IOWA STATE BOARD
OF EDUCATION
(Cite as 5 D.o.E. App. Dec. 296)

In re Ronald E. Thompson	:	
Iowa State Education Association, Appellant,	:	DECISION
v.	:	RULING ON APPELLEE'S SPECIAL APPEARANCE
Plainfield Community School District, Appellee.	:	[Admin. Doc. #930]

Appellee Plainfield Community School District [hereafter the District], through a Special Appearance, moves to dismiss the appeal filed in this case for lack of jurisdiction. A hearing on the matter was held by telephone on June 16, 1987, between counsel for the Appellant, Mr. James L. Sayre of Sayre & Gribble, P.C., Des Moines; counsel for the District, Mr. Gaylen V. Hassman, Engelbrecht, Ackerman & Hassman, Waverly; and the presiding officer, Dr. Robert D. Benton, director of the Iowa Department of Education. Briefs were filed by both parties.

The jurisdictional facts of this case began when Mr. Sayre wrote a letter to the board of directors [hereafter the Board] of the District on February 10, 1987, on behalf of Mr. Sayre's client, Donna Head, a teacher employed by the Board. The letter sought the costs of defending Ms. Head before the Iowa Professional Teaching Practices Commission [Commission] in a complaint filed against her by district parents.

The Board received the letter and took up the issue of Mr. Sayre's request at its next regular meeting on March 9, 1987. It is unknown whether the issue was placed on the agenda. Immediately prior to taking up the issue in discussion, the Board recessed for twenty-two minutes. Following the recess, the Board voted unanimously to go into closed session "to discuss matters that might lead to possible litigation." The directors remained in closed session for approximately seven minutes. When they emerged, the only item of business they took up was "[a] request . . . made by a non-board member for legal assistance." Adjournment came thirteen minutes later. According to the minutes of the board meeting, no motion was made for or against paying the costs of Ms. Head's defense before the Commission.

Thereafter, on March 11, the Board's attorney, Mr. Hassman, wrote to Mr. Sayre regarding the Board's action:

> The Plainfield School Board has asked me to respond to your letter of February 10, 1987 to the school board President relating to the professional teaching practices complaint pending against Donna M. Head.

> Your demand contained in your February 10 letter was brought to the full school board's attention at their last regular meeting.
>
> The board reviewed and considered the situation, the proposal, and the applicable law and they declined to provide the cost of defense.
>
> Thank you for your attention to this matter.

Appellant's Exhibit 4.

We are, therefore, faced with a single issue, argued fully and vigorously by both parties in briefs and in the telephone hearing: Whether the absence of a vote on an issue within a school board's discretion ousts the state board of education of jurisdiction over an appeal timely filed from the board's actions because it does not constitute a "decision" within the meaning of Iowa Code section 290.1? Stated in the alternative, did the Board in this case make a "decision" without a formal vote?

Counsel for the parties have supplied us with various legal theories and citations of authority. Appellant argues that action by a school board is akin to action by an administrative agency; that Iowa Code section 17A.2(9) clearly provides for judicial review of "inaction" by an agency; therefore, inaction by a school board is included by analogy in the term "decision" in Iowa Code section 290.1, although the terminology is not used. Further, Appellant forcefully asserts that if a vote must be taken before a "decision" can exist, the spirit of the law would be frustrated. In effect, a board can avoid having its actions reviewed by simply discussing issues and never taking formal action.

Appellee contends that the exercise of jurisdiction in this case, where no "decision" was reached, would be contrary to law because the term implies some form of adjudication, decision-making, or deliberative process resulting in a determination, which the Board argues was lacking here.[1] Appellee also asserts of importance is the fact that the Appellant's remedies are not foreclosed merely because the 290 appeal process is not available.

Neither party has come forward with citations of Iowa authority with regard to either the intent of the legislature or judicial interpretations

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[1] This is argued despite the existence of Exhibit 4, wherein the Board's counsel stated that deliberation occurred resulting in a denial of Appellant's request for financial assistance for Ms. Head's defense. The official minutes of the Board should, we think, take precedence over a contradictory statement made by one who was not in attendance at the board meeting.

thereof in enacting Iowa Code chapter 290. The appeals from local board decisions provision has existed in Iowa laws for over a century. See Iowa Code § 2133 (1860); Iowa Code § 4298 (1939). The process formerly involved an intermediate appeal to the county superintendent, id., but the avenue of redress has remained virtually unchanged. Despite the longevity of the statutory appeal process, we uncovered no precedent on point to guide us in answering this question of jurisdiction.

An early Attorney General's opinion addressed the issue of whether a board member's failure to attend a meeting was a "decision" for the purposes of appeal. The Attorney General wrote, "An action of a board of education to be subject to appeal to the county superintendent must be an action of the board or a refusal to act upon a proposition in a meeting assembled." 1928 O.A.G. 302 (emphasis added). Such a statement would tend to support Appellant's position herein.

On the other hand, according to a later opinion on the issue of appealing a board's action in failing to renew a teacher's contract for the subsequent year, the Attorney General concluded that no "decision" had been made because the board did not act to terminate the teacher, instead merely exercising its discretion not to renew a contract. 1942 O.A.G. 184 (citing Independent School District v. Samuelson, 222 Iowa 1063, 270 N.W. 434 (1937)).

Our own appeals file produced only one case in which, upon similar facts, the state board dismissed an appeal for lack of jurisdiction finding that the local board had not made a "decision." In re H. May Roberts, 2 D.P.I. App. Dec. 157 (1980). In that case, Appellant, a school bus driver, appeared before her employing board seeking payment for unused sick leave on her noon kindergarten route. The local board discussed with Ms. Roberts the inapplicability of sick leave to noon routes under its own policy. Following a hearing before a panel of this department, the case was dismissed. The dismissal decision read as follows:

> In order for the State Board of Public Instruction to have jurisdiction in appeals such as this, an appeal from a "decision or order of the board of directors" must be timely filed. The absence of a decision or order on the part of the local board means that the State Board is without jurisdiction to consider the merits of the matter. This was established early in Iowa. In the case of Case v. Blood, 71 Iowa 632, 33 N.W. 144 (1887), the Iowa Supreme Court said of such an appeal at page 634: "In this case the directors did not decide anything, and made no order. They simply refused or neglected to act. No appeal could be taken from their default in this regard."

In re H. May Roberts, 2 D.P.I. App. Dec. at 158.

While on its face, the action of the Appellee in this case may have the same result as a voted denial, and the letter from Mr. Hassman to Mr. Sayre may have led the latter to believe initially that the Board officially acted to deny Ms. Head's request, we feel constrained nonetheless to follow what little precedent exists and uphold Appellee's

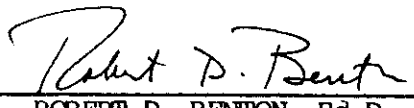
Special Appearance. It goes almost without saying that our action today in dismissing the appeal is without prejudice to Appellant. If the Iowa State Education Association is able to obtain a formal decision from the Board in the future, such action would be subject to appeal under Iowa Code chapter 290.

The appeal filed in this case by Ronald Thompson and ISEA on behalf of Donna Head is hereby dismissed.

September 11, 1987
DATE

LUCAS J. DEKOSTER, PRESIDENT
STATE BOARD OF EDUCATION

July 8, 1987
DATE



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