

BEFORE THE
GOVERNING BOARD OF
EUREKA UNION SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

CERTAIN CERTIFICATED PERSONNEL
EMPLOYED BY THE EUREKA UNION
SCHOOL DISTRICT,

Respondents.

OAH No. 2011030177

PROPOSED DECISION

Administrative Law Judge Linda A. Cabatic, State of California, Office of Administrative Hearings, heard this matter in Granite Bay, California on April 7, 2011.

Terry Filliman, Attorney at Law represented the Eureka Union School District (District).

Ernest H. Tuttle IV, Attorney at Law, represented respondents Linda Godshall and Christy Goldthwaite (Respondents).

Evidence was received, the record was closed and the matter was submitted for decision on April 7, 2011.

FACTUAL FINDINGS

1. Rich L. Schrichfield is the Interim Superintendent and the Assistant Superintendent for Human Resources for the District. The District provides education to approximately 3,400 students from pre-kindergarten through the eighth grade.

2. Mr. Schrichfield stated a reduction of \$2.5 million was recommended for the next school year because of budgetary constraints and declining enrollment in the District. The District has also undergone budget reductions for the past three years.

3. On March 8, 2011, the Board of Education (Board) of the District adopted Resolution No. 10-11-20, entitled "Reduction/Elimination of Particular Kinds of Certificated Services" (PKS Resolution). Pursuant to the PKS Resolution, the Board determined that it was necessary for the District to eliminate or reduce certain particular kinds of services

(PKS) and to terminate not later than the beginning of the 2011-2012 school year the employment of a corresponding number of probationary and/or permanent certificated employees. In the PKS Resolution, the Board directed the Superintendent or his designee to send appropriate notices to all employees to be affected by virtue of the PKS reductions and eliminations. The Board also directed the Superintendent or his designee to make such assignments and reassignments of certificated employees following implementation of the reduction or elimination of the PKS so as to ensure that each remaining certificated employee is assigned to a position for which he or she is properly credentialed to perform pursuant to Education Code section 44955.

4. The PKS Resolution identified the following particular kinds of services for reduction or elimination:

A	<u>Grade K-8 Instructional Services:</u>	
1.	Self-Contained Classroom Teachers And Self-Contained Core Teachers	10.0 FTE ¹
B.	<u>Certificated Support Services:</u>	
1.	Speech Language Pathologist	.7 FTE
TOTAL:		10.7 FTE

5. The PKS Resolution set forth the District’s competency criteria as follows:

That “competency” for the purposes of Education Code sections 44955, 44956 and 44957 shall be met based upon (1) current possession of a preliminary or clear credential for the subject matter, grade level or pupil personnel services to which the employee will be assigned at the beginning of the 2010-2011 school year.

6. The PKS Resolution also prohibited “partial bumping” situations. It stated:

For scheduling needs, the Board prohibits the following “partial bumping” situations. A senior teacher with a multiple subject credential whose assignment is being reduced below full-time may consent to bump a full-time classroom grades 7-8 assignment including a core assignment provided the teacher is also credentialed to teach the elective class if the assignment includes an elective, but may not bump a portion of the assignment. A senior teacher with an English credential may bump a two-hour English course at Cavitt Middle School, but may not bump only one of the two hours. The Board finds that allowing a more senior teacher to “bump” into a portion of an elementary classroom teaching assignment forcing the class to be taught by

¹ “FTE” stands for full-time equivalent.

two or more teachers who did not plan a “team teaching” assignment is not educationally sound. As a result, senior teachers who are otherwise qualified may not bump into a portion of an elementary classroom teaching assignment. A qualified full-time middle school teacher who is proposed for being bumped less than full-time or faces less than full-time elimination of his/her position may consent to bump full-time into an elementary classroom teaching assignment. Part-time certificated employees may not bump a greater percentage full-time equivalent position than he/she currently holds.

7. The PKS Resolution also set forth the following skipping criteria:

The Superintendent is authorized to deviate from terminating in order of seniority for certificated employees currently assigned to the below listed program based upon their unique training, qualification and skills related to the required responsibilities for the course/job:

- A. Reading Lab Teachers (Caro McKillop, Shawna Lukasko and Beth Furdek) based upon their unique responsibilities to plan and evaluate the District reading program and mentor teachers in teaching reading and language arts and requirement for the position to hold a Reading Specialist Credential of [sic] a Masters degree in reading.

8. On February 8, 2011, the Board adopted Resolution No. 10-11-15, which set forth the Criteria for Resolving Seniority Ties In Case of Certificated Layoffs:

As between certificated general education K-8 employees who first rendered paid service to the district on the same date, the Board of Education determines that the order of termination shall be determined based solely upon the needs of the District and its students in accordance with the following criteria. The criteria are listed in priority order with number one the highest priority. Each criteria next in order shall be applied only if the preceding criteria does not resolve all ties.

1. Possession of a current valid preliminary or clear credential wins;
2. If a tie still exists, possession of a current English Language Development Certificate (BCLAD or CLAD or SDAIE or SB 1969) wins;
3. If a tie still exists, possession of a second preliminary or clear credential wins;
4. If a tie still exists, possession of a clear credential wins;

5. If a tie still exists, the employees shall be ranked in order by total years of public school teaching experience including experience outside this district. The most years of experience shall be ranked highest;
6. If a tie still exists, the tie will be broken by lottery. In the lottery the employee drawing the lowest number shall be retained. If necessary, additional employees shall be retained in rank order of the lowest number drawn. An officer of EUTA will be present to witness the drawing.
7. If it becomes necessary to resolve a tie between employees who lost at any level 1-4 above, the tie shall be broken by the use of the lottery process described in level 5 [sic]².

9. As of March 8, 2011, the Board then considered all positively assured attrition including resignations, retirements, and other permanent vacancies for 2011-2012 known at that time in determining the needed services to be reduced or eliminated.

Indeed, on March 29, 2010, the District and the Eureka Union Teachers' Association entered into a Memorandum of Understanding (MOU) which offered the State Teachers Retirement System Two-Year Retirement Incentive Program during the fall of 2010-2011, effective July 1, 2011. The intent of this MOU is to offer a retirement incentive program that would support senior staff in retirement, reduce the number of teachers being noticed for layoff and financially benefit the school district in this difficult budget period and this MOU remains in force only during the 2010-11 school year.

The Board has accepted the resignations for purposes of retirement of two middle school teachers. These retirements, however, did not reduce the need to reduce the number of teachers in self-contained classrooms and self-contained core teachers.

10. On or about May 12, 2009, the Board revised the duty statement for a Reading Lab Teacher to more clearly outline the duties as they are currently performed and define qualification requirements for those holding such position. In this revision, the Board adopted the following education and experience requirements:

Education and Experience:

1. Bachelor's Degree with valid California Teaching Credential authorizing service in assigned grade and subject, and
2. Reading Specialist Credential, or
3. Master's Degree with Reading/Early Literacy emphasis or,

² The lottery is actually described in level 6.

4. Miller Unruh Reading Specialist Credential

11. On or about March 9, 2011, Mr. Schrichfield, sent Notices of Recommendation That Services Will Not Be Required to the certificated employees identified for the layoff. The layoff notices included the PKS Resolution and informed the certificated employees of their right to request a hearing. In response to the layoff notices, the District received four requests for hearing. On March 18, 2011, Mr. Schrichfield sent letters to the certificated employees who requested a layoff hearing, serving upon them the Accusation, Statement to Respondent, form Notice of Defense, Notice of Hearing and relevant statutes, and informing them of their right to file a notice of defense if they desired a hearing.

12. On or about March 21 and 24, 2011, Notices of Defenses were served on behalf of respondents Godshall and Goldthwaite who desired a hearing, both of whom are respondents to this hearing.

13. Respondents Godshall and Goldthwaite are self-contained classroom or core teachers who are being laid off pursuant to section A.1. of the PKS Resolution and their issues with respect to this layoff are identical.

14. Respondents Godshall and Goldthwaite both have Professional Clear Multiple Subjects and Cross-cultural Language and Academic teaching credentials. No evidence was presented that either or both respondents satisfy the "Education and Experience" requirements for the position of Reading Lab Teacher.

Respondent Godshall testified that she successfully passed the Reading Instruction Competence Assessment (RICA) in 2001 and obtained her Multiple Subject credential prior to being hired.

Respondent Godshall teaches kindergarten at Maidu Elementary School. She stated she works with kindergartners until their release at 1:15 p.m. and then from approximately 1:30 p.m. to 2:15 p.m. on Tuesdays through Fridays, she participates in the Response to Intervention (RTI) program and also the What I Need Now (WINN) program. These programs allow her to work with third graders on reading issues, such as comprehension, interpreting, and phonics. She informally and continually tests and assesses the third graders in reading. She also plans the curriculum for these third graders in conjunction with the third grade teachers. She stated she performs and is capable of performing many of the duties and responsibilities being performed by Reading Lab Teachers and should not be laid off.

15. While respondent Godshall has the units to obtain her credential, she does not have a Reading Specialist Credential, or a Master's Degree with Reading/Early Literacy emphasis, or a Miller Unruh Reading Specialist credential. As previously noted, no evidence was presented to demonstrate that Ms. Goldthwaite possesses a Reading Specialist Credential, or a Master's Degree with Reading/Early Literacy emphasis, or a Miller Unruh Reading Specialist credential.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set for the in Education Code sections 44949 and 44955. The notices sent to respondents indicated the statutory basis for the reduction of services and therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 632; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831, 842.) The description of the kinds of services to be reduced, both in the Board Resolution and in the notices, adequately describes the particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838, 855. See also *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

2. The issue here is whether respondents, who do not satisfy the requisite “Education and Experience” requirements of a Reading Lab Teacher, have the right to “bump” junior teachers who possess the requisite credentials. They do not. (Findings 8, 12 and 13.)

3. The District has the discretion to determine the education and experience requirements necessary to teach a particular assignment. The evidence did not establish that the District acted arbitrarily or capriciously, or abused its discretion when it revised the Reading Lab Teacher job description to include additional education and experience requirements. At the time Resolution Nos. 10-11-20 and 10-11-15 were issued, neither respondent had in their possession, or have in their possession, the requisite credentials to be a Reading Lab Teacher. (Findings 8, 11, 12, 13, and 14; Legal Conclusion 3 and 4.)

4. While respondents Linda Godshall and Christy Goldthwaite have rendered valuable services to the District, cause exists under Education Code section 44949 and 44955 to provide final Notices to respondents Linda Godshall and Christy Goldthwaite that their services will not be required in the ensuing school year. Respondents do not have the requisite credentials which would allow them to bump junior teachers that have the requisite credentials. (Findings 8, 11, 12, 13, and 14; Legal Conclusion 3 and 4.)

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RECOMMENDATION

Notice shall be given to respondents Godshall and Goldthwaite that their services will not be required for the 2011-2012 school year because of the need to reduce or eliminate particular kinds of services.

Dated: April 12, 2011

LINDA A. CABATIC
Administrative Law Judge
Office of Administrative Hearings