

The Journal

Judge denies restraining order in Gag suit

NEW ULM — Fifth District Judge Todd Westphal denied Gag Sheet Metal Inc.'s (GSM) suit seeking a Temporary Restraining Order (TRO) against ISD 88.

An email from Bob Putnam, a law clerk, to the lawyers of both sides explained that Westphal had decided to deny GSM's request. The email explained that the judge had reached his decision but was unsure if his opinion would be filed before 5 p.m. Wednesday, Dec. 28.

"It awaits the decision but we feel this vindicates the process the school uses to make decisions," District 88 lawyer James Strommen said.

The full decision of the judge has not been filed as of the end of court house business hours Thursday. Depending on the details of Westphal's decision the case could be appealed, Strommen said.

Time was a factor because GSM sought to prevent the opening of bids Thursday, Dec. 29. It argued that Tremco Inc.'s involvement in preparing plans and specifications for the reroofing of the middle school biased the project toward Tremco's products.

The school is seeking a built-up roof with an EPDM (ethylene propylene diene monomer) or rubber roof as an alternative. GSM argued that Tremco's plans put undue costs on a rubber roof forcing their and other firms' bids to be higher and costing tax payers more money.

Part of GSM's case rested on an alleged violation of Minnesota Statute 326.12, subdivision 3 which states that plans *"must bear the signature of the licensed or certified person preparing it, or the signature of the licensed or certified person under whose direct supervision it was prepared."*

GSM argued that the plans given to the bidding companies bore the signature of a licensed person who reviewed them, not prepared them.

The company also argued that ISD 88's consultation with Tremco put unnecessary costs into the rubber roof specifications.

They cited requirements that the rubber roof be installed under the supervision of someone with 10 years of experience versus the built-up roof only needing someone with five; the rubber roof requiring a flood test when the built-up roof did not; removing insulation that

was not required to be removed for the built-up roof and a few more instances.

ISD 88 responded by pointing out that Tremco was regularly retained for consultation. Even with that, Tremco's products had been rarely used on any project for which it was consulted.

The district also pointed out that GSM had won the bid for the high school roof, which the school had consulted Tremco on as well.

As for the alleged discrepancies in building requirements, ISD 88 Facilities Director Patrick Lang said in an affidavit that they were based on his experience with rubber roofs.

In a phone call, owner of GSM John Gag said he will wait to see the judge's full opinion before commenting on the ruling.

GSM did end up being lowest bidder for the rubber roof on the middle school at approximately \$530,000. Gag said that they could have gone lower if not for the requirements he considers unnecessary in the plans.

The bid awaits recommendation from Lang on whether to go with GSM's bid or the lowest bid on the built-up roof. Then it will go to the Board of Education for a final decision.

