

BEFORE THE GOVERNING BOARD OF THE
FILLMORE UNIFIED SCHOOL DISTRICT

In the Matter of the Layoffs of:

OAH NO. 2009040034

Brian Ricards, Henry Beltran and Mary
Ellen Wortham, Certificated Employees
of the Fillmore Unified School District,

Respondent.

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Somis, California, on April 22, 2009.

Aaron O'Donnell, Attorney at Law, represented the Complainant.

Adam Acevedo, Attorney at Law, represented the Respondents.

Oral and documentary evidence and evidence by way of stipulation and official notice was received.

The Administrative Law Judge now finds, concludes and orders as follows:

SUMMARY

The Governing Board (Board) of the Fillmore School District (District) decided to reduce or discontinue particular kinds of services provided by certificated personnel for the 2009/2010 school year for budgetary reasons. The decision was not related to the competency and dedication of the teachers whose services were proposed to be reduced or eliminated.

FACTUAL FINDINGS

Parties

1. Complainant Evalene Townend, filed the Accusation¹ in this proceeding in her official capacity as assistant superintendent of the District.

2. At the outset of the hearing, upon the unopposed motion of Complainant, the Accusation was dismissed as to Brian Ricards and the notice of layoff is, therefore, rescinded.

3. Respondents Henry Beltran and Mary Ellen Wortham are certificated employees of the Fillmore Unified School District.

Reduction of Services

4. On March 3, 2009, the Board adopted and issued resolution number 19, entitled “Reduction or Discontinuance Particular Kinds of Services” (Resolution) to reduce or discontinue particular kinds of certificated services no later than the beginning of the 2009/2010 school year because of the financial constraints resulting from revenue being insufficient to maintain the current levels of programs.

5. The Resolution specified the Reduction or Elimination of Particular Certificated Services as follows:

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¹ The term “accusation” refers to a pleading utilized under the Administrative Procedure Act, Government Code section 11503. Respondents are not “accused” in the every-day sense of that word, unless it can be said they are accused of not having enough seniority to retain their positions with the District in the face of a resolution to reduce positions.

<u>TYPE OF PROGRAM</u>	<u>FTE (Full-Time Equivalent)</u>
District ELD Coordinator	.5 FTE
District Migrant Coordinator	.5 FTE
Elementary Reading Coach	1.0 FTE
Multiple Subject Teachers (K-6)	2.0 FTE
High School Special Education RSP	.4 FTE
High School Physical Science	.2 FTE
High School Electives	.4 FTE
High School Spanish	.2 FTE
High School Physical Education	.4 FTE
High School ROP – Construction Technology	.4 FTE
High School ROP – Ag Fabrication	.4 FTE
High School ROP – Automotive	.4 FTE
High School ROP – Photography	<u>.6 FTE</u>
	7.4 FTE

The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinue under Education Code section 44955.

6. The decision by the Board to reduce or discontinue services was neither arbitrary nor capricious, but rather was a proper exercise of the District’s discretion given the budgetary constraints, other factors considered by the Board, and the manner in which the decision to reduce or discontinue services was reached. Additionally, said decision relates solely to the welfare of the District’s schools and the District’s pupils and students.

Notice and Process

7. The Board determined that it shall be necessary, by reason of the reductions or discontinuances set forth in Finding 5, to decrease the number of certificated employees at the close of the present school year by a corresponding number of full-time equivalent positions, and directed the Superintendent, or designee, to proceed accordingly by notifying the appropriate employees to implement the Board’s determination.

8. On or before March 15, 2009, Respondents were given various written notices by the District that it had been recommended that notice be given them pursuant to Education Code sections 44949 and 44955 that their services will not be required for the ensuing 2009/2010 school year, and stating the reasons therefore. Respondents were provided notifications as a precaution, in order that they be permitted to participate and exercise arguable rights in this hearing.

9. On March 20, 2009 each Respondent did file a request for hearing. Thereafter, an Accusation was timely served on each Respondent and each Respondent did timely file a notice of defense.

Findings Re: Respondents

10. Henry Beltran serves the District and its students as a Regional Occupational Program (ROP) instructor teaching woodshop and construction technology at the high school level. He is a competent and well qualified teacher. However, as an ROP instructor he is not, and cannot be, either a permanent or probationary employee of the District.

11. Mary Ellen Wortham serves the District and its students as an ROP instructor teaching photography at the high school level. She is a competent and well qualified teacher. However, as an ROP instructor she is not, and cannot be, either a permanent or probationary teacher.

Seniority

12. The District maintains a Seniority List which contains employees' seniority dates (the first date of paid service) current assignments and locations, credentials, authorizations and employment status (permanent or probationary). Neither Respondent is on the Seniority List in that neither Respondent is either a permanent or probationary employee of the District. No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render.

LEGAL CONCLUSIONS

1. All notice and other requirements of Education Code sections 44949 and 44955 were met. Therefore, jurisdiction was established for this proceeding as to all Respondents by reason of Findings 7, 8 and 9.

2. Cause was established as required by Education Code section 44955 to reduce the number of certificated employees due to the reduction or discontinuation of particular kinds of services by reason of Findings 4 and 5. The Board's decision to reduce or eliminate the identified services set forth in Finding 5 was neither arbitrary nor capricious in that the decision relates solely to the welfare of the District's schools and the pupils within the meaning of Education Code section 44949, by reason of Finding 6.

3. Respondents Henry Beltran and Mary Ellen Wortham, pursuant to Education Code sections 44909 and 44910, do not possess rights under Education Code sections 44949 and 44955, by reason of Finding 10 as to Mr. Beltran and Finding 11 as to Ms. Wortham. In sum, Respondents do not possess rights to a hearing because Respondents serve in categorically funded positions as instructors in a regional occupational program.

4. No permanent or probationary employee with less seniority is being retained to render a service for which Respondents are certificated and competent by reason of Finding 12.

5. Cause exists to give notice to Respondents that their services will not be required for the 2009/2010 school year by reason of the whole of the Findings herein.

ORDER

Notice may be given to Respondents Henry Beltran and Mary Ellen Wortham that their services will not be required for the 2009/2010 school year.

Dated: _____

RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:rfm