

BEFORE THE
GOVERNING BOARD
WILSONA SCHOOL DISTRICT
COUNTY OF LOS ANGELES
STATE OF CALIFORNIA

In the Matter of the Layoff of:

Michael Aktutay and other
certificated employees of the Wilsona
School District,

Respondents.

OAH Case No. L2011030822

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 14, 2011, in Lake Los Angeles, California.

Maggy M. Athanasious, Attorney at Law, represented Teresa A. Grey (Grey), Superintendent of the Wilsona School District (District).

R. Terry Welborn and Carolyn Kinel, California Teachers Association Advocates, represented Michael Aktutay, Tracie Banner, Marcia Saldana, and Raymond Strasser-King (Respondents).

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 2011-2012 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2011-2012 school year.

Oral and documentary evidence was presented at the hearing, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Superintendent Grey filed the Accusation in her official capacity.
2. Respondents are certificated employees of the District.

3. On February 16, 2011, the Governing Board of the District (Governing Board) adopted Resolution Number 2010-11-07, reducing or discontinuing the following services for the 2011-2012 school year:

<u>Service</u>	<u>FTE¹ Reduction</u>
Classroom Instructors, Grades K-8	5.0
Intervention Teacher	1.0
RSP/Preschool Teacher	1.0
Vice Principal	<u>1.0</u>
Total	8.0

4. Superintendent Grey thereafter provided written notice to the Governing Board and to Respondents that she recommended the termination of Respondents' services for the 2011-2012 school year due to the reduction of particular kinds of services.

5. On March 11 and 14, 2011, the District provided notice to Respondents that their services will not be required for the 2011-2012 school year due to the reduction of particular kinds of services. Respondents thereafter filed timely requests for hearing.

6. On or about March 28, 2011, the District filed and served the Accusation and other required documents on Respondents. Respondents thereafter filed timely notices of defense, seeking a determination of whether cause exists for not reemploying them for the 2011-2012 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 44955.²

9. The District seeks to reduce projected spending due to the uncertainty associated with State funding and potential reductions in such funds. The Governing Board's decision to reduce or discontinue the services set forth in factual finding number 3 is not arbitrary or capricious but is rather a proper exercise of the District's discretion in light of such potential loss of revenue.

¹ Full-time equivalent position.

² All further references are to the Education Code.

10. The reduction of services set forth in factual finding number 3, in the context of potential revenue losses and the need to provide services if such losses materialize, 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. Since the adoption of Resolution 2010-11-07, the District received the resignation of a certificated employee who had not received notice of termination in connection with the instant reduction in force, and, therefore, will only need to issue final layoff notices to seven certificated employees to achieve the reductions approved by the Governing Board.

12. a. On February 16, 2011, the Governing Board adopted Resolution 2010-11-08, setting forth its tie-breaking criteria for employees with the same seniority date. In pertinent part, the Resolutions provides: “[W]HEREAS, as among employees who first rendered paid service to the District on the same date, the law requires the Governing Board to determine the order of termination solely on the basis of the needs of the District and its students; and [¶] **NOW THEREFORE, BE IT RESOLVED**, that the specific criteria used in determining this need shall be as follows, but not necessarily listed in the order of importance: [¶] 1. CLAD [¶] 2. BCLAD [¶] 3. Clear Special Education Credential [¶] 4. Clear Multiple Subject Credential/Life Credential [¶] 5. Clear Single Subject Credential [¶] 6. Experience [¶] 7. Masters Degree [¶] 8. Doctorate Degrees [¶] 9. Competence [¶] 10. Evaluations [¶] 11. NCLB Highly Qualified status [¶] 12. Training [¶] 13. Extracurricular Activities. . . .” (Emphasis in original.)

b. The criteria are reasonable as they relate to the skills and qualifications of certificated employees, and the District properly applied the criteria.

13. The District did not retain any certificated employee junior to any Respondent to render a service which Respondents are 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 determined to be 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 10.

4. The number of certificated employees to be given final layoff notice depends on the service reductions. As Section 44955, subdivision (b), states, “[w]henver a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year . . . and when in the opinion of the governing board of the district it shall become necessary to decrease the number of permanent employees of the district, the governing board may terminate the services of not more than a *corresponding percentage of the certificated employees* of the district, permanent as well as probationary, at the close of the school year. . . .” (Emphasis added.) In this case, the resignation of one certificated employee not subject to layoff has reduced the need to terminate one position in order to achieve the 8 FTE reductions approved by the Governing Board.

5. Cause exists to terminate the services provided by Respondents Michael Aktutay, Tracie Banner, Marcia Saldana, and Raymond Strasser-King, by reason of factual finding numbers 1 through 13 and legal conclusion numbers 1 through 4.

ORDER

The Accusation is sustained and the District may notify Respondents Michael Aktutay, Tracie Banner, Marcia Saldana, and Raymond Strasser-King that their services will not be needed during the 2011-2012 school year due to the reduction of particular kinds of services.

DATED: _____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings