

BEFORE THE
GOVERNING BOARD OF THE
KELSEYVILLE UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ROCHELLE BELLE, HEATHER CARTER,
NATASHA COUEY, LORI JONES,
CATHLEEN McCARTHY, KIMBERLY
OLDS-OLSON, CHERI SEELY and
SUSAN WILKINSON,

Respondents.

OAH No. 2009060790

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Kelseyville, California, on July 22, 2009.

Joseph C. Kinkade, Lozano Smith, Attorneys at Law, represented complainant Boyce McClain, Superintendent of the Kelseyville Unified School District.

James D. Allen, Attorney at Law, represented the respondents, all of whom were present with the exception of Lori Jones.

The matter was submitted on July 22, 2009.

FACTUAL FINDINGS

1. Complainant Boyce McClain made and filed the accusation in his official capacity as Superintendent of the Kelseyville Unified School District (district).¹

2. Respondents Rochelle Belle, Heather Carter, Natasha Couey, Lori Jones, Cathleen McCarthy, Kimberly Olds-Olson, Cheri Seely and Susan Wilkinson are certificated employees of the district.

¹ Superintendent McClain signed the accusation, but he has since left the district. The current superintendent is David McQueen.

3. On June 10, 2009, the district's Board of Trustees adopted Resolution No. 08/09-17, setting a schedule of notice and hearing pursuant to Education Code section 44955.5.²

4. On June 10, 2009, Superintendent McClain recommended to the board that it reduce or discontinue particular kinds of services at the end of the 2008-2009 school year. The services to be reduced or discontinued are identified as "Eliminate the equivalent of nine (9) full time equivalent (FTE) teachers." The superintendent asked the board to authorize him to pursue those procedures necessary to not reemploy the affected teachers pursuant to sections 44949, 44955, and 44955.5.

5. On June 10, 2009, the board adopted Resolution No. 08/09-18. In Resolution No. 08/09-18, the board determined that the district's total revenue limit per unit of average daily attendance pursuant to the 2009-2010 Budget Act has not increased by at least two percent, and stated the board's opinion that it is necessary to decrease the number of permanent and/or probationary employees of the district pursuant to section 44955.5. The board concluded that, as of the end of the 2008-2009 school year, it is necessary reduce or discontinue certain particular kinds of services now being provided by the district. The services to be reduced or discontinued are stated as "Eliminate the equivalent of nine (9) full-time teachers." The resolution directs the superintendent or his designee to give appropriate notices, pursuant to sections 44949, 44955 and 44955.5, to certificated employees whose positions will be affected by the board's action.

6. On June 11, 2009, in accordance with the schedule of notice and hearing adopted in Resolution No. 08/09-17, Superintendent McClain gave written notice to respondents of the recommendation that their services will not be required for the 2009-2010 school year. The reasons for the recommendation were set forth in the written notice.

7. Respondents filed timely requests for hearing to determine if there is cause for terminating their services for the 2009-2010 school year. An accusation was served on respondents, all of whom filed timely notices of defense. All prehearing jurisdictional requirements have been met.

8. The district's total revenue limit per unit of average daily attendance (ADA) for the 2009-2010 fiscal year has not increased by at least two percent under the Budget Act for that fiscal year. Under the Budget Act adopted in February 2009, the district's total revenue limit per unit of ADA will decrease by 1.69 percent. Under the governor's "May Revise" budget, which has yet to be enacted, the district's total revenue limit per unit of ADA will decrease by 3.45 percent.

9. The board's action to eliminate the equivalent of nine full time teachers is based upon its intent to eliminate class size reduction for the 2009-2010 school year. (After adopting Resolution No. 08/09-18, the district determined that it would only be necessary to

² All further statutory references are to the Education Code.

eliminate eight teachers, not nine.) Of the district's certificated employees who hold only a multiple subject credential and thus can teach only in the district's elementary schools, respondents are the least senior.

10. Respondents assert that it is too late for the district to initiate this layoff. They contend that, since the layoff is predicated on the elimination of class size reduction, it is a "particular kind of service" (PKS) layoff that must be conducted under sections 44955 and 44949. Those sections require that employees be given notice of the proposed layoff no later than March 15 and final notice of termination no later than May 15. The district did not conduct a spring layoff in 2009.

Respondents' argument is not persuasive. This proceeding was initiated under section 44955.5, subdivision (a), which provides in relevant part as follows:

During the time period between five days after the enactment of the Budget Act and August 15 of the fiscal year to which that Budget Act applies, if the governing board of a school district determines that its total revenue limit per unit of average daily attendance for the fiscal year of that Budget Act has not increased by at least 2 percent, and if in the opinion of the governing board it is therefore necessary to decrease the number of permanent employees in the district, the governing board may terminate the services of any permanent or probationary certificated employees of the district, including employees holding a position that requires an administrative or supervisory credential. *The termination shall be pursuant to Sections 44951 and 44955 but, notwithstanding anything to the contrary in Sections 44951 and 44955, in accordance with a schedule of notice and hearing adopted by the governing board.* [Italics added.]

Under section 44955, the governing board of a school district may decrease the number of permanent certificated employees if it determines that it is necessary to reduce or discontinue a particular kind of service. It is true, as respondents assert, that this layoff is based upon the elimination of a particular kind of service, namely, the district's participation in class size reduction. But that is not a legal weakness in the layoff proceeding. On the contrary: any termination under section 44955.5 must be pursuant to section 44955, which expressly authorizes a PKS layoff.

11. Respondents assert that the board's decision to institute this layoff proceeding was arbitrary and capricious and an abuse of the board's discretion. Respondents do not dispute that the district's revenue limit will decrease by at least 1.69 percent for the 2009-2010 school year. They contend, however, that it is not necessary to eliminate teachers for the 2009-2010 school year because the district will receive federal stimulus funds that can and should be used to retain teachers. Instead, respondents argue, the district intends to use

the stimulus funds to help it increase its reserve. Respondents assert that while the district is only required to maintain a three percent reserve, the district proposes to maintain a reserve of over 14 percent for FY 2009-2010. Respondents argue that it is unconscionable for the district to lay off teachers when it is maintaining a reserve many times larger than required.

Katherine Garrison explained the rationale for the district's proposed layoff and the setting of its reserves. Until this summer, Garrison was the district's Assistant Superintendent for Business Services, a position she held for almost 10 years. (She was recently appointed Director of Business Services for the Placer County Office of Education.) As assistant superintendent, Garrison analyzed the district's financial situation for 2009-2010 and recommended various actions to the board, including this proposed layoff.

Garrison stated that when the district reviewed the budget act in February 2009, it felt that it could avoid spring layoffs through attrition and other cost-saving measures. The district, however, has a substantial deficit and, under the governor's May Revise, the deficit would increase to approximately \$900,000. According to Garrison, a deficit that size is "huge" for this district, which has total annual revenues of about \$14.5 million. In addition, the deficit continues to grow because of declining enrollment and increasing costs. The district looked at many different ways to reduce the deficit, including reductions in sports and maintenance, but found that it could not do so without affecting personnel: over 90 percent of the district's budget goes to personnel costs.³

The district relies on its reserve fund for cash flow to meet its payroll and pay its bills. Its cash flow problems are also increasing because the state, to meet its own budget problems, frequently defers payments to school districts. Garrison acknowledged that federal stimulus funds will allow the district to increase its reserve to about 14 percent for 2009-2010. The district, however, is required by the state to prepare "Multi-Year Projections" that extend three years out. In its Multi-Year Projections, the district must demonstrate that it will maintain a three percent reserve over the next three fiscal years, not just the next school year. If the district uses stimulus funds for payroll instead of reserve for 2009-2010, the district will have used all of its reserve by 2010-2011 and will have no cash to make payroll or pay bills. Even if the district uses stimulus funds to increase its reserve, as it plans to do, and eliminates the services of eight teachers, as it also proposes, it will have only a 1.71 percent reserve in 2011-2012, below the three percent required by the state.

It is well-established that a district's budget priorities – which include the amount needed for reserves – are matters within the discretion of its governing board. (*California Sch. Employees Assn. v. Pasadena Unified Sch. Dist.* (1977) 71 Cal.App.3d 318, 322.) Whether the board acted arbitrarily and capriciously in deciding upon the present layoff is "measured by the standard set by reason and reasonable people, bearing in mind that such a standard may permit a difference of opinion on the same subject." (*Campbell Elementary*

³ The district's effort to reduce personnel costs is not limited to the elimination of class size reduction. It also intends to reduce costs through attrition, consolidation of positions, and the elimination of classified positions.

Teachers Assn., Inc. v. Abbott (1978) 76 Cal.App.3d 796, 808.) The district is facing decreasing state revenue and declining enrollment, and it has a substantial deficit. The board has chosen to reduce its payroll now to avoid an even more serious financial situation two years from now. Although respondents may disagree with the board's decision, the decision meets the standard of reasonableness.

12. Respondents contend that the district "overnoticed" the number of teachers to be laid off. They assert that, if the district's goal is to replace the money it will lose in 2009-2010 because of the decrease in its total revenue limit – about \$300,000 – it only needs to lay off five teachers, not eight. The district's financial difficulties, however, go much deeper than its loss of revenue for 2009-2010: the district faces a deficit of \$900,000. It is a reasonable exercise of the board's discretion to address that deficit by eliminating class size reduction, which has the effect of eliminating the district's need for eight elementary school teachers.

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

14. No permanent or probationary employee with less seniority is being retained to render a service that any respondent is certificated and competent to provide.

15. The cause for the reduction in particular kinds of services relates to the welfare of the district's schools and their pupils.

LEGAL CONCLUSION

Cause exists because of the elimination of class size reduction pursuant to sections 44955.5 and 44955 to give notice to respondents that their services will not be required for the 2009-2010 school year. This cause relates solely to the welfare of the schools and the pupils thereof within the meaning of section 44949.

ORDER

In accordance with the Legal Conclusion set forth above, notice may be given to respondents Rochelle Belle, Heather Carter, Natasha Couey, Lori Jones, Cathleen McCarthy, Kimberly Olds-Olson, Cheri Seely and Susan Wilkinson that their services will not be required for the 2009-2010 school year because of the elimination of class size reduction.

DATED: _____

DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings