

BEFORE THE
SAN BERNARDINO COUNTY
SUPERINTENDENT OF SCHOOLS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2010030636

WILLIAM HANCOCK,

Respondent.

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Bernardino, California on April 30, 2010.

Sharon J. Ormond, Esq. and Heather A. Dozier, Esq., Atkinson, Andelson, Loya, Ruud and Romo represented the District.

Respondent William Hancock was present and represented himself.

The matter was submitted on April 30, 2010.

SUMMARY OF PROPOSED DECISION

The San Bernardino County Superintendent of Schools determined to reduce or discontinue particular kinds of services provided by teachers and other certificated employees for budgetary reasons. The decision was not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

District staff carried out the Board's decision by using a selection process involving review of credentials and seniority. The selection process was in accordance with the requirements of the Education Code.

FACTUAL FINDINGS

1. William Hancock (Respondent) is a certificated employee of the San Bernardino County Superintendent of Schools (SBCSOS).
2. On March 8, 2010, Gary S. Thomas, Ed.D., San Bernardino County Superintendent of Schools (Superintendent) adopted a resolution reducing or discontinuing Regional Occupational Program (ROP) services for the ensuing school year.
3. On March 9, 2010, Denise J. Danne, Ed.D., Assistant Superintendent, Human Resources (Assistant Superintendent), served Respondent with written notice that she recommended to the Superintendent that he be given notice that his services would not be required for the ensuing school year and the reasons for her recommendation. In addition, she informed Respondent of his right to hearing, that the request for hearing must be delivered to the SBCSOS no later than March 22, 2010, and that failure to request a hearing would constitute waiver of the right to a hearing.
4. On March 9, 2010, the Superintendent adopted a revised resolution, removing office operations/technician from the ROP services to be reduced or eliminated.
5. On March 10, 2010, the Assistant Superintendent served Respondent with another letter informing him that she recommended to the Superintendent that he be given notice that his services would not be required for the ensuing school year and the reasons for her recommendation. Again, she advised Respondent of his right to hearing, that the request for hearing must be delivered to the SBCSOS no later than March 22, 2010, and that failure to request a hearing would constitute waiver of the right to a hearing.

Respondent submitted a timely request for hearing to determine if there was cause not to re-employ him for the ensuing school year.

6. On April 14, 2010, the Superintendent made, filed and served Respondent with an Accusation and related materials.

In response, Respondent filed a timely Notice of Defense.

7. The prehearing jurisdictional requirements were satisfied.
8. On March 10, 2010, in the revised Resolution, the Superintendent took action to reduce or eliminate the following particular kinds of certificated services commencing the 2010-2011 school year:

Reduce Adults in Correction ROP Teaching Srvcs: Restaurant Occupations	.250	F.T.E.
Reduce Adults in Correction ROP Teaching Srvcs: Custodial Occupations	.250	F.T.E.
Reduce Adults in Correction ROP Teaching Srvcs: Computer Applications	.250	F.T.E.

Reduce Adults in Correction ROP Teaching Svcs: Printing Occupations	.625	F.T.E.
Reduce Adults in Correction ROP Teaching Svcs: Desktop Publishing	.250	F.T.E.
Reduce Adults in Correction ROP Teaching Svcs: Auto Body/Fender Rpr	.625	F.T.E.
TOTAL CERTIFICATED POSITIONS:	2.25	F.T.E.

The proposed reductions totaled 2.25 full-time equivalent (FTE) positions.

9. During the hearing, Lisa Norman, the Director of Certificated Personnel and Human Resources (Director), testified that the reasons for the reduction of particular kinds of services are (1) the State of California’s reduction of the ROP budget by 21%, and (2) decline in enrollment within the ROP Program, and, as a result, less ADA funding for the ROP program. As a consequence, with no changes, there will be a \$300,000.00 deficit; further, there is concern that there will be further reductions in funds from the State of California.

10. Respondent questioned the validity of the analysis that was the basis for the Superintendent’s decision (as he understood it), as well as the reasonableness and fairness of his decision to reduce or eliminate ROP services. On cross-examination, Respondent asked the Director if the SBCSOS relied on the “ROP adults in corrections labor market summary job survey (Job Survey).”¹ In response, she testified that the Job Survey was one factor but reiterated the reasons she described on direct examination (Finding 9).

Respondent readily acknowledged that the SBCSOS has a budgetary problem.

Further, Respondent agreed that the SBCSOS has no control of assignment of students to the classes. Some, if not all, of the ROP classes are taught at Glen Helen Rehabilitation Center, a correctional facility. As a result, the San Bernardino County Sheriff assigns the students/inmates.

In summary, even if the Superintendent inaccurately evaluated the Job Survey, there were other reasons for the reduction or discontinuing ROP services, including budgetary reductions in the ROP program. There is no evidence to the contrary.

Based on the evidence in the record, the Superintendent properly exercised his discretion in determining to reduce or discontinue ROP services.

11. The Director developed a seniority list that contained, among other matters, the certificated employee’s name, date of hire,² assignment, credential and subject authorization. She verified the information on file with the SBCSOS and with the Commission on Teacher Credentialing.

¹ Exhibit A.

² The Director testified that hire date also means seniority date.

12. Respondent has a seniority date of October 22, 1986 and holds a clear designated subject credential that authorizes him to teach auto body, auto repair and fender repair, a service identified for reduction by .625 FTE. He is the only certificated teacher that teaches this course. His credential does not authorize him to provide any other service, and he holds no other credential. The Assistant Superintendent properly noticed Respondent.

13. The Superintendent considered all known attrition, including all deaths, resignations, retirements, nonreelection of probationary employees and other permanent vacancies in service to be effective no later than the end of the current school year.

14. Between the employees who first rendered paid service to the SBCSOS on the same date, the order of termination was based solely on the basis of the needs of the SBCSOS and its students.

15. The services that the Superintendent proposed to reduce were “particular kinds of services” that can be reduced or discontinued within the meaning of Education Code section 44955. The Superintendent’s decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious but constituted a proper exercise of discretion.

16. The reduction or discontinuance of particular kinds of services related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the SBCSOS as determined by the Superintendent.

17. No certificated employee junior to Respondent was retained to perform any services that he was certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in these sections are satisfied.

2. The Superintendent may reduce services within the meaning of section 44955, subdivision (b), “either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may ‘reduce services’ by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved.” (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. Cause exists under Education Code sections 44949 and 44955 for the San Bernardino County Superintendent of Schools to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuance of particular kinds of services is related solely to the welfare of the schools and the pupils thereof.

4. All arguments not addressed herein are determined not to be relevant and/or unsupported by the evidence and therefore rejected.

ORDER

1. The Accusation served on Respondent William Hancock is sustained.

2. Notice shall be given to Respondent William Hancock that his position will be reduced by .625 full-time equivalent for the 2010-2011 school year because of the reduction or discontinuance of particular kinds of services.

DATED: _____

VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings