

BEFORE THE
BOARD OF EDUCATION
OF THE
NEEDLES UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2009031322

Respondents listed in Appendix A.

PROPOSED DECISION

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Needles, California on May 1, 2009.

John W. Dietrich, Atkinson, Andelson, Loya, Ruud & Romo, Attorneys at Law, represented the Needles Unified School District.

Michael D. Hersh, Esq., California Teachers Association, represented the respondents listed in Appendix A.

The matter was submitted on May 1, 2009.

FACTUAL FINDINGS

1. Dave Renquest made and filed the accusation dated March 14, 2009 in his official capacity as the Superintendent of the Needles Unified School District.
2. Respondents¹ are certificated district employees.

¹ The District initially identified 32 certificated employees as respondents. Five of the 32 did not request and thus waived their right to a hearing; the district subsequently rescinded the layoff notices as to 20 others. Accordingly seven respondents remain in this proceeding and are listed in Appendix A.

3. The district employs approximately 67 certificated employees, including administrators, in four elementary schools, one middle school, and one high school. About 1000 students are enrolled in the district's schools.

4. On March 10, 2009, in accordance with Education Code sections 44949 and 44955, the Superintendent notified the Board of Education of the Needles Unified School District in writing of his recommendation to reduce or discontinue particular kinds of services for the upcoming school year. The Superintendent stated the reasons for the recommendation. The recommendation that respondents be terminated from employment was not related to their competency as teachers.

5. On March 7, 2009, the board adopted Resolution No. 08-09-13, determining that it would be necessary to reduce or discontinue particular kinds of services at the end of the current school year. The board determined that the particular kinds of services that must be reduced for the 2009-2010 school year were the following full time equivalent (FTE) positions:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
High School English Teachers	4
High School Science Teachers	1
Elementary (K-5) Classroom Teachers	14
Middle School Core Teachers	2
Middle School Combination Class Teachers	1
Middle School English Teachers	2
High School Spanish Teachers	1
High School Math Teachers	1
Elementary Special Education Teachers	2
Middle School RSP Teachers	1
Elementary SDC Teachers	1
High School SDC Teachers	1
High School Life Skills	1
6th Grade Teaching Services	1
Elementary/Middle School Music	.5

The proposed reductions totaled 33.5 FTE positions.

6. The board directed the Superintendent or his designee to determine which employees' services would not be required for the 2009-2010 school year as a result of the reduction of the foregoing particular kinds of services. The board further directed the Superintendent or his designee to send appropriate notices to all certificated employees of the district who would be laid off as a result of the reduction of these particular kinds of services.

7. On or before March 15, 2009, the district timely served on respondents a written notice that the Superintendent had recommended that their services would not be

required for the upcoming school year. The notice set forth the reasons for the recommendation. The notice advised respondents of their right to a hearing, that each respondent had to deliver a request for a hearing in writing to the person sending the notice by the date specified in the notice, a date which in each case was more than seven days after the notice was served, and that the failure to request a hearing would constitute a waiver of the right to a hearing.

The recommendation that respondents be terminated from employment was not related to their competency as teachers.

8. Subsequent to the action the board took on March 10, 2009 to reduce particular kinds of services by 33.5 FTE positions, the district continued to evaluate its personnel needs. After taking into consideration upcoming positively assured attrition, as well as the changing financial picture, the district has now determined it can meet its fiscal needs by reducing services by a total of ten FTE positions for the 2009-2010 school year.² To accomplish this reduction of services, the district must give final notices of termination to 12 certificated employees, including the seven respondents remaining in this proceeding.

9. Respondents timely filed written requests for hearing to determine if there was cause for not reemploying them for the upcoming school year. The accusation, along with required accompanying documents, was timely served on respondents. Respondents filed notices of defense. All pre-hearing jurisdictional requirements were met.

10. Respondents are probationary or permanent certificated employees of the district.

11. The services the board addressed in Resolution No. 07-08-39 were “particular kinds of services” that could be reduced or discontinued within the meaning of Education Code section 44955. The board’s decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious and constituted a proper exercise of discretion. No particular kinds of services were lowered to levels less than those levels mandated by state or federal law.

12. The reduction or discontinuation of particular kinds of services related to the welfare of the district and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the district as determined by the board.

13. The board considered attrition, including resignations, retirements and requests for transfer, in determining the actual number of necessary layoff notices to be delivered to its employees. No evidence was presented that any known positively assured attrition was not considered.

² The remaining ten FTE positions to be eliminated consist of seven elementary teachers, one middle school core teacher, one elementary special education teacher, and one high school life skills teacher.

14. The Superintendent testified that at the time the board made the decision to eliminate 33.5 FTE positions, the district budget situation for next year was “uncertain.” An added concern was that the district is required to certify annually to the County Office of Education that the district can meet its operating budget. Payroll constitutes approximately 80 percent of the district’s total budget. The district considered other ways (besides payroll) to reduce its expenses; it also looked at not only certificated, but also management and classified employees in this regard. The board believed that the 33.5 designated FTE eliminations was necessary to provide maximum flexibility with regard to staffing for the next school year. With regard to each FTE category, the board made cuts as deeply as it felt was necessary.

As time has gone on, the impact of the state budget reductions has become clearer to the district, and the district has been able to identify more cost-saving measures. Accordingly, as of the date of the hearing, the district believed that only 10 FTE positions had to be eliminated, instead of the initial 33.5, in order to meet next year’s budget.

15. Respondents argued that by virtue of the district’s designation of 33.5 FTE positions for elimination, and its issuance of preliminary layoff notices to approximately one half of its certificated staff, the district abused and violated the statutory layoff process. Respondents have taken the position that the district’s over-noticing was so pervasive that its actions effectively constituted a complete lack of any meaningful notice to anyone, thus undermining the purpose of the layoff statute. As a result, respondents assert that the district’s entire layoff should be invalidated.

The district’s issuance of notices to about one half of the district’s certificated employees certainly seems an unusually high percentage.³ However, respondents’ characterization of the district’s action as essentially providing no notice at all equally overstates the case. Further, no evidence was presented that the district acted in bad faith or sought to circumvent the layoff statute. Other matters to be borne in mind are the unprecedented state budget crisis, the small size of the district, and the great uncertainty as to what funds the district would ultimately receive for the upcoming school year. The district’s basic goal of maintaining maximum flexibility to implement whatever layoffs eventually proved necessary was certainly appropriate. Ultimately, the record was insufficient to

³ As respondents pointed out, the board’s initial intention to eliminate all four high school English teaching positions raises a particular concern. However, the board and district ultimately rescinded that PKS reduction; in fact, no high school English teachers are identified for lay off at this time. It is thus a moot question whether the district would have acted in an arbitrary and capricious fashion had it finally determined that all four high school English teaching positions were to be eliminated.

It was similarly argued that the board’s decision to eliminate the one high school life skills teaching position was inappropriate, in that it was inconsistent with board policy which presently requires such a course as a high school graduation requirement. However, the position is not being eliminated for this year, and it is possible that the board will change its policies with regard to graduation requirements before next year. No state or federal statute or regulation was cited that requires that a life skills course be offered to high school students. At this point, elimination of the position is neither arbitrary nor capricious, and constitutes a proper exercise of the board’s discretion.

establish that the actions of the district and the board were arbitrary and capricious. Instead, it is concluded that the board and district acted in the proper exercise of their discretion.

16. Amanda Kinsler teaches special education and physical education at Needles Middle School. She testified that she has 27 special education students, three to five times as many as any other special education teacher in the district. She believes that her lay off would be an injustice to her students.

Kinsler testified in a sincere manner that reflected her genuine concern for and commitment to her students. However, the district's decision to eliminate one full-time special education position was neither arbitrary nor capricious, and constituted a proper exercise of the board's discretion.

17. Several employees, David McMasters, Martha Nash, Shannon Roach, testified that they believed the district had assigned them the wrong seniority date. However, none claimed and the record did not reflect that assigning them the seniority date they claimed was the correct one would have made any difference as to their layoff status. It is thus neither necessary nor appropriate for the administrative law judge to make a determination as to the proper seniority dates of these individuals.

18. No certificated employee junior to any respondent was retained to perform any services which any respondent was certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

2. A district may reduce services within the meaning of section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.)

4. A preponderance of the evidence sustained the charges set forth in the accusation. Cause exists under Education Code sections 44949 and 44955 for the district to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof. Cause exists to reduce the number of certificated employees of the district due to the reduction and discontinuation of particular kinds of services. The district identified the certificated employees providing the particular kinds of services that the board be directed be reduced or discontinued. It is recommended that the board give respondents notice before May 15, 2009, that their services are no longer required by the district.

ADVISORY DETERMINATION

The following advisory determination is made:

The accusations served on respondents are sustained. Notice shall be given to respondents before May 15, 2009, that their services will not be required because of the reduction or discontinuation of particular services as indicated.

DATED: _____

DONALD P. COLE
Administrative Law Judge
Office of Administrative Hearings

Appendix A

1. Amanda Kinsler
2. Jean Lacey
3. David McMasters
4. Marti Nash
5. Ken Parker
6. Breanna Parker
7. Heather Woods