

BEFORE THE
GOVERNING BOARD OF THE
STANISLAUS UNION SCHOOL DISTRICT
COUNTY OF STANISLAUS
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

CERTAIN CERTIFICATED PERSONNEL
EMPLOYED BY THE STANISLAUS UNION
SCHOOL DISTRICT,

Respondents.

OAH No. 2009040197

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, in Modesto, California, on April 24, 2009.

Roman J. Munoz, Attorney at Law, represented the Stanislaus Union School District (District).

Ernest Tuttle, IV, Attorney at Law, represented the respondents, who are listed on Attachment A hereto.¹

Evidence was received, the record was closed, and the matter was submitted for decision on April 24, 2009.

FACTUAL FINDINGS

1. On March 12, 2009, the Governing Board of the District adopted Resolution No. 0809-26, entitled "A Resolution for Reduction and Elimination of Particular Kinds of Service (PKS), Criteria for Assignments and Tiebreak Criteria for the 2009-2010 School Year" (PKS Resolution), by which it determined that it was necessary to reduce the following particular kinds of services not later than the beginning of the 2009-2010 school year:

¹ Cynthia Goodwin was also named as a respondent in this matter. She is not represented by Mr. Tuttle. The issues relating to Ms. Goodwin were bifurcated from this case and will be heard at a separate hearing and addressed in a separate proposed decision.

Reduction of Administrative Services resulting in the elimination of 1.0 FTE Certificated Principal (Grades K-6) Services.

Reduction of Elementary School Teaching Services (Grades K-6) resulting in the elimination of 20.0 FTE Certificated Elementary Teaching Services (Grades K-6).

Reduction of Title I Categorical Teaching Services (Grades K-6) resulting in the elimination of 4.5 Certificated Elementary Teaching Services (Grades K-6).

Reduction of Intermediate Art Services (Grades 7-8) resulting in the elimination of 1.0 FTE Certificated Intermediate (Grades 7-8) Teaching Services.

Reduction of School Counseling Services (Grades 7-8) resulting in the elimination of 1.0 FTE School Counseling Services (Grades 7-8).

Reduction of District-wide Music Services (Grades K-8) resulting in the elimination of 1.0 FTE Certificated Music Teaching Services (Grades K-8).

Total: 28.5 FTE²

By reason of the above reduction of particular kinds of services, the Governing Board determined that it will be necessary to terminate, at the end of the 2008-2009 school year, the employment of an equal number of certificated employees of the District. The Governing Board directed the Superintendent or his designated representative to take all appropriate action needed, including the sending of appropriate notices to all employees whose positions will be affected by virtue of its action. The Governing Board determined that, for purposes of making assignments and reassignments of certificated employees, "competency shall mean, at a minimum, possession of a preliminary clear, professional clear, lifetime, other full credential or supplementary authorization in the subject matter the employee seeks to displace a junior employee." The Governing Board also established the criteria for determining the order of termination of certificated employees who first rendered paid service to the District on the same date, and the weight to be given to such criteria (tie-breaking criteria). The District's 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 times, and is not related to the skills, abilities or work performance of the affected employees.

² "FTE" stands for full-time equivalent.

2. Prior to March 15, 2009, certain certificated employees were given written notice of the recommendation that, pursuant to Education Code sections 44949 and 44955, their services will not be required for the ensuing school year and stating the reasons therefor (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 or had filed on their behalf a timely Notice of Defense.

4. Seniority List: The District maintains a Certificated Seniority List, which contains the name, seniority date, and work site of the District's certificated employees. The District also maintains a Employee Credential List, which lists the credentials and authorizations held by each certificated employee. There was no evidence presented at the hearing to establish that any changes to the District's Seniority List should be ordered in this proposed decision.

5. Positively Assured Attrition: The PKS Resolution states that "the Governing Board has considered all positively assured attrition which has occurred to date, that is, all deaths, resignations, retirements, non-reelections and other permanent vacancies in reducing these services and, but for the attrition already assured and the attrition anticipated, would have found it necessary to reduce additional particular kinds of service." 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.

6. Bumping: In deciding which certificated employees should be laid off for each particular kind of service being reduced, the District developed a "Displacement Chart" to determine whether certificated employees identified for reduction had credentials and competencies that would allow them to displace or "bump" more junior employees. There was no evidence presented at the hearing to show that the District has retained any junior certificated employees to perform services that more senior respondents are credentialed and competent to perform.

7. Tie-Breaking: The District developed a chart entitled, "Stanislaus Union School 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. The District also developed a procedure for drawing lots when certificated employees with the same seniority date were deemed to have equal seniority after application of the tie-breaking criteria. After conducting the lottery, the District developed a second chart entitled, "Stanislaus Union School Application of Tie-Breaking Criteria (after drawing)," which reflects both the results of the application of the tie-breaking criteria and the lottery. 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 and conduct of the lottery.

8. 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.

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

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

11. 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 28.5 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