

BEFORE THE BOARD OF TRUSTEES
KONOCTI UNIFIED SCHOOL DISTRICT
LAKE COUNTY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CHRISTOPHER EMBERSON, NINA
GIBSON, RUBEN GUERRERO, JOHN
MILLER, TANIA SCHRAML PAUL,
AND NAOMI RICHMOND,

Respondents.

OAH No. 2009030199

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, Office of Administrative Hearings, State of California, heard this matter on April 16, 2009, in Lower Lake, California.

John A. Drummond, Schools Attorney, Lake County Office of Education, represented the Konocti Unified School District.

James D. Allen, Attorney at Law, represented respondents Christopher Emberson, Nina Gibson, Rueben Guerrero, John Miller, Tania Schraml Paul, and Naomi Richmond. Nina Gibson and Rueben Guerrero were present at hearing.

The matter was submitted for decision on April 16, 2009.

FACTUAL FINDINGS

1. William MacDougall, Ed.D., made and filed the accusation in his official capacity as Superintendent of the Konocti Unified School District.
2. Respondents Christopher Emberson, Nina Gibson, Ruben Guerrero, John Miller, Tania Schraml Paul, and Naomi Richmond, are certificated employees of the district.
3. On March 5, 2009, the district's Board of Trustees adopted Resolution No. 15-08-09 reducing particular kinds of services and directing the superintendent to give appropriate notices to certificated employees whose positions will be affected by the action. On March 11, 2009, the Board of Trustees adopted an amended Resolution No. 15-08-09 which included the reduction of one additional FTE position.

4. Superintendent MacDougall gave written notice to approximately 53 certificated employees, including respondents, of the recommendation that their services will not be required for the 2009-10 school year. The reasons for the recommendation were set forth in these preliminary layoff notices.

5. Respondents filed timely requests for hearing to determine if there is cause for terminating their services for the 2009-10 school year. An accusation was served on each respondent. Respondents Guerrero and Gibson filed notices of defense; the other respondents did not file notices of defenses. All prehearing jurisdictional requirements have been met.

6. In its resolution, the board took action to reduce or eliminate the following particular kinds of services for the 2009-10 school year:

1. A total of 29 full time equivalent positions (FTEs) of Middle School Instructional Services at Oak Hall Middle School as more particularly described in attachment number one, and also including:

- One full time equivalent position (FTE) of Teacher on Special Assignment (Curriculum Coach).
- One full time equivalent position (FTE) counseling position.

2. A total of 40 full time equivalent positions (FTEs) of K through 6 Elementary School Instructional Services including, but not limited to –

- One full time equivalent position (FTE) of elementary music instruction.
- Three full time equivalent positions (FTEs) of Elementary Teachers on Special Assignment (Curriculum Coach) at Burns Valley Elementary School, Lower Lake Elementary School/East Lake Elementary School, and Lower Lake Elementary School.
- One full time equivalent position (FTE) of Elementary Teacher on special assignment (Curriculum Coach) at Burns Valley Elementary.

- One full time equivalent position (FTE) of English Language Development Instruction.
 - Fifteen full time equivalent positions (FTEs) of Elementary K-3 Instructional teaching positions due to Elimination of K-3 Class Size Reduction.
 - Nineteen other full time equivalent positions (FTEs) of K through 6 Elementary School Instructional Services.
3. One full time equivalent position (FTE) of academic counseling at Lower Lake High School.
 4. One full time equivalent position (FTE) of ninth grade English instruction at Lower Lake High School.
 5. Two full time equivalent positions (FTEs) of administrative services.

7. Before issuing the preliminary layoff notices, the district took into account all positively assured attrition. The district must issue the final layoff notices before May 15, and when it does so the district will take into account any additional attrition that has occurred. After that, further attrition will allow the district to rehire laid off employees.

8. Since the issuance of the preliminary layoff notices, the district has rescinded notices to all but the remaining six respondents.

9. Respondents argue that the board's resolution is impermissibly vague because it does not specify that the district is closing Oak Hill Middle School and does not specify the particular kinds of services that are being reduced. The resolution specified a reduction of 29 FTE positions of middle school instruction at Oak Middle School. It specifically listed two services, a one FTE position of Teacher on Assignment (Curriculum Coach), and a one FTE counseling position. In addition, the resolution attached and incorporated by reference the Oak Hill Middle School master schedule for current school year. The master schedule lists the schedules of the 27 full-time certificated employees at the middle school. The board's resolution described the particular kind of services being reduced at Oak Hill Middle School with sufficient specificity.

10. Respondent Gibson is a high school Physical Education teacher and she teaches one class of reading. She holds single subject credentials in Physical Education, which allows her to teach Physical Education in grades 6 through 12, and Introduction to Health, which allows her to teach Health in grades 6 through 9, and a supplemental authorization in Health Science that allows her teach health in grades 10 through 12.

11. On the district's seniority list, respondent Gibson and others who received layoff notices share the seniority date of August 17, 2007. The district has tie-breaking criteria in which points are assigned for experience and credentials, but these criteria were not applied in determining who would receive preliminary layoff notices. Determining relative seniority was not necessary because effectuating the service reductions required sending notices to *all* employees who teach Physical Education with a seniority date of August 17, 2007.¹ The superintendent has made informal point computations for tie-breaking but has not yet presented those calculations to the affected employees. The criteria will be applied to re-order the seniority list when it becomes necessary to do so. The district anticipates applying the tie-breaking criteria during the rehire process, but it may be necessary to do so before the final layoff notices are issued.

Respondents argue that the proposed layoffs are arbitrary and capricious because the district failed to comply with the statutory mandate that tie-breaking criteria be used to determine the order of layoff. This argument is without merit. Education Code section 44955, subdivision (b), provides: "As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof." Under Education Code section 44955, the district must apply tie-breaking criteria when it affects the order of termination. However, when all employees with the same first date of paid service are being laid off, there is no need to determine the order of termination. The district did not err in not applying its tiebreaking criteria to those respondents with a seniority date of August 17, 2007.

12. Respondent Guerrero teaches Spanish at Lower Lake High School. He holds a Preliminary Designated Subjects Adult Education Teaching Credential and a Single Subject Teaching Credential Waiver in Spanish.

The district has an adult education program. A two-thirds FTE position, formerly held by a credentialed teacher, is currently being filled by an instructor who holds only an emergency credential. Respondent Guerrero may be eligible for this position but the district has not confirmed that his credential authorizes him to teach in this position. Depending on how the district utilizes this position, others may also be eligible. For example, the district has not made the determination whether bilingual competency will be required for the 2009-10 school year. Once the district has decided how to utilize the position, it will be offered to the most senior teacher who is competent and credentialed to teach in the adult education program. Whether respondent Guerrero is credentialed and competent to hold this position, and whether he is the most senior employee eligible for this position, are matters to be resolved in the rehiring, not the layoff, process.

¹ One of the physical education teachers with the same first date of paid service, James Bauch, has notified the district of his intent to retire at the end of the school year.

13. All contentions made by respondents not specifically addressed above are found to be without merit and are rejected.

14. No certificated employee junior in seniority to any respondent is being retained by the district to perform services that any respondent is certificated and competent to render.

15. The cause for the layoff relates to the welfare of the schools and their pupils.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

2. Cause exists because of the reduction of particular kinds of services pursuant to Education Code section 44955 to give notice to respondents that their services will not be required for the 2009-10 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education section 44949.

ORDER

Notice may be given to respondents Christopher Emberson, Nina Gibson, Ruben Guerrero, John Miller, Tania Schraml Paul, and Naomi Richmond, that their services will not be required for the 2009-10 school year because of the reduction of particular kinds of services.

DATED: April 22, 2009

MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings