945 for a total deficit in operating funds of \$617,876. Ex. 14, p. 7-8; testimony of S. Cobenais.

12. The District's expenditures exceeded revenues by \$937,884 in 1990. The District's auditor found that the Fiscal Year 1990 unreserved deficit in its operating funds of \$617,876 was greater than 2.5% of the Fiscal Year's expenditures, which placed the District in statutory operating debt, as defined in Minn. Stat. § 121.914, in violation of Minn. Stat. § 121.917, subd. 2. Ex. 14, p. 21, Note 9; testimony of S. Cobenais.

13. In FY91, the District was audited by the State Auditor. The District's general fund balance for the Fiscal Year ending June 30, 1991, was a deficit of \$577,727. Special Revenue funds were found to be in a combined deficit of \$825,083 for a total operating fund deficit of \$1,402,810. Ex. 14, p. 6; testimony of S. Cobenais.

14. The State Auditor also noted that the District was in statutory operating debt as defined in Minn. Stat. § 121.914 in violation of Minn. Stat. § 121.917, subd. 2, and stated that the District needed to prepare a plan to eliminate the statutory operating debt. Ex. 15, p. 22; testimony of S. Cobenais.

15. The District, being located on the Red Lake Indian Reservation where most of the land is non-taxable, relies heavily on State aides and Federal Impact Aid for revenue rather than on local property taxes. Local property taxes have only provided between \$15,254.00 and \$21,163.00 for the general and special revenue funds over the last three years. Exs. 14, 15 and 16. The amount of Federal Impact Aid the District receives is based on average daily attendance of the District's students. The attendance rate of District students is very poor, running about 75 percent of enrolled students most of the year and falling as low as 50 percent in the spring. The poor attendance rate has had a negative effect on the District's finances. Testimony of S. Desjarlait and E. Kroenke. The Federal Impact Aid amounts to over \$2 million each year and has been increasing for each of the last three years. Exs. 14, 15 and 16; testimony of S. Cobenais.

16. The District developed a special operating plan to reduce the District's deficit expenditures and submitted it to the Commissioner of Education for approval as required by Minn. Stat. § 121.917, subd. 4.

Stephanie Cobenais, the District's Business Manager, prepared a draft plan that was submitted to the Commissioner of Education on May 12, 1992. Ex. 17. She and Superintendent Kroenke worked with the Department of Education to develop the final three-year plan that was submitted to the Department of Education on August 15, 1992. Ex. 17. The three-year plan involves serious measures to reduce expenditures through staff reductions in all areas, reductions in costs of travel, books and supplies, athletic activities and various programs to operate the District at a "bare bones" level. The final plan included transferring some of the Federal Impact Aid in the general fund to the capital expenditure fund to eliminate the deficit in that fund during the third year of the plan.

17. Under Minn. Stat. § 121.912, subd. 1, school districts are prohibited from permanently transferring money from an operating fund, such as the general fund, to a non-operating fund, such as the capital expenditures fund. However, Minn. Stat. § 121.9121 permits the State Board of Education to authorize a school district to make such a transfer in certain circumstances. It is the belief of the District that the State Board will approve the transfer of the Federal Impact Aid from the general fund to the capital expenditure fund in Fiscal Year 1994 because the statute does not apply to the Federal Impact Aid and because the Department of Education assisted in the development of and has approved the District's three-year plan which includes the transfer of Federal Impact Aid to the capital expenditures fund in Fiscal Year 1994 to eliminate any remaining deficit. Ex. 17; testimony of S. Cobenais.

18. In Fiscal Year 1992, the District was audited by an independent auditor. Ex. 16. The District's general fund balance for the Fiscal Year ending June 30, 1992, was \$143,350.00. Special revenue funds had a combined deficit of \$899,623.00 for a combined total operating fund deficit of \$756,273.00. Ex. 16, ps. 8-9; testimony of S. Cobenais.

19. The Business Manager projects a total fund deficit for all District funds at the end of Fiscal Year 1993 of \$299,513.00 and a total deficit for District funds at the end of Fiscal Year 1994 of \$62,252.00. This projection excludes a planned reserve of \$100,000.00 for teachers' severance pay, but includes the transfer of Federal Impact Aid from the general fund to the capital expenditure fund. Ex. 27; testimony of S. Cobenais.

Discontinuance of Positions

20. On March 15, 1993, the Board directed the administration to make recommendations for budget reductions and discontinuance of programs and positions. Ex. 18B; testimony of E. Kroenke. The administration submitted recommendations in a Memorandum to the Board for the Board's March 29, 1993 meeting. Ex. 19. At the meeting, the Board reviewed the recommendations of the administration. Ex. 20; testimony of E. Kroenke. Among the recommendations for discontinuance of positions were discontinuance of Project Preserve Teacher/Director, Project Pride Theatre 0.5 FTE Teacher and Day Care Coordinator/Teacher. Ex. 19; testimony of E. Kroenke.

21. On March 29, 1993, the Board discontinued the positions held by Roberta Ball (0.5 FTE Project Pride); Diane Schwanz, (Project Preserve); and Marilyn Norby Day Care Teacher/Coordinator, and proposed placing each of the teachers on unrequested leave. Ex. 19, testimony of E. Kroenke.

22. On March 4, 1991, the Board adopted a policy, as permitted by Minn Stat. § 126.501, providing that in placing any teacher on unrequested leave absence, it would retain, wherever possible, American Indian teachers. The language of the policy, in part, states as follows:

"WHEREAS, Minnesota Statute 126.501 permits the Board of Education in placing a teacher on unrequested leave of absence, to retain a probationary teacher or a teacher with less seniority in order to retain an American Indian teacher, notwithstanding the provisions of 125.12, subdivisions 4, 6a, or 6b; 125.17, subdivisions 3 and 11, and other laws or contract provisions,

NOW THEREFORE BE IT RESOLVED, that it shall be the general policy of the District, in placing any teacher or teachers on unrequested leave of absence the District may retain, wherever possible, American Indian teachers pursuant to the above quoted provisions of 125.501." (sic, typographical error in original which should have referred to 126.501). Exs. 10 and 11.

23. The Project Pride and Project Preserve are programs operated by the District which in the past have been funded with discretionary grants from the Blandin Foundation and State of Minnesota discretionary funds. In response to the ongoing financial difficulties, the Board adopted a policy requiring grant programs within the District to be self-supporting. The District does not know whether these grant programs will be refunded for the 93-94 school year and does not feel it can afford to fund them on its own for the next school year. Testimony of S. Cobenais.

Diane Schwanz

24. Schwanz's date of initial employment is September 10, 1979, and her seniority number is 43. During the school year 92-93, Schwanz held an .80 FTE position as Project Preserve Teacher/Coordinator. She also held a .20 FTE position as Indian Teacher/Trainee Coordinator which was not a position discontinued by the Board. Exs. 8, 20.

25. Schwanz is licensed to teach social studies 7-12. Ex. 28.

26. Schwanz is not an American Indian. Testimony of D. Schwanz.

27. Schwanz's salary and fringe benefits for her Project Preserve position in 92-93 was \$35,061, including FICA, TRA and insurance benefits. Board's proposal to place Schwanz on ULA and discontinuing the Project Preserve Teacher/Coordinator position would save the District \$35,061. Ex. 25, testimony of S. Cobenais.

28. Schwanz's Project Preserve Teacher/Coordinator position is funded by a discretionary grant from the Minnesota Department of Education's Indian Post-Secondary Preparation Program. Testimony of D. Schwanz, S. Cobenais.

29. The qualification for the Project Preserve Teacher/Coordinator is a Minnesota teaching license. Ex. 24. Students taking Project Preserve receive general elective credit or Indian studies credit towards graduation. Ex. 3. testimony of S. Desjarlait.

30. Three teachers with licensure in social studies and less seniority than Schwanz are being retained under the District's Indian teacher retention policy. These teachers are Charles Buckanage, Patricia Doro Goodwin and Ray Dreher. Buckanaga and Goodwin are American Indians and are enrolled in the Minnesota Chippewa Tribe. Dreher is an American Indian and is enrolled in the Red Lake Band of Chippewa Indians. All three of these teachers are being retained under the District's Indian Teacher Retention policy. Exs. 8, 9; testimony of E. Kroenke. Schwanz does not object to that policy. Testimony Schwanz.

31. Other than Buckanaga, Goodwin and Dreher, no probationary teacher no other teacher with less seniority than Schwanz is being retained in any field in which Schwanz is licensed. Raymond Brown is licensed in social studies and PE. His seniority date is 8/10/87. He is currently on ULA 2/5 time and teaches PE at the Ponemah Elementary 3/5ths time where he will continue to be assigned next year. Ex. 8; testimony of E. Kroenke.

32. Discontinuance of Schwanz's Project Preserve position will still leave the high school with three full-time social studies teachers and will result in an average size social studies class size of approximately 20 students. See Ex. 33; testimony of S. Desjarlait. Discontinuance of the Project Pride position is not desirable, but is necessary and will not unduly adversely affect the quality of education for the students.

33. Schwanz suggested that the District should realign positions and permit her to displace Leo Soukup, Ron Sandell, Steve Thompson, and the part time Drug Free/Art based position held in 92-93 by M. Schlemper. Schwanz is not licensed in any of the fields in which these teachers are licensed and is not qualified to teach English, Science or Art. Ron Sandell is assigned to PE and has more seniority than D. Schwanz. See Ex. 8; testimony of M. Schlemper. Therefore, none of the realignments suggested by Schwanz are reasonable or legally permissible.

Roberta Ball

34. Ball is licensed in English/Language Arts 7-12 and her seniority date is February 1, 1989. Her seniority number is 70. Ex. 8. No teacher with less seniority than Ball is being retained in any field in which she is licensed except Mark Hendrickson who is licensed in English and Communication Disorders and who is assigned to Special Education/Speech. Ex. 8; testimony of E. Kroenke.

35. In 1992-93, Ball was employed full time by the District with a one-half time assignment to regular English classes and one-half time in Project Pride. The Board discontinued the Project Pride portion of her position and has proposed that she be placed on ULA 0.5 FTE for the Project Pride position next year. Exs. 2, 20. She will continue her half-time English teaching duties.

36. Part of the District's revenue problems relate to the loss of student population and low attendance rates. According to the District's draft operational plan submitted to the Department of Education May 12, 1992, Ex. 20, the District is in a state of crisis in regard to credibility with its public.

and the two most frequent reasons for parents sending their children to other schools are that they feel that discipline is not strict enough to protect their children and that their children do not learn enough at District's schools. The District has attempted to address those problems. Testimony of E. Kroenke. The Project Pride program dealt with those problems in that it intended to deal with problems of suicide, sexual harassment and abuse, drug alcohol abuse, teen pregnancy, violence and lack of self esteem. Testimony of R. Ball. The Project Pride program under the direction of Ball has adapted Illusion Theater's Production of a play entitled "Touch" to incorporate Native American culture and language. The play has been performed throughout the state and in some other areas of the country and has been found to be an effective tool for increasing the confidence of students and improving attendance, as well as for fighting sexual abuse on the Red Lake Reservation. Testimony of S. Desjarlait and J. Roy.

37. Students taking Project Pride taught by Ball receive credit in the general elective area towards graduation unless they have failed a required English course in which case they receive one required English credit. Ex. testimony of S. Desjarlait.

38. Ball's salary and benefits in 1992-93 total \$34,588, including FICA, TRA and insurance benefits. Elimination of her Project Pride position and placing her on ULA 0.5 FTE will save the District \$17,294.00, less the health insurance benefits provided. Ex. 25, testimony of S. Cobenais.

39. Ball is not licensed to teach elementary students in any subject and is not licensed in Art. Exs. 8, 28. She is therefore not qualified to teach the art based Drug Free Schools puppet theatre project. Testimony of M. Schlemper.

40. Discontinuance of the Project Pride position is not desirable, but necessary and will not unduly adversely affect the educational program of the District.

Marilyn Norby

41. Norby is licensed in Pre-Kindergarten (Pre-K). Her seniority date is April 8, 1987, and her seniority number is 66. Ex. 8. The only other teachers licensed to teach Pre-K children with less seniority than Norby are Karen Johnson and Myrna Baird. Ex. 8.

42. Jentz holds licensure in Early Childhood Family Education (ECFE) and is assigned to that field with her primary responsibility being working with parents. Testimony of M. Norby, K. Moen.

43. Baird holds a license in ECFE and is employed as a part-time teacher for 10 hours per week (two evenings). Her responsibility is working with Pre-K children. Ex. 8; testimony of K. Moen.

44. Under rules of the Board of Teaching, a person with Pre-K licensure is not permitted to teach adults while licensure in ECFE entitles the holder to teach both adults and Pre-K children. Therefore, Norby is not qualified for the position held by Jentz. She is, however, qualified for the position held by Baird. Ex. 29.

45. There are no rules or regulations requiring that the day care center operated by the District have a teacher licensed in Pre-K.

46. There has been a significant decline in the number of children in day care program operated by the District for children of teen parent students and the day care program will lose \$26,500.00 in funding for this program next school year. Ex. 21. The day care/teen parent program has been operating at a financial loss with sometimes as few as 3-5 children being cared for per day. There are five day care staff members. Testimony of E. Kroenke and S. Cobenais.

47. Discontinuance of Norby's position and placement of her on ULA will save the District \$28,728 in salary and fringe benefits.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Board and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 125.12 and 14.55.

2. The requests for hearing from Schwanz and Ball were timely filed. Even though the District did not receive Norby's request until May 6, 1993, it was apparently aware of her request for a hearing prior to that point because it issued her notice of hearing on May 3, 1993. Moreover, "service" is normally complete upon mailing and the evidence makes it seem most likely that Norby mailed her appeal in a timely manner. Her appeal was duly served.

3. The notices of hearing were properly served and all other substantial and procedural requirements of law or rule have been fulfilled.

4. The Master Agreement between the District and the Red Lake Federation of Teachers currently in effect does not contain a negotiated plan for the placement of teachers on ULA.

5. Pursuant to Minn. Stat. § 125.12, subd. 6b, the Board may place on ULA, without pay or fringe benefits, as many teachers as may be necessary because of discontinuance of position, lack of pupils or financial limitations. Minn. Stat. § 125.12, subd. 6b, provides that teachers who have acquired continuing contract rights must be placed on ULA in fields in which they are licensed in the inverse order in which they were employed by the District.

6. Minn. Stat. § 126.501 provides that the school board of a district in which there are at least ten American Indian children enrolled may place a senior teacher on ULA in order to retain an American Indian teacher, notwithstanding Minn. Stat. § 125.12, subd. 6b, or any provision of a contract entered into after May 7, 1988.

7. The District may retain less senior American Indian teachers while placing more senior non-Indian teachers on unrequested leave pursuant to Minn. Stat. § 126.501.

8. The District has financial limitations which warrant the discontinuance of the positions at issue in this proceeding.

9. The District has discontinued the positions of Project Pride, Pride Theatre and Day Care Teacher/Coordinator which warrant the placement of these teachers on ULA, except that Norby should be offered the 10 hour position held by Myrna Baird.

10. The discontinuance of positions will not unduly adversely affect the quality of education of the students and will result in a reduction in expenditures for the District.

11. The proposed placement of Schwanz on ULA from her position as Project Preserve teacher is authorized pursuant to Minn. Stat. § 125.12, subd. 6b.

12. The proposed placement of Ball on ULA from her position as Pride Theatre Teacher is authorized pursuant to Minn. Stat. § 125.12, subd. 6b.

13. The proposed placement of Norby on ULA from her position as Day Care Teacher/Coordinator is authorized by Minn. Stat. § 125.12, subd. 6b, except that she should be allowed to bump into the 10 hour teaching position held by Myrna Baird.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Board of Education of Independent School District No. 38, Red Lake, Minnesota, affirm its decision to place Diane Schwanz on unrequested leave of absence from her position as Project Preservation teacher and to place Roberta Ball on unrequested leave of absence from her 0.5 FTE position as Pride Theatre teacher and Marilyn Norby on unrequested leave of absence from her position as Day Care Teacher/Coordinator except that Norby be allowed to bump into the 10 hour teaching position held by Myrna Baird.

Dated this ____ day of May, 1993.

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Ronald L. Rasmussen, RPR
Northland Reporting Agency
P.O. Box 89
Grand Rapids, MN 55744
(No transcript)

NOTICE

It is hereby requested that the Board of Education serve a copy of its decision upon the Administrative Law Judge by U.S. mail.