

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF EDUCATION
SPECIAL SCHOOL DISTRICT NO. 1

In Re the Discharge of Certain Minneapolis
Technical College Tenured Teachers for
Discontinuance of Position or Lack of
Pupils

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick, duly appointed as an independent hearing examiner for the Board of Education, Special School District No. 1, Minneapolis, Minnesota, on May 31 and June 19, 1995, at the Educational Service Center, Conference Room 1, 807 Broadway Street N.E., Minneapolis, Minnesota. The record closed on June 21, 1995, upon receipt of the briefs of the parties.

Timothy J. Pawlenty, Attorney at Law, Rider, Bennett, Egan & Arundel, 2000 Metropolitan Centre, 333 South Seventh Street, Minneapolis, Minnesota 55402, appeared on behalf of Special School District No. 1 (the District). Roger A. Peterson, Attorney at Law, Peterson, Engberg & Peterson, 700 Title Insurance Building, 400 Second Avenue South, Minneapolis, Minnesota 55401, and Norman A. Moen, Business Agent, Minneapolis Federation of Teachers, Local 59, AFT-AFL-CIO, 1300 Plymouth Avenue North, Minneapolis, Minnesota 55411, appeared on behalf of the teachers who are the subject of this proceeding.

This report is a recommendation, not a final decision. The Board of Education, Special School District No. 1, Minneapolis, Minnesota, (the Board) 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. § 125.17, subd. 8, the Board must issue a written decision. Parties should contact Peter C. Hutchinson, Superintendent of Schools, to ascertain the date and time of the Board meeting at which this report will be considered and to ascertain the procedure for filing exceptions with and presenting argument to the Board.

STATEMENT OF ISSUE

Whether the District may discharge 22 tenured teachers at the Minneapolis Technical College due to discontinuance of position or lack of pupils pursuant to Minn. Stat. § 125.17, subd. 4(5).

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

FINDINGS OF FACT

Procedural Background

1. This matter involves the discharge of 22 tenured teachers from the Minneapolis Technical College for budgetary reasons. The Minneapolis Technical College (MTC) is operated by the District. The teachers recommended for discharge and who are the subject of this proceeding are:

Michael Boyce	Joanne Larson	Gary Strom
John Cina	Sheldon Meile	Theresa Wickstrom
Daniel Erickson	Diane Nelson	Sharon Wold
Richard Ganci	Thomas T. Nelson	William A. Lowe
Phil Gatto	Anthony Otto	Wendi Moss Jarson
Jerry Gulleckson	Pat Reinhart	Clifford Oman
Thomas Hiltner	Barbara Roche	
David Hollenback	Linda Starks	

All of the foregoing are tenured teachers at the MTC except Mr. Lowe. His original date of hire was October 2, 1992, and he has yet to complete his three-year probation. However, because notice of discharge was not provided to him before June 1, 1995, the District gave him notice and the right to a hearing as if he were tenured.

Tr. 153.

2. On May 9, 1995, the Board passed a resolution based upon the recommendation of the Superintendent of Schools finding that financial limitations and/or the discontinuance of positions for the 1995-96 school year required a reduction of licensed positions and discontinuing 18.5 positions at the MTC effective June 28, 1995. Those positions were:

Accounting - MTC	1.0 position
Automotive Technology - MTC	1.0 position
Aviation Mechanics - MTC	5.0 positions
Construction Electricity - MTC	1.0 position
Culinary Arts - MTC	1.0 position
Graphic Arts - MTC	1.5 position
Electronics - MTC	1.0 position
Jewelry - MTC	1.0 position
Practical Business Management - MTC	1.0 position
Practical Nursing - MTC	3.0 position
Welding - MTC	1.0 position

District Ex. 1.

3. Also on May 9, 1995, the Board authorized the Chairperson of the Board to appoint a hearing examiner to hold a hearing concerning the discharge of the 18.5 tenured teachers and establish a date for the hearing. District Ex. 2.

4. Also on May 9, 1995, the Superintendent of Schools filed with the Clerk of the Board, in accordance with Minn. Stat. § 125.17, subd. 5, the Charges and Notice of

Recommendation for Discharge of the following teachers upon the grounds of discontinuance of position, financial limitations and lack of pupils:

Michael Boyce	Joanne Larson	Gary Strom
John Cina	Sheldon Meile	Theresa Wickstrom
Daniel Erickson	Diane Nelson	Sharon Wold
Richard Ganci	Thomas T. Nelson	
Phil Gatto	Anthony Otto	
Jerry Gulleckson	Pat Reinhart	
Thomas Hiltner	Barbara Roche	
David Hollenback	Linda Starks	

District Ex. 3.

5. By letter of May 11, 1995, the Chairperson of the Board appointed the undersigned Administrative Law Judge to act as hearing examiner on May 31, 1995, in the matter of the discharge of the 19 tenured teachers listed above. By letters of May 11, 1995, sent certified mail, return receipt requested, the 19 tenured teachers listed above were notified of the filing of charges proposing their discharge effective June 28, 1995, on the grounds of discontinuance of position, financial limitations or lack of pupils. The letter also provided notice of the hearing and of the right to be represented by counsel or any other person of the teachers' choice, to call and subpoena witnesses, to question witnesses called by the administration, and to have the hearing open or closed to the public. Dist. Ex. 5.

6. The hearing regarding the discharge of the 19 tenured teachers commenced May 31, 1995, and was recessed to June 19, 1995, by agreement of the parties. It was further agreed between the District and the union that a hearing involving three additional teachers to be discharged could be combined with the recessed hearing on June 19, 1995.

7. On May 30, 1995, the Board passed a resolution based upon the recommendation of the Superintendent of Schools finding that financial limitations and/or the discontinuance of positions for the 1995-96 school year required a reduction of licensed positions and discontinued the following 3.5 positions at the MTC effective June 30, 1995:

Transition - MTC	.5 position
Small Business Management - MTC	1.0 position
Manager of Community Programs	
Family Community Services	1.0 position
Program Assistant, Adult Basic Education Program	
Family Community Services	1.0 position

Jarson & Oman Ex. 1.

8. Also on May 30, 1995, the Board passed a resolution authorizing the Chairperson of the Board to appoint a hearing examiner to hold a hearing concerning the charge and recommendation for discharge of 1.5 tenured teachers and 2.0 administrators and establish a date for the hearing. Jarson & Oman Ex. 2.

9. On May 30, 1995, the Superintendent of Schools filed Charges and Recommendation for Discharge with the Board recommending the discharge of Wendi Moss Jarson and Clifford Oman, tenured teachers at the MTC, and two administrators, effective June 30, 1995, on the grounds of discontinuance of position, financial limitations or lack of pupils.¹¹ Jarson & Oman Ex. 3.

10. By letters of June 1, 1995, the District notified Mr. Oman and Ms. Moss Jarson of the filing of charges proposing their discharges on the grounds of discontinuance of position or lack of pupils effective June 28, 1995, and of their rights to a hearing, to be represented by counsel or any other person of their choice, to call and subpoena witnesses, to question witnesses called by the administration and to have the hearing open or closed to the public. Jarson & Oman Exs. 5 and 6.

11. On June 2, 1995, the Board passed a resolution based upon the recommendation of the Superintendent of Schools finding that financial limitations and/or the discontinuance of positions for the 1995-96 school year required a reduction of licensed positions and discontinued a Graphic Arts-MTC .5 position effective June 28, 1995. Lowe Ex. 1.

12. Also on June 2, 1995, the Board passed a resolution authorizing the Chairperson of the Board to appoint a hearing examiner to conduct a hearing concerning the discharge of the .5 tenured teacher and establish a date for the hearing. Lowe Ex. 2.

13. Also on June 2, 1995, the Superintendent of Schools filed Charges and Notice of Recommendation for Discharge of Tim Lowe (whose full name is William A. Lowe) on the grounds of discontinuance of position, financial limitations and lack of pupils. Lowe Ex. 3.

14. By letter of June 2, 1995, the District notified Mr. Lowe of the charges having been filed proposing his discharge effective June 28, 1995, on the grounds of discontinuance of position or lack of pupils and notified him of the hearing on June 19, 1995, and of his rights. Lowe Ex. 5.

15. By letter of June 12, 1995, the Chairperson of the Board appointed the undersigned Administrative Law Judge to act as hearing examiner on June 19, 1995, at hearings regarding the discharge of the three tenured teachers in combination with the recessed hearing regarding the 19 tenured teachers. Jarson & Oman Ex. 4, Lowe Ex. 4.

Financial Conditions

16. Dist. Ex. 6 is a line graph depicting enrollment at the MTC by quarter from fall 1991 to spring 1995. Enrollment was generally rising from 1991 until it peaked in winter 1994, and since that time has been steadily and gradually declining. For the fiscal year 1994, the MTC had enrollment of 1,884.46 FYE (full year equivalents). For fiscal year 1995, the MTC had projected enrollment of 1,745.00 FYE, a decline of 139.46 FYE. Tr. 29-30; Dist. Ex. 6, p. 1. An instructional funding comparison for the MTC was prepared by Peter Stenberg, the school's Manager of Business Affairs, Dist. Ex. 6, p. 2, for the fiscal year 1996. It shows that the MTC expects to receive net state aid of \$6,829,389.00, less an estimated adjustment for the final appropriation made by the Legislature of \$254,723.00, and less a tuition expectation adjustment of \$3,679,267.00, for a net aid amount of \$2,893,599.00. Tr. 38. In addition, the school expects to receive tuition revenue in the amount of \$3,279,907.00, bringing the net funding expected for FY96 to \$6,175,306.00. That is \$666,850.00 less than the monies received to operate

instructional programs in 1995. Tr. 39; Dist. Ex. 6, p. 2. In addition, the MTC expects expenditure increases due to inflationary pressures and salary adjustments. Tr. 39.

17. Dist. Ex. 6, p. 3, is a FY96 budget projection for the MTC's instructional program. It is based on an assumption that the net funding will be the \$6,175,306.00 projected for FY96 on Dist. Ex. 6, p. 2, and staffing at the existing FY95 levels. Based on such assumptions, the MTC projects expenses for staff, supplies and contract services of \$6,167,964.00, summer school expenses of \$297,375.00 and staff support allocations of \$828,702.00 for a total expenditures of \$7,294,041.00. That would create a budget deficit of \$1,118,734.00. The budget assumes an inflation rate of 1.9 percent, a conservative figure. Tr. 39-41.

18. Dist. Ex. 6, p. 4, shows the FY96 budget analysis based on reducing staffing by 18.5 positions and adjusting supplies and contract service expenses accordingly. (In at least one case, closing a program will actually increase expenditures for the fiscal year in that program.) That projection indicates that expenses for staff, supplies and contract services would be reduced to \$5,044,037.00 and result in a net budget surplus of \$5,193.00. Tr. 41-42, 45, and 60-61.

19. There are two other department budgets at MTC in addition to the instruction budget. They are student services and instructional institutional support, which includes administration. It is the school's intent that those department budgets will be balanced with the funding formula allocations received. The current indication is that the two areas will each be reduced approximately \$100,000.00. Tr. 73.

20. Sarah Jahnke, Vice President for Academic Affairs at the MTC, is responsible for the curriculum and instruction function of the college. She played a major role in determining which programs and positions would be discontinued in response to the budget shortfall. Tr. 77-78, 207-208.

21. Ms. Jahnke reviewed enrollment data, including graphs prepared by Mr. Stenberg such as District Exhibit 6, page 1, financial information from Mr. Stenberg, and program information available to her, including four program reviews conducted by the State Board of Technical Colleges. Tr. 206-207. Those four program reviews were in Accounting Careers, Aviation Mechanics, Graphic Arts, and Welding. Based upon the reviews, the MTC recommended to the State Board of Technical Colleges that Accounting Careers be retained, that Aviation Mechanics be reduced, and that the Welding and Graphic Arts programs be closed. The State Board ratified those determinations. Tr. 84-88. In late April or early May, Ms. Jahnke went through a process of examining each of the programs to see whether there was stable or decreasing enrollment. If there was, she looked at the programs FYE/FTE ratio, which compares enrollment to staff. Using 18:1 as a benchmark, if a program had an FYE/FTE ratio below the benchmark, it was designated for discontinuance of positions and layoff. Other factors were also taken into account. Tr. 92-93, 230-232, Dist. Ex. 9.

22. Ms. Jahnke prepared a list of the teachers to be laid off, Dist. Ex. 7, and discussed it with the administrative team at the MTC. The team agreed to her recommendations as shown on Dist. Ex. 7 and informed Dan Loewenson, the District's Director of Human Resources, of their determinations. Tr. 207-208.

23. Mr. Loewenson has the ultimate responsibility for reviewing teacher layoffs by reviewing their licensure and seniority and determining whether any realignment, bumping, or reassignment scenarios exist that would avoid the layoff of each teacher. He did so in the case of

all the teachers involved in this matter. Tr. 114-119. Each of the teachers proposed for discharge in this matter are the lowest in seniority number within their programs, except in those cases where there are probationary instructors who are also being laid off. In each case, the licensure held by the teachers has been examined to determine the possibilities of realignment, bumping or reassignment and, where such opportunities exist, the teachers have been advised of those opportunities. Tr. 119-129, 157-159, and 165-170.

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. §§ 125.17 and 14.55. Pursuant to Minn. Stat. § 125.17, subd. 4, the Board may discharge teachers on the grounds of discontinuance of position or lack of pupils. Minn. Stat. § 125.17, subd. 11(a), requires that any teacher whose services are terminated on account of discontinuance of position or lack of pupils shall receive first consideration for other positions in the District for which that teacher is qualified and that teacher shall be discontinued in any department in the inverse order in which they were employed.

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

3. The charges against the teachers in this matter were properly executed and filed with the Secretary of the Clerk of the Board, the Notices of Hearing were properly served upon all the teachers, and all other substantive and procedural requirements of Minn. Stat. § 125.17, subs. 4, 5, 6 and 7, have been fulfilled.

4. All requirements for the discharge of the teachers for discontinuance of position or lack of pupils have been fulfilled and the teachers may be discharged.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Board of Education of Special School District No. 1, Minneapolis, Minnesota, discontinue the positions identified in the District's exhibits and discharge the teachers identified above.

Dated this ____ of June, 1995

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Richard K. Huff & Associates
Two Volumes

NOTICE

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

MEMORANDUM

In its post-hearing submission, the Union stated that the administration alleged on the first day of hearing that the "budget shortfall" of about \$1 million was the primary reason for the layoff of 18 tenured teachers, but then added two more tenured teachers and a probationary teacher when the hearing resumed. In fact, the three additional teachers were all included in the original considerations by the MTC and were listed in Ms. Jahnke's Memo of May 23, 1995, Dist. Ex. 7. Tim (William) Lowe was listed under Graphic Arts, Clifford (Jack) Oman was listed under Small Business Management, and Wendi Moss Jarson was listed under non-instructor layoffs because she was on a sabbatical leave from the MTC during the 94-95 school year. Thus, the fiscal justification for discontinuing the positions included all the teachers involved in this matter since the original decisions were made by the MTC.

The Union has pointed out in its cross-examination of the District's witnesses that some subjective judgments had to be made in reducing certain programs and that purely objective criteria were not always followed. For example, some programs, such as Architectural Technology, were less than the 18:1 benchmark, but were not reduced. Ms. Jahnke's explanations for such decisions show that they were made in consideration of factors peculiar to such programs. Exercising such judgment is appropriate.

The Union also objected to the fact that no efforts were made to involve teachers in the early decision-making level, even though the Board has a policy of moving toward shared decision-making at its schools. That is a matter the Board may wish to consider, but it is not a legal requirement in this proceeding. On the contrary, in this proceeding, it appears that all the requirements of Minn. Stat. § 125.17 have been fulfilled by the administration.

S.M.M.

June 23, 1995

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RE: In Re the Discharge of Certain Minneapolis Technical College Tenured Teachers
for Discontinuance of Position or Lack of Pupils; OAH Docket No. 69-2104-
9715-2

Dear Parties:

Enclosed and served upon you by FAX and by U.S. Mail is the Administrative Law
Judge's Findings of Fact, Conclusions and Recommendation in the above-entitled matter.

Sincerely,

STEVE M. MIHALCHICK
Administrative Law Judge

Telephone: 612/349-2544

SMM:llc

^[1] The administrators are no longer involved in this proceeding. It was noted on the record that George Ploetz
waived his right to a hearing. No information regarding the other administrator was made part of the record.