

BEFORE THE
GOVERNING BOARD
GREENFIELD UNION SCHOOL DISTRICT
COUNTY OF KERN
STATE OF CALIFORNIA

In the Matter of the Layoff of:

Erin Chairez and other certificated
employees of the Greenfield Union
School District,

Respondents.

OAH Case No. L2010040179

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on May 4, 2010, in Bakersfield, California.

Christopher W. Hine, Attorney at Law, represented Chris Crawford (Crawford), Superintendent of the Greenfield Union School District (District).

Ernest H. Tuttle III, Attorney at Law, represented Erin Chairez (Chairez), Joyce Cisneros (Cisneros), Monique Elysee (Elysee), Marcie Frankhouser (Frankhouser), Connie Leija (Leija), Kelly Mashburn (Mashburn), Kerri K. Ornelaz (Ornelaz), and Jenny Saldana (Saldana), collectively referred to as Respondents.

Respondent Kimberly Sward (Sward) represented herself.

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2010-2011 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2010-2011 school year.

Oral and documentary evidence, and evidence by oral stipulation on the record, was received at the hearing, and the matter was submitted for decision.

On May 5, 2010, Respondents' counsel submitted a document pertaining to Respondent Mashburn. Submission of this document was not authorized. Moreover, the document itself does not indicate that it was sent to District's counsel, so lack of objection cannot be assumed. Accordingly, absent a joint request to reopen the record the document has not been received into evidence or considered.

FACTUAL FINDINGS

1. Superintendent Crawford filed the Accusation in his official capacity.
2. Respondents are certificated employees of the District.
3. On March 10, 2010, the Governing Board of the District (Governing Board) adopted Resolution Number 10-15, reducing self-contained classroom instruction in Grades Kindergarten to Sixth by 27 full time equivalent positions.
4. Superintendent Crawford thereafter provided written notice to the Governing Board and to Respondents that he recommended the termination of Respondents' services for the 2010-2011 school year due to the reduction of particular kinds of services.
5. On March 12, 2010, the District provided notice to Respondents that their services will not be required for the 2010-2011 school year due to the reduction of particular kinds of services. Respondents filed timely requests for hearing.
6. On April 8, 2010, the District filed and served the Accusation and other required documents on Respondents. Respondents thereafter timely filed Notices of Defense, seeking a determination of whether cause exists for not reemploying them for the 2010-2011 school year.
7. All prehearing jurisdictional requirements have been met.
8. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.¹
9. The decision to reduce or discontinue the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.
10. The reduction of services set forth in factual finding number 3 is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.
11. a. Several Respondents challenged their given seniority date of August 13, 2007, because it did not take into account attendance at District-provided training before they started imparting instruction. All hold multiple subject credentials, and are providing elementary school instruction.

¹ All further statutory references are to the Education Code.

b. Respondent Chairez attended an August 8, 2007, training session called “Frontloading Academic Language for EL,” in which she received instruction on techniques for teaching English Language learners (EL). A site administrator told her that the class was a prerequisite to teach EL students.

c. Respondent Cisneros attended the August 8, 2007, EL language class, and a training class on the same date about a new interactive blackboard called “Smart Board.” The latter was a requirement for teachers who wanted to have the Smart Board in their classrooms.

d. Respondent Elysee attended Language Arts training on August 6, 2007. Her site administrator, whose name she did not remember, told Respondent Elysee that she had to attend the training in order for the school to retain its status as a grant recipient.

e. Respondent Mashburn attended a training on August 8, 2007, called “Write From The Beginning,” and which covered the curriculum to be taught at her school.

f. All teachers and administrators who attended the foregoing in-service training were paid at the rate of \$25 per hour. No evidence was presented regarding the certificated employees’ regular rate of pay under their employment contract.

12. Respondent Ornelaz has a seniority date of August 13, 2007. She holds a single subject credential that allows her to teach sewing and cooking in middle school. She is working towards attaining a single subject (Home Economics) credential.

13. Respondent Frankhouser has a seniority date of August 13, 2007, and holds a multiple subject credential. She was first hired in August 2002, voluntarily resigned in June 2006, and was rehired on August 13, 2007.

14. Respondent Sward was first hired by the District on March 13, 2002, and attained permanent status in August 2004. She voluntarily resigned her employment on June 30, 2007, and was rehired on January 25, 2008, as a long-term substitute. She started a regular assignment the following school year, and was given a seniority of date of August 11, 2008. Respondent Sward holds a multiple subject credential.

15. The District did not retain any certificated employee junior to any Respondent to render a service which any Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 7.

2. The services listed in factual finding number 3 are particular kinds of services

within the meaning of section 44955, by reason of factual finding numbers 3 and 8.

3. Cause exists under sections 44949 and 44955 for the reduction of the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 15.

4. The seniority date of a certificated employee is defined as the date the employee "first rendered paid service in a probationary capacity." (§ 44845.) These words must be given their plain and commonsense meaning in order to effectuate the legislative intent. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 775; *California Teachers Assn. v. Governing Bd. of Rialto Unified School District* (1997) 14 Cal.4th 627, 632-633; *Steketee v. Lintz, Williams & Rothberg* (1985) 38 Cal.3d 46, 51-52.) The statute requires crediting a certificated employee with the seniority date on which he or she was first paid to render service in a probationary capacity. The statute does not expressly require a particular salary rate or schedule, a particular type of service in a probationary capacity, or that the service be "mandatory."

Respondents Chairez, Cisneros, Elysee, and Mashburn were hired to render services in a probationary capacity and the training in question was provided in connection with such services. In each case, the training pertained to the subject matter the certificated employee was expected to teach during the school year. In some cases, namely those of Respondents Cisneros and Elysee, the training was a prerequisite to use certain equipment or to teach a class. In the case of Respondent Elysee, the instruction provided in her in-service training provided some tangible benefit to the District.

If the date on which the employee first rendered paid service in a probationary capacity is incorrect, the employee's seniority date must be adjusted to reflect the earlier first date of probationary service. (*Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260, 1273.)

Accordingly, the seniority dates of Respondents Chairez, Cisneros, Elysee, and Mashburn, and those of all other certificated employees who attended District in-services in 2007, must be adjusted to reflect their earlier first date of paid service in a probationary capacity. However, even after this adjustment, these Respondents remain junior to those retained to render services which the Respondents are certificated and competent to render.

5. Section 44848 provides, in pertinent part, that, "When any certificated employee shall have resigned or been dismissed for cause and shall thereafter have been reemployed by the board, his date of employment shall be deemed the date on which he first . . . rendered paid service (if reemployed after June 30, 1947) after his reemployment." Another pertinent section, 44931, cited by Respondent Sward, provides: "Whenever any certificated employee of any school district who, at the time of his or her resignation, was classified as permanent, is

reemployed within 39 months after his or her last day of paid service, the governing board of the district shall, disregarding the break in service, classify him or her as, and restore to him or her all the rights, benefits and burdens of, a permanent employee, except as otherwise provided in this code. . . .” In *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627 (*San Jose*), the court held that section 44931 was subject to the limitations contained in section 44848.

The District correctly calculated Respondent Frankhouser’s seniority date under section 44848.

Respondent Sward’s actual reemployment date is January 25, 2008. Although Respondent Sward was reemployed as a long-term substitute, neither section 44848 nor 44931 qualify the type of employment a rehired employee must discharge, and both simply refer to date of “reemployment.” Her correct seniority date is, therefore, January 25, 2008. However, as was the case with the Respondents set forth in legal conclusion number 4, even after this adjustment, Respondent Sward remains junior to those retained to render services which she is certificated and competent to render.

6. Cause exists to terminate the services of Respondents Chairez, Cisneros, Elysee, Frankhouser, Leija, Mashburn, Ornelaz, Saldana, and Sward for the 2010-2011 school year due to the reduction of particular kinds of services, by reason of factual finding numbers 1 through 15, and legal conclusion numbers 1 through 5.

ORDER

The Accusations are sustained and the District may notify Respondents Chairez, Cisneros, Elysee, Frankhouser, Leija, Mashburn, Ornelaz, Saldana, and Sward that their services will not be needed during the 2010-2011 school year due to the reduction of particular kinds of services.

DATED: _____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings