

**The State of New Hampshire
Superior Court**

Rockingham

HAMPSTEAD SCHOOL DIST.

V.

SCHOOL ADMIN. UNIT NO. 55, ET AL.

No. 218-2018-CV-1395

ORDER

On December 20, 2018, the Hampstead School District and the Hampstead School Board filed an Emergency Ex Parte Petition for Writ of Mandamus or in the Alternative Preliminary and Permanent Injunctive Relief (Doc. #1) (hereinafter “Compl.”) against School Administrative Unit No. 55 (“SAU No. 55” or the “SAU”), the School Board for the SAU, Timberlane Regional School Board, and nine individual SAU School Board members, who are also members of the Timberlane Regional School District (referred hereinafter collectively as the “Timberlane School Board Members”). The petitioners requested the Court issue a writ of mandamus or preliminary injunction ordering the Timberlane School Board Members to participate in a budget meeting on December 28, 2018, at 7:00 p.m. RSA 194-C:9 requires SAU No. 55 to adopt a budget before January 1, 2019. The petition alleges that the Timberlane School Board Members have interfered with the budget process of the SAU on three separate occasions.

The Court scheduled a hearing on the petition for today at 8:30 a.m. All of the respondents were served with notice of the hearing. The individual respondents filed an

appearance of counsel by Attorney John Kuzinevich and a motion to continue the hearing until after January 4, 2019, because Attorney Kuzinevich was out of the country at the time of the hearing. The Court denied the motion to continue the hearing because RSA 194-C:9 requires the SAU School Board to adopt a budget before January 1, 2019 and to certify by January 15, 2019 each school district's proportional amount of the budget. If the petition has merit, a continuance would result in SAU No. 55 violating these statutory mandates.

SAU No. 55 is comprised of the Timberlane and Hampstead School Districts. Compl. ¶4. The SAU No. 55 School Board has 14 board members: nine from Timberlane and five from Hampstead. Id. On April 18, 2018, Jason Cipriano was elected as Chairman of the SAU by a vote of 10-4. Pet. Obj. To Emergency Motion for Clarification Regarding School Board Chair (Doc. #9) Ex. A. On October 17, 2018, the SAU School Board held a meeting to prepare the SAU budget. Compl. ¶6 & Ex. A. During that meeting, Board member Shawn O'Neil made a motion to engage in weighted voting pursuant to RSA 194-C:7. Id. Ex. A at 2. The motion failed on a tie vote. Id. Dr. Kimberly Farah then made a motion to remove Cipriano as chair of the SAU School Board. Id. Cipriano ruled that the motion was out of order because there was no procedure for removal of the chair. Id. O'Neil then moved to set aside the SAU policy. Id. Cipriano ruled that motion out of order as well. Id. Seven board members (all of whom are respondents in this lawsuit), who voted in favor of the failed motion regarding weighted voting, left the meeting. Id. Their departure resulted in the lack of a quorum so that the meeting adjourned. Id. Consequently, the SAU School Board did not address the budget at the October 17, 2018 meeting.

On November 14, 2018, another meeting was scheduled to address the proposed budget. Id. ¶7. A motion to proceed based on weighted voting passed on a vote of 8-1. O'Neil made a motion to seek the resignation of Cipriano as chair based on a vote of no confidence. Id. Ex. B at 1. Cipriano again ruled the motion out of order as there was no legal basis for removal of the chair. Id. A vote of no confidence passed on a straight vote of 8-6 and a weighted vote of 194.64 to 105.83. Id. at 2. Several motions relating to replacement of Cipriano as chair of the SAU School Board were all ruled out of order by Cipriano. Id. Farah then moved to adjourn the meeting which passed on a straight vote of 8-6 and a weighted vote of 194.64 to 105.83. Id. Eight of the nine Timberlane School Board Members who are respondents in this lawsuit voted to adjourn the meeting. Sarah Macheimer was the only Timberlane School Board Member and respondent in this case who voted against the motion to adjourn. Id. The meeting again ended without addressing the proposed budget.

