

BEFORE THE
BOARD OF EDUCATION
TRACY UNIFIED SCHOOL DISTRICT
COUNTY OF SAN JOAQUIN
STATE OF CALIFORNIA

In the Matter of the Reduction or Elimination
of Particular Kinds of Services and the
Employment Status of:

CERTAIN CERTIFICATED EMPLOYEES
OF THE TRACY UNIFIED SCHOOL
DISTRICT,

Respondents.

OAH No. 2012030076

PROPOSED DECISION

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California, heard this matter via a stipulation between the parties on April 3, 2012.

Marie A. Nakamura, Attorney at Law, Kronick, Moskovitz, Tiedemann and Girard, Attorneys represented the Tracy Unified School District (District).

Thomas J. Driscoll, Jr., Attorney at Law, Driscoll Law Firm, represented all respondent members of the Tracy Education Association (TEA).

The matter was submitted through a stipulation of the parties (below) received on April 4, 2012, and through submission of the written record, received April 9, 2012.

FACTUAL FINDINGS

1. James C. Franco, Ed.D., (Superintendent) made and filed the Accusation in his official capacity as Superintendent, Tracy Unified School District (District).

2. All respondents are and at all times relevant to this Decision were certificated permanent or probationary employees of the District.

3. On or just before March 13, 2012, in accordance with Education Code section 44949 and 44955, the Superintendent notified the Board of Education of the District (Board) in writing of the Superintendent's recommendation that certain particular kinds of services would have to be reduced or eliminated for the upcoming school year. The Superintendent's recommendation specified the particular kinds of services to be reduced or eliminated, as set forth below.

4. Just before February 28, 2012, the Superintendent notified the Board that a certain number of certificated employees of the District, in this instance, 12.00 full time equivalents (FTE), would have to be laid off to effectuate the reduction or elimination of the particular kinds of services necessitated by reductions required to balance the District's budget. By attachment to the pre-February 28, 2012, notification to the Board, the Superintendent identified and notified the Board that respondents listed on the attachment to that notice to the Board had been identified as persons to whom notice should be given that their services would not be required for the ensuing school year. The recommendation that respondents' services for the District would not be required for the upcoming school year was not related to any respondent's skills, abilities, capabilities or competencies as teachers.

REDUCTIONS/ELIMINATIONS OF PARTICULAR KINDS OF SERVICES

5. The Board adopted Resolution 11-13 on February 28, 2012. The Board resolved to follow the Superintendent's recommendation to reduce 12.00 FTE of particular kinds of services. The Resolution authorized and directed the Superintendent to give notice to an equivalent number of certificated employees of the District that their services would not be required for the upcoming school year in order to effectuate the reduction. The Resolution authorized the elimination of the following services now offered in the District:

Building Literacy Together (First Five) Preschool Program	1.00 FTE
Elementary Classroom Teaching Program	10.00 FTE
Middle School Business (Business Applications) Teaching Program	1.00 FTE
TOTAL REDUCTIONS/ELIMINATIONS	<u>12.00 FTE</u>

6. The Governing Board also adopted Resolution 11-14, Competency Criteria in the Case of Certificated Reduction in Force (Competency Criteria Resolution) on February 28, 2012, regarding the adoption of criteria and standards for assessing potentially tied employees against District educational priorities. The Tie Breaker Resolution was adopted for use for breaking ties in the event two or more certificated employees have the same first date of paid service in the event of a reduction in force layoff such as this one.

7. The Governing Board also adopted Resolution 11-15, Tie Breaking Criteria in the Case of Certificated Reduction in Force (Tie Breaker Resolution) on February 28, 2012, regarding the adoption of criteria and standards for assessing potentially tied employees, creating a scoring system for potentially tied employees against Board-agreed upon standards and District educational priorities. The Tie Breaker Resolution was adopted for use for

breaking ties in the event two or more certificated employees have the same first date of paid service in the event of a reduction in force layoff such as this one, in conjunction with the Competency Criteria resolution.

8. The Superintendent caused each of the respondents to be served with a written Notice of Intention to Dismiss (Preliminary Notice) on March 13, 2012. The written Preliminary Notices advised respondents that their services would not be required for the upcoming school year. The Preliminary Notices set forth the reasons for the recommendation. Fourteen Preliminary Notices were timely served by the District on respondents, including the two Precautionary Notices set forth below. Ten of the recipients of Preliminary Notices are permanent employees of the District, and two are probationary certificated employees.

9. Those certificated employees of the District receiving either a Preliminary Notice or a Precautionary Notice, who also filed Requests for Hearing with the District and Notices of Defense in response to Accusations filed and served upon each of the respondents, are as follows:

PERMANENT CERTIFICATED EMPLOYEES RECEIVING NOTICE AND CURRENT ASSIGNMENT

1.	Case, Leilani	NORTH (K-8)
2.	Coredisco, Monica	WILLIAMS (6-8)
3.	Garcia, Rocio	SOUTH/WEST PARK
4.	Huddleston, Amber	HIRSCH (K-5)
5.	Hula, Amanda	VILLALOVOZ (K-5)
6.	Johnson, Jennifer	CENTRAL (K-5)
7.	Lee, Maysue	MCKINLEY (K-5)
8.	Nunes, Laura	JACOBSON (K-5)
9.	Ryan, Myesha	KELLY (K-8)
10.	Shah, Fiaz	WILLIAMS (6-8)
11.	Walker, Wesley	CENTRAL (K-5)
12.	Web, Justine	MCKINLEY (K-5)

PROBATIONARY CERTIFICATED EMPLOYEES RECEIVING NOTICE AND CURRENT ASSIGNMENT

1.	Gardner, Shazana	WILLIAMS (6-8)
2.	Mullen, Tyler	KIMBALL HIGH

10. At least two permanent certificated employees receiving notice were given a “precautionary” Preliminary Notice of layoff (Precautionary Notice). These two employees were Fiaz Shah (06/26/2006¹) and Westley Walker (06/20/2006). As nearly as could be

¹ First day of paid service to the District, also known as seniority date.

ascertained from the record, these two employees were given Precautionary Notices to provide the District the ability to still lay them off, in the event that these employees were determined in the proceedings to have status or “bumping rights” that might place either into him and him a position to displace another teacher not given notice.

11. Respondents timely filed Requests for Hearing with the district following receipt of Preliminary Notices and/or Precautionary Notices.

12. The District timely served Accusations on each respondent following receipt of their Requests for a Hearing. Respondents timely filed Notices of Defense to the Accusations. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, pursuant to Education Code sections 44949 and 44950, as those sections incorporate Government Code section 11500, et. seq. All prehearing jurisdictional requirements were met.

STIPULATION

13. Just prior to the evidentiary hearing, the District and respondents, by and through their respective counsel, entered into a written stipulation, referred to above, that resolves all of the issues pending between the parties. The parties stipulated and agreed to submit the matter to the ALJ for preparation of a written Decision to be submitted to the Board of Education for review and adoption, based on the written stipulation. The written stipulation was executed by the parties April 3, 2012, and filed with the ALJ on April 4, 2012. The parties stipulated and agreed that the ALJ should prepare the Decision based upon the agreements made in the written stipulation, and that, based upon the execution of the stipulation and submission of the matter for Decision, all parties thereupon waived any further right to evidentiary hearing on the matters raised in the Accusations.

STIPULATED WITHDRAWALS OF PRELIMINARY NOTICES

14. The written stipulation referred to just above resolved all outstanding issues pending between the parties. In the written stipulation, the parties agreed to the following:

- a. The Precautionary Notices of layoff issued to Fiaz Shah and Westley Walker are rescinded;
- b. The Preliminary Notices of layoff issued to Amanda Hula and Jennifer Johnson are withdrawn and rescinded.

15. As a result of the written stipulation, each of the employees specifically named in the written stipulation (Shah, Westley, Hula, and Johnson), are deemed rehired for the upcoming school year.

16. All other Preliminary Notices of layoff and Precautionary Notices issued to respondents are affirmed, and the District may issue and serve Final Notices of layoff to the remaining respondents not covered by the stipulation.

17. The reductions and eliminations of particular kinds of services as set forth in the District's Resolution are in the best interests of the District and its students.

18. The Superintendent, on behalf of the District, considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

19. There was no evidence that the District proposes to eliminate any services that are State or federally mandated.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied. The District has the burden of proving by a preponderance of the evidence that the proposed reduction or elimination of particular kinds of services and the preliminary notice of layoff served on respondents is factually and legally appropriate.² The parties stipulated and agreed in the written stipulation that the District met its burden.

2. The services the District seeks to eliminate in this matter are "particular kinds of services" that may be reduced or discontinued within the meaning of Education Code section 44955. The Board's decision to reduce or discontinue these particular kinds of services was not demonstrated to be arbitrary or capricious, but constituted a proper exercise of discretion.

3. The reduction or discontinuation of particular kinds of services related to the welfare of the District and its pupils. The District is facing a projected deficit related to funding. The reduction in particular kinds of services proposed is necessary to avert the District operating in a deficit in the upcoming school year.

4. The parties stipulated and agreed that, with the exception of those persons named in the stipulation, no person receiving a preliminary notice of layoff is being laid off in favor of a junior employee being skipped, or that any employee being laid off is entitled to bump into a position held by a more junior employee where the employee being laid off has the credentials and competence to take the position of the more junior employee being retained. No certificated employee of the District is being retained to provide a service any of the respondents who received preliminary notices are certificated and competent to render.

² Education Code section 44949.

5. The parties agreed that legal cause exists pursuant to Education Code sections 44949 and 44955 for the Tracy Unified School District to reduce or discontinue 12.0 FTE of particular kinds of services, as set forth in the District's Resolution 11-13. The cause for the reduction or discontinuation of particular kinds of services relates solely to the welfare of the schools and the pupils thereof. Legal cause therefore exists to sustain the Accusations. The Board may give respondents final notices that their services will not be required by the District in the upcoming school year, in inverse order of seniority.

ORDER

The Precautionary Notices of Layoff issued to Fiaz Shah and Westley Walker are RESCINDED. The Accusations against Fiaz Shah and Westley Walker are WITHDRAWN and DISMISSED;

The Preliminary Notices of Layoff issued to Amanda Hula and Jennifer Johnson are WITHDRAWN and RESCINDED. The accusations against Amanda Hula and Jennifer Johnson are WITHDRAWN and DISMISSED.

The Accusations against all other named respondents are SUSTAINED.

The Tracy Unified School District action to reduce or eliminate 12.0 FTE of particular kinds of services for the 2012-2013 school year is AFFIRMED.

With the exception of those respondents named above, Final Notice may be given to respondents by the District that their services will not be required for the upcoming school year. Notice shall be given in inverse order of seniority.

DATED: April 23, 2012

STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings