

BEFORE THE
GOVERNING BOARD OF THE
DAVIS JOINT UNIFIED SCHOOL DISTRICT
COUNTY OF YOLO
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

CERTAIN CERTIFICATED PERSONNEL
EMPLOYED BY THE DAVIS JOINT UNIFIED
SCHOOL DISTRICT,

Respondents.

OAH No. 2009030052

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, in Davis, California, on April 27, 2009.

James Scot Yarnell, Attorney at Law, represented the Davis Joint Unified School District (District).

Ernest Tuttle, IV, Attorney at Law, represented the respondents, who are listed on Attachment A hereto.

Evidence was received, the record was closed, and the matter was submitted for decision on April 27, 2009.

FACTUAL FINDINGS

1. On March 3, 2009, the Board of Education of the District (Governing Board) adopted Resolution No. 40-09, entitled a resolution "Relative to the Reduction or Elimination of Particular Kinds of Certificated Services" (PKS Resolution). In the PKS Resolution, the Governing Board determined that, as recommended by the Superintendent, it was necessary and in the best interest of the District to reduce or eliminate the following particular kinds of certificated services not later than the beginning of the 2009-2010 school year:

- (A) Elementary (Grades K-6) Classroom Instructional Services:
 - 1. Elem. Classroom Teaching Services 15.0 FTE
15.0 FTE

(B)	Secondary (Grades 7-12) Departmentalized Instructional Services:	
	2. English	3.0 FTE
	3. Mathematics	3.2 FTE
	4. Social Science	1.0 FTE
	5. Health	.4 FTE
	6. Physical Education	2.4 FTE
	7. General Computer/Technology	.6 FTE
	8. Art	.8 FTE
	9. Photography	.2 FTE
	10. Spanish	1.2 FTE
	11. Basic Auto	.2 FTE
	12. Business Law	.2 FTE
	13. Internetworking : I & II (ROP)	<u>.4 FTE</u>
		<i>13.6 FTE</i>
(C)	Educational Services:	
	14. School Psychologist Services	1.0 FTE
	15. Secondary Counseling Services	2.8 FTE
	16. AVID Services	1.0 FTE
	17. 7-9 Athletic Director Services	.6 FTE
	18. 7-9 Student Activities Director/Leadership Services	<u>.6 FTE</u>
		<i>6.0 FTE</i>
(D)	Administration Services	
	19. Site Administrative Positions	<u>2.7 FTE</u>
		<i>2.7 FTE</i>
	TOTAL	37.3 FTE ¹

As a result of the above elimination or reduction of particular kinds of services, the Governing Board determined that it is necessary to terminate, at the end of the 2008-2009 school year, the employment of a corresponding number of probationary and/or permanent certificated employees of the District. The Governing Board directed the Superintendent or his designee to send appropriate notices to all employees who will be affected by virtue of this action in accordance with the provisions of the California Education Code, and to afford all such employees all rights to which they are entitled under law. The Governing Board set forth the competency criteria for the purpose of bumping and reemployment rights. In paragraph 7 of the PKS Resolution, the Governing Board authorized the Superintendent or his designee to deviate from terminating and rehiring certificated employees in order of seniority according to certain criteria (skipping criteria). In addition, the Governing Board established the criteria for determining the order of termination and rehire of certificated employees who first rendered paid service to the District on the same date (tie-breaking criteria). The reduction of particular kinds of services and certificated employees is based solely upon the severe budget cuts that the District anticipates in these difficult economic

¹ "FTE" stands for full-time equivalent.

times, and is not related to the skills, abilities or work performance of the affected employees.

2. Prior to March 15, 2009, the Superintendent gave certain certificated employees written notice that, pursuant to Education Code sections 44949 and 44955, he had recommended that their services will not be required for 2009-2010 school year, and that their services would, therefore, be terminated at the end of the current school (Notice of Recommended Layoff).

3. Respondents are currently certificated employees of the District. Each respondent was properly and timely served with a Notice of Recommended Layoff and timely requested a hearing. Each was also properly and timely served with an Accusation, Statement to Respondent, form Notice of Defense, Notice of Hearing and relevant statutes, and filed a timely Notice of Defense.

4. At the hearing, the District rescinded the Notices of Recommended Layoff served on Jose Bermudez and Erica Lara. Consequently, these certificated employees are no longer respondents in this matter. The District also rescinded the Precautionary Notice of Recommended Layoff served on Elizabeth Castro.

5. At the hearing, the District corrected the seniority date (i.e., first day of paid service in a probationary position²) of Norma Ramirez from August 25, 2008, to August 27, 2007, and her employee status from Probationary Year 1 to Probationary Year 2.

6. Seniority List: The District maintains a Certificated Seniority List that contains the name, seniority date, employee status, FTE, work site, assignment, and credentials of the District's certificated employees. Except for the change made in Ms. Ramirez's seniority date (Finding 5), there was no evidence presented at the hearing to establish that any further changes to the District's Seniority List should be ordered in this proposed decision.

7. Positively Assured Attrition: The PKS Resolution states that the Governing Board had "considered all positively assured attrition, including deaths, resignations, retirements and other permanent vacancies, for 2009-10 which has occurred up to and including February 24, 2009 in determining the needed services to be reduced or eliminated." There was no evidence presented at the hearing to indicate that the District has failed to properly take into consideration any positively assured attrition in this matter.

² Education Code section 44845 provides: "Every probationary or permanent employee employed after June 30, 1947, shall be deemed to have been employed on the date upon which he first rendered paid service in a probationary position."

8. Skipping: Education Code section 44955, subdivision (d)(1), permits a school district to deviate from terminating certificated employees in order of seniority (i.e., “skip”) when the school district “demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.” At the hearing, the parties stipulated that respondents did not object to the skipping criteria set forth in paragraph 7 of the PKS Resolution. There was no evidence presented at the hearing to show that the skipping criteria established by the Governing Board were unreasonable or inappropriate, or that the District applied the skipping criteria improperly.

9. Bumping: In deciding which certificated employees should be laid off for each particular kind of service being reduced, the District applied the competency criteria established the Governing Board in the PKS Resolution to determine whether any certificated employees identified for layoff had credentials and competencies that would allow them to bump more junior employees. There was no evidence presented at the hearing challenging the Governing Board’s competency criteria, or disputing the District’s application of those criteria to allow more senior certificated employees to bump more junior employees.

10. Tie-Breaking: The District developed a chart entitled, “Application of Tie-breaking Criteria,” which shows how the District applied the tie-breaking criteria established by the Governing Board for those certificated employees identified for layoff who have the same seniority dates. Given the correction of Ms. Ramirez’s seniority date (Finding 5), Ms. Ramirez now has the same seniority date as Shannon Meade-Lee. At the hearing, the District applied the tie-breaking criteria to Ms. Ramirez and Ms. Meade-Lee, and determined that Ms. Ramirez should be deemed less senior because the last four digits of her social security number are lower than Ms. Meade-Lee’s. There was no evidence offered at the hearing challenging the Governing Board’s tie-breaking criteria, or disputing the District’s application of those criteria.

11. There was no evidence that the District proposes to reduce any services that are mandated by state or federal laws or regulations below mandated levels.

12. Any other assertions put forth by respondents at the hearing and not addressed above are found to be without merit and are rejected.

13. No junior employees are being retained to render services that more senior respondents are certificated and competent to perform.

14. The District’s reductions and discontinuances of particular kinds of services relate solely to the welfare of the District’s schools and pupils.

LEGAL CONCLUSIONS

1. The District complied with all notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955.

2. The services identified in the PKS Resolution are particular kinds of services that may be reduced or discontinued under Education Code section 44955. The Governing Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuance of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

3. Cause exists to reduce certificated employees of the District due to the reduction or discontinuance of particular kinds of services. The District properly identified the certificated employees to be laid off as directed by the Governing Board.

4. No junior certificated employee is scheduled to be retained to perform services that a more senior respondent is certificated and competent to render.

5. Cause exists to give notice to respondents that their services will be reduced or will not be required for the 2009-2010 school year because of the reduction and discontinuance of particular kinds of services.

RECOMMENDATION

1. Cause exists for the reduction of 37.3 full-time equivalent certificated positions at the end of the 2008-2009 school year.

2. Notice may be given to respondents that their services will be reduced or will not be required for the 2009-2010 school year. Notice shall be given in inverse order of seniority.

DATED: May 5, 2009

KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings