

BEFORE THE
GOVERNING BOARD OF THE
EUREKA CITY SCHOOLS
HUMBOLDT COUNTY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

LUCIA BOYER, JAMIE BUSH,
DANA CLOWER, STACEY GONZALEZ,
MARIANNE LANCASTER, DUSTIN KUEHN,
PATRICIA GUERRERO-FRAZIER,
ADINA LAWSON, SHELLY L. STANDLEY
and BYRON ZINSELMEIR,

Respondents.

OAH No. 2009040029

PROPOSED DECISION

On April 24, 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 Gregg Haulk, Superintendent, Eureka City Schools.

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 24, 2009, the parties submitted the matter and the record closed.

FACTUAL FINDINGS

1. On April 8, 2009, in his official capacity, Gregg Haulk, Superintendent for the Eureka City Schools, made and filed the respective Accusations regarding Respondents Lucia Boyer, Jamie Bush, Dana Clower, Stacey Gonzalez, Marianne Lancaster, Dustin Kuehn, Patricia Guerrero-Frazier, Adina Lawson, Shelly L. Standley and Byron Zinselmeir.

2. Respondents are certificated employees of the Eureka City Schools, who contest the instant proposed teacher lay-off action. And the respondents are all tenured (permanent) teachers with the District.

3. On March 4, 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 March 4, 2009, the District's Governing Board adopted Resolution No. 08-09-022. The resolution recites that, pursuant to Education Code sections 44949 and 44955, it has become necessary for the District to eliminate, no later than the beginning of the 2009-2010 school year, particular kinds of services in the form of fifty-three point nine (53.9) full-time equivalent (FTE) certificated positions as follows:

11.0 FTE	Grades Kindergarten through 6 (including Montessori), Elementary/ Middle School positions;
4.588 FTE	Grades 7 through 12, Fine Arts positions;
1.0 FTE	Grades 9 through 12, Industrial Arts/ Technology position;
5.2 FTE	Grades 7 through 12, Language Arts positions;
6.5 FTE	Grades 7 through 12, Mathematics positions;
2.6 FTE	Grades 4 through 12, Music positions;
1.0 FTE	Grades 9 through 12, NJROTC position;
2.0 FTE	Grades 7 through 12, Physical Education positions;
6.735 FTE	Grades 7 through 12, Science positions;
1.8 FTE	Grades 7 through 12, Social Science positions;
0.6 FTE	Grades 9 through 12, World Language position;
1.0 FTE	Grades 9 through 12, Agriculture position;
1.577 FTE	Grades 7 through 12, Elective positions;
0.8 FTE	Resource Specialist position;
0.5 FTE	District Teacher on Special Assignment position;
2.0 FTE	School Counselor positions;
4.0 FTE	Assistant Principal positions;
1.0 FTE	Site Administrator position.

5. The written preliminary notice to each respondent from the District's Superintendent states legally sufficient reasons of the District Board's determination to eliminate or reduce services provided by respondents.

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 8, 2009, and related documents. Each respondent filed a timely notice of defense.

8. All pre-hearing jurisdictional requirements were met.

9. At the hearing of this matter, the District rescinded the lay-off notice and withdrew the resultant accusation against Respondent Adina Lawson. By its withdrawal of the accusation and rescission of the layoff action against that respondent, the District will retain the services of Adina Lawson.

Respondents' Contentions

10. Respondent Dustin Kuehn offered evidence at the hearing of this matter that the lay-off's contemplated outcome will deprive him of the opportunity to teach mathematics at the District's junior high school or high school. Respondent Kuehn contends that the "five-way tie" among mathematics teachers with the same first day of paid service to the District of August 20, 2004, was not fairly or accurately applied. He avers that from the commencement of the service of math teachers in August 2004, the District assigned the teachers into a fixed ranking profile regardless of the qualifications of the respective mathematics teachers, and especially him. He asserts that had he been instructed by the District's administrators about "the rank system" for math teachers and that there was a course of action that would allow an individual to distinguish himself or herself from other teachers, then he would have pursued a course of action to enable him to excel in the tie-breaking criteria's application. Accordingly, he advances that the District should be equitably estopped from executing the layoff action against him. And as a second point of concern, Respondent Kuehn contended that the District's tie-breaking criteria treated him unfairly and was biased insofar as the deflated number of credits given him for his involvement in the advanced placement program was not proper. Respondent Kuehn asserts that he "took over" the Statistics Advanced Placement program for the high school, and he notes that he was at one time the District's only certified advanced placement teacher for Statistics. He notes that he taught the Statistics advanced placement course for one year that vested him with one point in the tie-breaking criteria, but after he started a second year with teaching the Statistics course, which had a larger than expected pupil enrollment, the District terminated the course before the completion of the school term. That termination action regarding the Statistics course deprived him of another point or credit under the tie-breaking criteria. In a third year, Respondent Kuehn personally recruited a large group of high school students to enroll in the Statistics course; but, a high school administrator directed Respondent Kuehn to relinquish "all certification papers" into the possession of another mathematics teacher who would then provide the Statistics service at the high school while Respondent Kuehn was assigned to the junior high school. Hence, he avers that he was deprived of a potential second point or credit in the application of the District's tie-breaking credential.

But Respondent Kuehn's contentions are without merit.

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

11. Respondent Patricia Guerrero-Frazier contends that the District's proposed reduction of services will adversely impact the general welfare of students in the District's high school. She notes that the contemplated "reclassification" of two science courses, namely Biology and Geoscience, into a ninth grade course improperly impacted teachers who should not be subject to layoff action. Respondent Guerrero-Frazier avers that the District's action will negatively impact on students who aspire to attend institutions of higher learning. And she asserted that there are two teachers, including Respondent Guerrero-Frazier, who are being subject to the reduction in force action while teachers, who are certificated only to teach science in classes from kindergarten through the ninth grade will teach the science courses that are usually oriented to higher grades. Further Respondent Guerrero-Frazier contends that the District's proposed reduction or elimination of sciences courses is contradicted by the District's course catalogue that shows the courses will be taught next year.

But Respondent Guerrero-Frazier's contentions are without merit.

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

12. Respondent Stacy Gonzalez contends that the District has miscalculated the number of teachers who will be required to teach Spanish for the coming school year. Also Respondent Gonzalez notes that a teacher who is being retained does not possess sufficient skills to teach "level-two" Spanish, while Respondent Gonzalez observes that she can teach the higher level Spanish language course at the District's high school. Further, Respondent Gonzalez avers that an accreditation society has vested the high school with designation as a "Distinguished School," which will be impaired with the proposed lay-off action.

But Respondent Gonzalez's contentions are without merit.

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

13. Other than Respondents Kuehn, Guerrero-Frazier, and Gonzalez, 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 Respondents Kuehn, Guerrero-Frazier, and Gonzalez 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 53.9 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 and the Assistant Superintendent

14. Gregg Haulk, 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.

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

The only mandated services, which are being reduced, are physical education, mathematics, science, and social studies; however, the District has sufficient teaching resources to meet the state required level for the provision of service for those reductions for the ensuing year.

15. Lee Ann Laning, the District's Assistant Superintendent of Human Resources and Special Education (the Assistant Superintendent), came to hearing to provide compelling and credible evidence at the hearing of this matter.

The Assistant 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. She developed a vividly clear and easily interpreted seniority list for District certificated employees. The chart notes the teachers who were subject to application of the tie-breaking criteria, which pertained to mathematics teachers and science teachers.

The Assistant Superintendent shows that as to the tie-breaking criteria was approved February 26, 2009. But an earlier version of the tie-breaking criteria had been developed by the Board. The current criteria are slightly different than criteria prescribed in the past. Regarding Respondent Kuehn, the Assistant Superintendent noted that over the years the District's tie-breaking criteria has been a public record for which teachers could glean the mechanism the District used to assess competency of teachers who had the same first date of paid service to the District for the purpose of retain teachers who could best serve the need of

District students. And the Assistant Superintendent, argued through counsel, that the District has no duty to guide certificated employees in improving skills or attaining enhanced certificates so as to amass points in a tie-breaking dispute. Accordingly, the Assistant Superintendent was reasonable in advancing that the doctrine of equitable estoppel to preclude the layoff action against Respondent Kuehn was not applicable.

Regarding Respondent Guerrero-Frazier's contention, the Assistant Superintendent pointed out that supplemental credentials held by teachers allow such teachers to teach introductory courses at higher levels in the high school.

And, the Assistant Superintendent noted that the high school is not a distinguished school. Further, even had the high school been given status as a distinguished school, the Board is not compelled to continue to offer classes that brought about the distinction. Also as to the contentions made by Respondent Gonzalez regarding the need for more teachers for Spanish, the Assistant Superintendent established that the "master schedule" has yet to be developed so that enrollment forecasts into specific course cannot be accomplished by the District's administrators.

The Assistant Superintendent compellingly established that the prospective elimination of the subject for "World Language" is shown on the Board resolution at 0.6 FTE. Respondent Gonzalez is subject to a reduction of 0.4 FTE in her prospective provision of Spanish. A more senior teacher, Ms Jennifer Trewartha, is being bumped into part of Ms. Gonzalez's Spanish current teaching assignment of 0.2 FTE. The Assistant Superintendent observed that should there be a greater demand by students for Spanish next year then the District will employ a sufficient number of teachers. And as to call-back or rehire of teachers the District would use the chart as crafted by the Assistant Superintendent.

16. The seniority list and the chart developed by the Assistant Superintendent showed details regarding the respondents who offered evidence at the hearing of this matter as follows:

Respondent Kuehn has a first date of paid service to the District as August 20, 2004. He holds a 1.0 FTE position in mathematics. Respondent Kuehn possesses a single-subject credential in mathematics, and a supplemental authorization in Economics. For the current school year, Respondent Kuehn teaches mathematics in the junior high school. The current school year is the first year that he has taught at the junior high school level; but, he has taught mathematics in the District for the entire length of his five years with the District.

Respondent Guerrero-Frazier has a first date of paid service to the District of August 24, 2004. She holds a single subject credential in Geosciences, and she possesses a CLAD certificate. Her college major was Geology.

Respondent Gonzalez has a first date of paid service to the District of August 22, 2005. She possesses a single subject credential in Spanish. She holds a multiple-subject credential and a CLAD Emphasis certificate.

Ultimate Findings

17. 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.

18. The decision of the District's Board to eliminate or discontinue a total of 53.9 FTE positions as specified in Resolution 08-09-022, including the positions held by each respondent, was neither arbitrary, fraudulent nor capricious. Rather, the District's determination was within the proper exercise of the discretion bestowed by law upon the District.

19. 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.

20. 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. At the direction of the Board, 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. Judgments entered by a tribunal on the stipulation of the parties have the same effect as acts tried on the merits. (*John Siebel Associates v. Keele* (1986) 188 Cal.App.3d 560, 565.) The District stipulates to withdraw the Accusation against the certificated employee named in Factual Finding 9. The stipulation is binding on the parties.

4. The doctrine of equitable estoppel is available in certain circumstances to those who detrimentally rely on representations made by another. In order for equitable estoppel to apply, the following requirements must be met: "(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other

party must be ignorant of the true facts; and (4) he must rely upon the conduct to his injury.” (*Lentz v. McMahon* (1989) 49 Cal.3d 393, 399, quoting *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 489.) Although the doctrine should be applied against the government “where justice and right require it,” it cannot be applied against the government where to do so would effectively nullify a “strong rule of policy, adopted for the benefit of the public” (*City of Long Beach v. Mansell, supra*, 3 Cal.3d at p. 493.) Nor can estoppel be applied where to do so would enlarge the power of a governmental agency or expand the authority of a public official. (*Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 28.)

Respondent Kuehn did not show that the third or fourth factors of equitable estoppel can be realized in the context of his relationship to the District with regard to the application of the tie-breaking criteria among mathematics teachers having a first date of paid service to the District of August 20, 2004. Because the District publishes the tie-breaking criteria for each year, Respondent Kuehn cannot be found to have been ignorant of the true facts that pertain to applying tie-breaking criteria. And he did not show that the District’s tie-breaking criteria injured him in a fashion that is contrary to equity and fairness. Hence, the District cannot be barred from executing the layoff action as to Respondent Kuehn.

5. 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.

6. 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 14 through 18 and 20.

7. 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 19.

RECOMMENDED ORDER

1. The Accusation served on Respondents Lucia Boyer, Jamie Bush, Dana Clower, Stacey Gonzalez, Maryann Lancaster, Dustin Kuehn, Patricia Guerrero-Frazier, Shelly L. Standley and Byron Zinselmeir, is sustained, except that the Accusation is dismissed as to Respondent Adina Lawson.

2. Final notice may be given to Respondents Lucia Boyer, Jamie Bush, Dana Clower, Stacey Gonzalez, Marianne Lancaster, Dustin Kuehn, Patricia Guerrero-Frazier, Shelly L. Standley and Byron Zinselmeir, 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 Eureka City Schools.

DATED: May 4, 2009

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