On December 19, 2018, a third meeting was scheduled to address the proposed budget. Compl. ¶11 & Ex. C. Prior to the meeting, the Timberlane School Board submitted a letter to Cipriano and the SAU School Board. Id. Ex. E. In that letter the Timberlane School Board stated: "In light of recent actions and statements by the Chair at SAU board meetings, [Timberlane Regional School Board] feels it is in the best interest of the SAU to allow Vice Chair, Dr. Kim Farah, to take over all responsibilities for the next SAU meeting and public hearing." Id. The letter voiced a number of complaints about the manner in which Cipriano conducted past meetings. Id. The letter concluded, "Given that Timberlane is responsible for over \$1.5M of the SAU budget, it is imperative that our board be allowed to be recognized and heard. As a board we seek

to move forward and we request that SAU Chair Mr. Cipriano acknowledge receipt of this letter and respond no later than Thursday, December 13th. It is our hope that the Chair will work with the Vice Chair as she carries out all duties pertaining to the upcoming budget meeting and public hearing.” Id. On December 6, 2018, Cipriano responded that he had no intention of stepping down as chair of the SAU School Board. Id. Ex. F.

All five Hampstead School Board Members appeared for the meeting on December 19. Id. ¶15. Only two Timberlane School Board Members—Sue Sherman and Macheimer—appeared. Id. ¶16. As a result, there was no quorum for the meeting and the budget again was not addressed.

The next meeting—and, in light of the weekend and holiday, last opportunity before January 1—to address the budget is scheduled for December 28, 2018. The Hampstead School District and its school board filed this lawsuit to compel the Timberlane School District, and its individual board members, to participate in the budget process on December 28, 2018, so that SAU No. 55 can meet its statutory obligation to adopt a budget by January 1, 2019. The respondents object to the motion for relief, arguing that it is speculative that the individual board members will not attend and participate in the budget process on December 28. Resp. Obj. to Emergency Ex Parte Petition (Doc. #3) at ¶4. Several individual respondents expressed the same position at the hearing. In the event the Court granted the petition, the respondents filed an Emergency Motion for Clarification Regarding School Board Chair (Doc. #7). That motion, which detailed the efforts to oust Cipriano as chair of the SAU, concluded that

“an alternate [chair] should be appointed for the purpose of ensuring an orderly meeting can occur and achieve the necessary means.” Id. ¶18.

The petitioner has asked for a writ of mandamus in the first instance to compel the Timberlane School Board Members to participate in the budget process at the meeting on December 28, 2018. “Mandamus is an extraordinary writ that may be addressed to a public official, ordering him to take action, and it may be issued only when no other remedy is available and adequate.” Rockhouse Mountain Prop. Owners Ass’n, Inc. v. Town of Conway, 127 N.H. 593, 602 (1986). “When an official is given discretion to decide how to resolve an issue before him, a mandamus order may require him to address the issue, but it cannot require a particular result.” Id.; see also In re Cigna Health Care Inc., 146 N.H. 683, 687 (2001); Guy v. Commissioner, 131 N.H. 742, 747 (1989).

In this case, mandamus is necessary to ensure that the Timberlane School Board Members fulfill their legal obligation to adopt a budget in a timely manner. All public officials take an oath to “faithfully and impartially discharge and perform all duties incumbent upon” the public official consistent with the constitution, statutes, and rules and regulations of the State of New Hampshire. N.H. Const. pt. II, art. 84; RSA 42:1 (requiring town officials to take constitutional oath of office); RSA 194:1 (defining the term “town” to include school district). RSA 194-C:9, I (2008) requires all SAU school boards to adopt a budget for the upcoming fiscal year at a meeting held before January 1. After a SAU board adopts a preliminary budget, RSA 194-C:10 (2008) requires the SAU board to hold a public hearing within the SAU at a time and place identified by the SAU board chairperson. Notice of the public hearing must be published at least 7 days

before the hearing. Id. Following the public hearing, an SAU school board is then required to adopt a final budget. Id. Prior to January 15, the SAU school board is obligated to apportion the budget among the constituent school districts in the SAU in a manner prescribed in the statute. RSA 194-C:9, I.

As noted above, in order to meet these statutory deadlines SAU No. 55 School Board must meet no later than December 28, 2018 to propose a preliminary budget, which must then be subject to a public hearing, final vote, and apportionment prior to January 15, 2019. Moreover, SAU No. 55's own rules empower the chairman of the board to call a budget meeting "at a time and place specified by the SAU Board Chairman." Pet. Obj. to Emergency Motion for Clarification Regarding School Board Chair, Ex. B (Organization and Operation of the School Administrative Unite (SAU) School Board (hereinafter "SAU Rules") ¶G(4)). Those same rules require the SAU Board to adopt a budget after a public hearing. Id.

The minutes of the SAU meetings between October 17 and December 19, 2018, establish that there is a significant dispute over who should lead the SAU School Board. It is clear from this Court's review of the record before it that a majority¹ of the Timberlane School Board Members have stymied consideration of the budget at the last three meetings in an effort to oust Cipriano as chair of SAU No. 55. Given this history, there is a significant risk that at least some of the Timberlane School Board Members will prevent consideration of the budget in violation of their legal obligation. Accordingly, the Court grants the petitioner's request for a writ of mandamus.

¹ Not all of the individual respondents have participated in all of the efforts to obstruct consideration of the budget over the issue of control of the SAU board. For example, Sarah Machermer voted against the November 14 motion to adjourn and Sue Sherman and Machermer appeared at the December 19 meeting.

Given the actions of most of the Timberlane School Board Members, SAU No. 55 School Board cannot meet its statutory obligation to hold a public hearing on a preliminary budget and adopt a final budget prior to the January 1, 2019 deadline. Accordingly, the individual respondents named in this law suit are ordered to attend the meeting on December 28, 2018, and required participate in good faith in creating a preliminary budget. SAU No. 55 School Board Chairman Cipriano is authorized to notice a public hearing on the preliminary budget to occur no later than January 7, 2019. Chairman Cipriano is authorized to notice a hearing of the SAU No. 55 School Board to occur at a date and time after the public hearing of his choosing to adopt a final budget and apportion the budget to the constituent school districts. Chairman Cipriano is empowered to notice these hearings in order comply with the spirit, if not the letter, of the statutory 7-day public notice, RSA 194-C:10, and the January 15 apportionment deadline, RSA 194-C:9, I. The individual respondents are required to attend and participate in good faith in all meetings and decisions to adopt the preliminary budget, final budget, and apportionment.

The respondent's Emergency Motion for Clarification Regarding School Board Chair is granted in part. Jason Cipriano is the duly elected Chairman of SAU No. 55 School Board. His term of office does not end until April 18, 2019. The respondents have cited no legal authority to remove him from office prior to that time. While a town official, including a school board member, may be removed by petition to the superior court, see RSA 42:1-a (2012), that has not occurred in this case. The individual respondents named in this lawsuit are prohibited from making any motion to remove Chairman Cipriano during SAU No. 55 School Board meetings before the final budget

has been approved and apportioned as required by law. The individual respondents are likewise prohibited from taking any action to obstruct a decision by SAU No. 55 School Board on the preliminary budget, final budget, or apportionment. Given the short statutory deadlines, if the individual respondents do not comply with this writ of mandamus, by failing to attend the meetings on the preliminary and final budget or to participate in good faith in the budget process, will be found in contempt of court.

In the alternative to a writ of mandamus, the petitioner has requested a preliminary injunction to allow SAU No. 55 School Board to hold a budget meeting with less than a quorum of 8 members. See Compl. ¶38. The standard for evaluating a preliminary injunction is well-settled. “The issuance of injunctions, either temporary or permanent, has long been considered an extraordinary remedy. An injunction should not issue unless there is an immediate danger of irreparable harm to the party seeking injunctive relief, ... there is no adequate remedy at law ... [and the] party seeking an injunction [is] likely [to] succeed on the merits. The trial court retains the discretion to decide whether to grant an injunction after consideration of the facts and established principles of equity.” ATV Watch v. New Hampshire Dep’t of Resources and Economic Dev., 155 N.H. 434, 437-38 (2007) (quotations omitted).

Given the history of the budget process over the last three months, there is a substantial likelihood that seven or more members of the Timberlane School Board will absent themselves, vote to adjourn, or take other action to prevent consideration of the budget unless Chairman Cipriano is removed or steps aside. Given the statutory deadlines there is no other relief available except for an injunction. SAU No. 55 School Board may proceed with the preliminary budget meeting, final budget meeting, and

decision on apportionment if a quorum is not present for any meeting as a result of the absence of any Timberlane School Board Member. Any Timberlane School Board Member who is present for a meeting of less than a quorum shall be entitled to vote all of the Timberlane School District votes (or a proportionate share thereof) as authorized by RSA 194-C:7 (2008).

SO ORDERED.

12/27/2018 at 2:50 p.m.

DATE



N. William Delker
Presiding Justice