

BEFORE THE
GOVERNING BOARD OF THE
FORTUNA UNION ELEMENTARY SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MICHELLE HERNANDEZ,
JEANNIE MANTOVA, BRENNA RUSS,
ANGELA SCHUETZLE, and
SHELLY L. STANDLEY

Respondents.

OAH No. 2009040025

PROPOSED DECISION

On April 21, 2009, in Eureka, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Stephen L. Hartsell, General Counsel, North Coast Schools Legal Consortium, 901 Myrtle Avenue, Eureka, California 95501, represented Patti M. Hafner, Ed. D., Superintendent, Fortuna Union Elementary School District.

Paul Hagen, Attorney at Law, of Bragg, Perlman, Russ, Stunich & Eads, LLP, 1036 Fifth Street, Suite E, Eureka, California 95501, represented Respondents in this matter.

On April 21, 2009, the parties submitted the matter and the record closed.

FACTUAL FINDINGS

1. On April 6, 2009, in her official capacity, Patti M. Haner, Ed.D., Superintendent for the Fortuna Union Elementary School District (Complainant), made and filed the respective Accusations regarding Respondents Michelle Hernandez, Jeannie Mantova, Brenna Russ, Angela Schuetzle, and Shelly L. Standley.

2. Respondents are certificated employees of the Fortuna Union Elementary School District, who contest the instant proposed teacher lay-off action. And respondents are all permanent teachers with the District.

3. On February 24, 2009, the Superintendent presented the District's Board of Trustees a recommendation that the District give notice that particular kinds of services

(PKS), then offered through the District, be reduced or eliminated by the District for the ensuing school year (2009-2010).

4. On February 24, 2009, the District's Governing Board adopted Resolution No. 09-05. The resolution recites that, pursuant to Education Code sections 44949 and 44955, it has become necessary for the District to reduce or to eliminate, no later than the beginning of the 2009-2010 school year, particular kinds of services in the form of 7.0 full-time equivalent (FTE) certificated positions in the ranks of elementary school teachers.

5. The written preliminary notice to each respondent from the District's Superintendent states legally sufficient reasons of the District's Board's determination to eliminate or reduce services provided by respondents. (Although seven teachers of the District were given notice of the prospective layoff action, two teachers (Mr. Norm Sotomayor and Mr. Michael Kauffman) did not file a Request for Hearing; hence, those two individuals are not respondents in this matter.)

6 Respondents each timely requested in writing a hearing to determine whether or not cause exists for not reemploying each respondent for the ensuing school year.

7. The District's Superintendent timely served upon each respondent the Accusation, dated April 6, 2009, and related documents. Each respondent filed timely notices of defense.

8. All pre-hearing jurisdictional requirements were met.

Respondents' Contentions

9. Respondent Jeannie Mantova offered evidence at the hearing of this matter that the lay-off's outcome will deprive her of the opportunity to teach reading. Respondent Mantova notes that her master's degree in teaching reading should vest her with points for competency to be retained. But the Superintendent offered evidence that there is a teacher, who has the same first date of paid service to the District as Respondent Mantova and the other teacher holds a record of experience and skills that Ms. Mantova does not possess. In particular, Ms. Katie Gerving works with the RTI (response to intervention) program. Ms. Gerving holds a 0.5 FTE position with the District. And she has received workshop training in applying the special reading program to students who are performing below a respective grade level. Ms. Gerving has worked in the RTI area for three years.

10. Respondent Mantova has a first date of paid service to the District as August 20, 2002. She holds a 1.0 FTE position. Respondent Mantova possesses a multiple-subject credential, a single-subject (English) credential and a CLAD authorization. And she has master's degree in elementary education for teaching grades K through 5 with emphasis in teaching mathematics and reading. But, for the current school year, Respondent Mantova teaches in a District second-grade classroom. In the past, she has taught a combination second-grade and third-grade classroom of elementary school pupils.

The Superintendent showed that although Respondent Mantova has earned a master's degree in elementary education with an emphasis in teaching reading, Respondent Mantova has a work history only in second-grade and third-grade classrooms. Respondent Mantova has not worked at the middle school level in the "intervention program" as has Ms. Gerving, who is being retained even though she has the same first date of employment to the District as Respondent Mantova.

Hence, Respondent Mantova provided no competent evidence that the District has retained any teacher junior to her for a position which Ms. Mantova possesses a credential and is currently competent to teach. Nor did Respondent Mantova establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects her teaching position with the District.

11. Other than Respondent Mantova, no other respondent offered evidence, under oath, at the hearing of this matter. Nor did respondents call any expert witness to offer evidence in support of the contentions argued by Respondent Mantova that would affect the layoff action.

Respondents offered no argument or presentation of evidence that suggests the District's action is improper insofar as the prospective elimination of 7.0 FTE positions. Respondents did not present evidence that the corresponding lay-off of credentialed employees, relative to the elimination of the subject FTE positions of the District, is contrary to law and unnecessary.

Acts by the District's Superintendent

12. Patti M. Hafner, Ed.D., the Superintendent for the District (the Superintendent) appeared at the hearing of this matter to provide credible and persuasive evidence.

The prospective elimination of particular kinds of services for the 2009-2010 school year directly results from a prospective shortfall in money for the District's budget.

In order to partially aid the District in crafting a reasonable budget for the ensuing school year, the Superintendent reasonably decided that certain certificated positions be eliminated due to a shortfall of revenue in an amount that may surpass \$450,000. There has been a determination that the District has an anticipated declining enrollment of pupils. Also the Superintendent observed that the District has the prospect of a reduction by 20 percent funding for the District's "categoricals." (If the ballot propositions as set for the May 2009 special election do not pass, the District's diminished income for the coming school year will be more dire.)

The Superintendent in her official capacity was reasonable in the exercise of discretion in executing the procedures associated with lay-offs required by the subject resolution.

13. The Superintendent established by persuasive evidence the reasonableness in the application of the Board-created criteria for tie-breaking regarding determining the District's retention of teachers having the same date of paid service to the District.

14. The Superintendent compellingly explained that six certificated employees who are junior to Respondents are to be retained by the District because those junior employees have unique or particular skills or experiences in providing discrete services to the District's students that Respondents do not possess.

Jana Reveles, who has a first date of paid service of December 1, 2008, is the District's GATE program coordinator. Jana Reveles is a probationary employee with the District. She is one course short of gaining a GATE certificate. Also Jana Reveles serves as the District's library teacher, and she works under a library authorization. And she is applying for issuance of a library/media teacher credential. Her special training, credential and experience are sought to be retained by the District for the ensuing year.

Karla Maldonado is a special education resource teacher. She has a preliminary credential as "Level 1 Special Ed." teacher. Karla Maldonado has a first date of paid service to the District of August 18, 2008. Her special training, credential and experience are sought to be retained by the District for the ensuing year.

Laurie Clendenen also is a special education resource teacher. She has a first date of paid service to the District of August 27, 2007. Her special training, credential and experience are sought to be retained by the District for the ensuing year.

Angela Johnson also is a special education resource teacher. She has a first date of paid service to the District of August 23, 2005. Her special training, credential and experience are sought to be retained by the District for the ensuing year.

Katrina Haeger is a music teacher. She has a first date of paid service to the District of September 24, 2002. Her special training, credential and experience are sought to be retained by the District for the ensuing year.

And Jeannie Kessel also is a music teacher. She has a first date of paid service to the District of September 23, 2002. Her special training, credential and experience are sought to be retained by the District for the ensuing year.

Ultimate Findings

15. No competent and credible evidence establishes that as a result of the proposed elimination of the full time equivalent positions respectively held by respondents, the District

will retain any teacher who is junior to respondents to perform services for which respondents have been certificated or found to be competent to teach in such FTE positions for the next school year.

16. The decision of the District's Board to eliminate or discontinue a total of 7.0 FTE positions as specified in Resolution 09-05, including the positions held by each respondent, was neither arbitrary, fraudulent nor capricious. Rather, the Superintendent's determination was within the proper exercise of the discretion bestowed by law upon the District.

17. The Board's proposed elimination or discontinuation of the subject full-time equivalent positions, including the positions respectively held by respondents, for the ensuing school year, is related to the welfare of the District and its overall student population.

18. The Board determined that it will be necessary, due to the elimination of particular kinds of services, to decrease the number of teachers before the beginning of the next academic year. The Superintendent lawfully directed the notification to respondents of the elimination of the certificated positions held by each respondent.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955.

2. The District provided all notices and other requirements of Education Code sections 44949 and 44955. This conclusion of law is made by reason of the matters set forth in Factual Findings 1 and 8.

3. Evidence Code section 664 establishes a presumption that the action or official duties of a public entity, such as the District and its governing board, have been regularly performed. Respondents offer no evidence to rebut the presumption that the District has properly performed actions related to the procedures that seek the non reemployment of respondents.

4. Pursuant to Education Code sections 44949 and 44955 cause exists to give respondents notice of the discontinuation of full-time equivalent positions in the particular kinds of services rendered by respondents, by reason of the matters set out in Factual Findings 12 through 16 and 18.

5. The discontinuation of the subject particular kinds of service provided by each respondent relates solely to the welfare of the District and its students within the meaning of Education Code sections 44949 and 44955, by reason of the matters in Factual Finding 17.

RECOMMENDED ORDER

1. The Accusations served on Respondents Michelle Hernandez, Jeannie Mantova, Brenna Russ, Angela Schuetzle, and Shelly L. Standley are sustained.

2. Final notice may be given to Respondents Michelle Hernandez, Jeannie Mantova, Brenna Russ, Angela Schuetzle, and Shelly L. Standley, that their respective services will not be required for the 2009-2010 school year because of the reduction or discontinuance of the particular kinds of services by the Fortuna Union Elementary School District.

DATED: April 30, 2009

PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings
State of California