

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Michael Wigley and Robert Jackson,
Complainants,

vs.

Orono Public Schools, ISD 278, Jack
Veach, Dick Lewis, Martha Van de Ven,
John Malone, Michael Bash, Michele
Kunz, Karen Orcutt, and Orono Kids
Matter,

Respondents.

**ORDER ON MOTIONS FOR
A PROTECTIVE ORDER AND
TO QUASH SUBPOENAS**

The above matter is pending before Presiding Administrative Law Judge Kathleen Sheehy on motions by Respondent and the School District for a protective order and to quash subpoenas served by Complainants to compel the appearance of witnesses and production of documents at the hearing scheduled for July 9, 2008.

Robert J. Hennessey, Esq., Lindquist & Vennum, 4200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402-2274, appeared for Orono Kids Matter (Respondent).

Michelle D. Kenney, Esq., and Stephen M. Knutson, Esq., Knutson, Flynn & Deans, P.A., 1155 Centre Pointe Drive, Suite 10, Mendota Heights, MN 55120, appeared for the Orono Public Schools, its School Board, and Superintendent (School District).

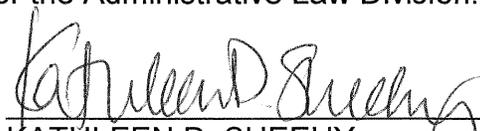
Erick G. Kaardal, Esq., and John E. Grzybek, Legal Assistant, Mohrman & Kaardal, P.A., 33 South Sixth Street, Suite 4100, Minneapolis, MN 55402, appeared for Michael Wigley and Robert Jackson (Complainants).

Based on the file, record and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Presiding Administrative Law Judge makes the following:

ORDER

1. Respondent's request for a protective order with respect to written discovery served by Complainants on June 6, 2008, is **GRANTED**, and no response to these discovery requests is required.
2. Respondent's motion to quash Complainants' subpoena is **GRANTED**, except that Respondent shall appear at the July 9, 2008, evidentiary hearing and bring copies of every campaign finance report filed in connection with the February 12, 2008, ballot question.
3. Respondent's request for attorney's fees is **DENIED**.
4. The School District's motion to quash Complainants' subpoenas is **GRANTED**.
5. Any further requests for subpoenas by any party shall be submitted to the Presiding Administrative Law Judge for approval on the subpoena request form provided on the OAH website for the Administrative Law Division.

Dated: July 3, 2008.


KATHLEEN D. SHEEHY
Presiding Administrative Law Judge

MEMORANDUM

On June 6, 2008, counsel for Complainants served interrogatories, document requests, and requests for admissions on the Respondent.¹ The Respondent objected to the discovery requests. On June 16, 2008, Mr. John Grzybek, a legal assistant with the law firm representing the Complainants, contacted the Office of Administrative Hearings to determine how to obtain a subpoena. Mr. Grzybek was advised to use the subpoena request form for the Administrative Law Division located on the OAH website.² Notwithstanding this advice, the Complainants obtained subpoenas from the Workers' Compensation Division of the OAH. These subpoenas are available to parties in workers' compensation cases pursuant to Minn. Stat. § 176.351, subd. 2 (2006), and the rules governing workers' compensation litigation, specifically Minn. R. 1420.2700 (2007). They are obtained by calling the Workers' Compensation Division directly, and they are issued by the Workers' Compensation Division pre-signed by the Chief Administrative Law Judge.

On June 20, 2008, the Complainant served on the Respondent a subpoena obtained from the Workers Compensation division of the Office of Administrative Hearings. The subpoena demands the appearance of "Orono Kids Matter" at the July 9,

¹ Ex. A to Respondent's June 26, 2008, correspondence. (Counsel for Complainants cited "APA 1400.6700, Subp. 2" as authority for his discovery requests.)

² There is no subpoena request form for the Workers' Compensation Division on the OAH website.

2008, hearing, and it requests essentially the same documents sought in Complainants' original demand for production of documents. On or about June 20, 2008, the Complainants also served subpoenas obtained from the Workers' Compensation division of the OAH on Neal Lawson, Assistant Superintendent for the Orono Public Schools, and Orono Public School Board members Jack Veach, Michael Bash, and John Malone, to appear and testify at the evidentiary hearing on July 9, 2008.

By letters filed June 27, 2008, the Respondent and the School District moved for a protective order and to quash Complainants' subpoenas. Respondent also seeks reimbursement of attorneys' fees incurred in responding to Complainants' discovery requests.

Written Discovery Requests Served on Respondent

The Administrative Law Judge advised the parties in the June 5, 2008, Prehearing Order that proceedings on complaints filed under Minn. Stat. § 211B.32 are not contested cases within the meaning of chapter 14 and are not otherwise governed by chapter 14.³ The Administrative Law Judge further noted that the Fair Campaign Practices Act envisions an expedited process for resolution of complaints and, as a result, the discovery procedures available to parties in contested case proceedings are not available to parties in these cases.⁴ Under the Act, a complainant must allege a prima facie violation when the complaint is filed. There is no authority within the Fair Campaign Practices Act that would permit the use of the above discovery procedures prior to a hearing.

Accordingly, the Respondent's request for a protective order with regard to written discovery requests served by Mr. Kaardal on June 6, 2008, is granted.⁵ The Respondent is not required to respond to the Complainants' interrogatories, requests for admissions, or request for production of documents.

Subpoena Served on Respondent Orono Kids Matter

Although campaign complaints are not contested cases within the meaning of chapter 14, there is authority to permit the issuance of a subpoena in campaign complaint matters. Under Minn. Stat. § 14.51, the Chief Administrative Law Judge may issue a subpoena for the attendance of a witness or the production of documents that are material "to any matter being heard by the Office of Administrative Hearings."⁶ Based on this authority, the Office has on prior occasions issued subpoenas in campaign complaint matters requiring the attendance of witnesses and, in some cases, requiring witnesses to bring with them relevant documents to the hearing.⁷

³ Minn. Stat. § 211B.36, subd. 5 (complaint proceedings are not contested cases within the meaning of chapter 14, even though a party aggrieved by a final decision is entitled to judicial review as provided in Minn. Stat. §§ 14.63 to 14.69).

⁴ See Prehearing Order at 4.

⁵ Ex. A to Respondent's June 26, 2008, correspondence.

⁶ Minn. Stat. § 14.51 (Emphasis supplied).

⁷ See *Young and Lehmann v. Stenglein and Stenglein Volunteer Committee*, OAH File No. 12-6326-17493-CV (Order dated October 4, 2006).

As the Complainants were advised, the proper procedure for obtaining a subpoena requiring the attendance of a witness or the production of documents at the hearing is to make a written request for a subpoena using the "Subpoena Request Form," which is located on the OAH website for the Administrative Law Division. The form requires the party requesting the subpoena to identify the relevancy of the testimony or document sought, and the requesting party must provide a copy of the request form to other parties. Upon approval by the Administrative Law Judge, the subpoenas are issued to the requesting party.

The Workers' Compensation subpoena the Complainants served on the Respondent on June 20, 2008, without the approval of the Administrative Law Judge, seeks the production of the following documents, among others:

- Each and every receipt supporting an expenditure by Orono Kids Matter related to the February 12, 2008, ballot question.
- Each and every communication between any person associated with Orono Kids Matter and the Orono School District related to the February 12, 2008 ballot question.
- Each and every document related to the preparation and production of the DVD identified and titled "2007-2008 Blue Ribbon Facilities Task Force School Funding and the Public Trust."
- Each and every document communication or document [sic] that reflects, references or relates to "anti-progress group or groups."
- Each and every document that reflects, references, or relates to the statement "the anti-progress group is again intentionally trying to deceive voters."
- Each and every document that reflects, references, or relates to the "No group."
- Each and every document relating to the organization of what has been identified as "informal neighborhood coffee sessions" as identified in a Star Tribune article dated on or about January 23, 2008 concerning the February 12, 2008 ballot question referendum.
- Each and every communication you sent to or received from Orono School District employees regarding the February 12, 2008 ballot question or its campaign.

The only issue remaining for hearing in this matter is whether Respondent received and failed to report contributions from the School District in connection with the ballot question. Specifically, the Complaint alleged that the school district provided Orono Kids Matter with mailing lists, blank disks for the reproduction of a DVD promoting the referendum, and possibly assistance from the school district's communications director in the creation of the DVD. It further alleged that the

Respondent improperly failed to report any of these in-kind contributions on its campaign financial reports.

The subpoena served by the Complainants appears to be directed predominantly at claims that have been dismissed. The Complainants failed to seek any documents specific to the remaining claims regarding the reporting of the above contributions, except for the request to bring campaign finance reports filed by Respondent in connection with the February 12, 2008, ballot question. The Administrative Law Judge concludes that the scope of the remaining documents requested in the subpoena is overbroad and irrelevant to the issue before the panel in this matter, which is whether the Respondent received and failed to properly report the contributions described above. Respondent's request to quash the subpoena as it relates to the documents sought is granted, except that Respondent shall appear at the hearing and bring copies of every campaign finance report filed in connection with the February 12, 2008, ballot question.

Subpoena Served on the Orono School District and Board Members

The Complainants also served subpoenas obtained from the Workers' Compensation division on Neal Lawson, Assistant Superintendent, and School Board members Jack Veach, Michael Bash, and John Malone, requiring them to appear and testify at the evidentiary hearing on July 9, 2008. By letter dated June 27, 2008, counsel for the School District moved to quash the subpoenas, arguing that the Workers' Compensation subpoena has no force or effect in the campaign practices complaint proceeding, the statutory process does not provide for the subpoena of witnesses, and the remaining allegation against Orono Kids Matter does not involve the School District.

The School District's motion to quash the subpoenas directed to Neal Lawson, Jack Veach, Michael Bash and John Malone is granted. The issue remaining for hearing in this matter is whether Respondent received and failed to report specific contributions from the School District. The Complainants have failed to establish that these persons have any relevant knowledge of the alleged contributions at issue in this case. Instead, they argue generally that discovery must be allowed or they will be deprived of their constitutional rights to due process and equal protection. They fail, however, to cite to any authority that establishes a constitutional right to conduct discovery in this matter.⁸

If the Complainants can identify a School District employee or member of the School Board who has specific knowledge of the issues set for hearing, they may submit a subpoena request form to the Presiding Administrative Law Judge. They must describe why they believe any potential witness has relevant knowledge of the facts at issue. A boiler-plate allegation that a witness is expected to give testimony "related to

⁸ The Minnesota Supreme Court has adopted the majority view that there is no due process right to even limited discovery in an administrative proceeding. See *Waller v. Powers Department Store*, 343 N.W. 2d 655, 657 (Minn. 1984). There, the Court issued a writ of prohibition to preclude the enforcement of a district court order requiring discovery in an administrative proceeding commenced by the Minneapolis Department of Civil Rights.

the actual and in-kind contributions of Board members and directions given to Orono District staff and others to cooperate with Orono Kids Matter – the “Vote Yes” Group, and [his or her] contributions reflecting or resulting in actual or in-kind contributions not reported by Orono Kids Matter as required under Minnesota campaign finance laws” is insufficient.⁹

Respondent’s Motion for Attorney’s Fees

Counsel for Respondent Orono Kids Matter requests entry of an order in the amount equal to the attorneys’ fees incurred in responding to Complainants’ discovery requests and subpoenas. The Complainants did improperly obtain and serve subpoenas obtained from the Workers’ Compensation division; but the Fair Campaign Practices Act permits an award of attorney’s fees only where the Administrative Law Judge determines the filed complaint was frivolous.¹⁰ The Respondent’s request for attorney’s fees is denied at this time.

K.D.S.

⁹ This is the language Complainants used to describe the expected testimony of nine different school district witnesses on its Witness List, filed June 2, 2008.

¹⁰ Minn. Stat. § 211B.36, subd. 3.



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

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July 3, 2008

By Fax and U.S. Mail

All Parties on Attached Service List

Re: *Michael Wigley and Robert Jackson v. Orono Public Schools, et al*
OAH Docket No. 3-6326-19653-CV

Dear Parties:

Enclosed please find the Order on Motions for a Protective Order and to Quash Subpoenas.

Sincerely,

A handwritten signature in cursive script that reads "Kathleen D. Sheehy".

KATHLEEN D. SHEEHY
Administrative Law Judge
Telephone: 651-361-7848

Encl.

SERVICE LIST AS OF JUNE 30, 2008

In the Matter of Michael Wigley and Robert Jackson v. Orono Public Schools, ISD 278, Jack Veach, Dick Lewis, Martha Van de Ven, John Malone, Michael Bash, Michele Kunz, Karen Orcutt, and Orono Kids Matter, OAH Docket No. 3-6326-19653-CV

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**Office of
Administrative
Hearings**

Fax

To: Erick G. Kaardal
Robert J. Hennessey
Michelle D. Kenney

From: Kathleen D. Sheehy

Fax: 612-341-1076
612-371-3211
651-225-0600

Date: July 3, 2008

Pages: 9

Phone: 651-361-7848

Re: In the Matter of Michael Wigley et al vs.
Orono Public Schools et al
OAH Docket No. 3-6326-19653-CV

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Comments:

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Fax

To: Erick G. Kaardal
Robert J. Hennessey
Michelle D. Kenney
From: Kathleen D. Sheehy

Fax: 612-341-1076
612-371-3211
651-225-0600
Date: July 3, 2008

Pages: 9
Phone: 651-361-7848

Re: In the Matter of Michael Wigley et al vs.
Orono Public Schools et al
OAH Docket No. 3-6326-19653-CV
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Fax

To: Erick G. Kaardal
Robert J. Hennessey
Michelle D. Kenney

From: Kathleen D. Sheehy

Fax: 612-341-1076
612-371-3211
651-225-0600

Date: July 3, 2008

Pages: 9

Phone: 651-361-7848

Re: In the Matter of Michael Wigley et al vs.
Orono Public Schools et al
OAH Docket No. 3-6326-19653-CV

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Fax

To: Erick G. Kaardal
Robert J. Hennessey
Michelle D. Kenney

From: Kathleen D. Sheehy

Fax: 612-341-1076
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651-225-0600

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