

BEFORE THE GOVERNING BOARD OF THE
SOMIS SCHOOL DISTRICT

In the Matter of the Layoffs of:

OAH No.: 2009030300

Jan Ferrell and other Certificated
Employees of the Somis School District,

Respondents.

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Somis, California, on April 9, 2009.

James C. Romo, Attorney at Law, represented the Complainant.

Paul D. Powers and Jeffrey J. Stinnett, Attorneys at Law, represented Respondent Jan Ferrell.

Oral and documentary evidence and evidence by way of stipulation and official notice was received.

At the request of the Complainant the record was held open to allow the parties to file closing briefs on or before April 17, 2009. On April 17, 2009, Complainant's brief was received by fax and marked and filed as Exhibit 12 for identification. On April 17, 2009, Respondent Jan Ferrell's brief was received by fax and marked and filed as Exhibit B for identification. The matter was deemed submitted on April 17, 2009.

The Administrative Law Judge now finds, concludes and orders as follows:

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SUMMARY

The Governing Board (Board) of the Somis School District (District) decided to reduce or discontinue particular kinds of services provided by certificated personnel for the 2009-2010 school year for budgetary reasons. The decision was not related to the competency and dedication of the teachers whose services were proposed to be reduced or eliminated.

District staff carried out the Board's decision by using a selection process involving review of credentials and seniority, "bumping," and breaking ties between employees with the same first dates of paid service. The selection process complied with Education Code requirements.

FACTUAL FINDINGS

Parties

1. Complainant Mary H. McKee filed the accusation¹ in this proceeding in her official capacity as Superintendent of Somis the District.
2. The following persons, the Respondents herein, are certificated employees of the District. Each received a layoff notice and a notice of hearing.

Somis Elementary School

Brinkman, Allison
Ferrell, Jan
Guevara, Rosario
Jack, Ronni
Mitchell, David
Morrissey, Jill
Murphy, Scott

¹ The term "accusation" refers to a pleading utilized under the Administrative Procedure Act, Government Code section 11503. Respondents are not "accused" in the every-day sense of that word, unless it can be said they are accused of not having enough seniority to retain their positions with the District in the face of a resolution to reduce positions.

Somis Academy Charter School

Allen, Dana
Allen, Laurie
Arie, Francoise
Austin, Jennifer
Ballard, Brent
Coleman, Jane
Guccione, Mathew
Hanson, Laura
Hawkins, Frank
Klain, Toni
Martin, Richard
Morgan, Robin
Smith, Francine
Su, Connie
Talley, Leland
Vasquez, Diane

Reduction of Services

3. On February 10, 2009 the Board, upon recommendation by the Superintendent, adopted and issued resolution number 08/09-10, entitled “Reduction or Elimination of Certain Certificated Services” (Resolution) to reduce or discontinue particular kinds of certificated services no later than the beginning of the 2009-2010 school year for the following reason:

Because of the financial constraints resulting from revenue being insufficient to maintain the current levels of programs, and necessary program changes resulting therefrom, the Governing Board determined to reduce or eliminate certain positions no later than the beginning of the 2009-2010 school year.

4. Exhibit A attached to the Resolution and incorporated therein specifies the Reduction or Elimination of Particular Certificated Services as follows:

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<u>TYPE OF PROGRAM</u>	<u>FTE (Full-Time Equivalent)</u>
Elementary (K-8) Classroom Teaching	2.00 FTE
Reading Teacher	1.00 FTE
ELD Teacher	1.00 FTE
Elementary Music Teacher	1.00 FTE
Charter School Music Teacher	1.00 FTE
Elementary Physical Education Teacher	1.00 FTE
Charter School Social Studies Teacher	1.00 FTE
Charter School Counselor	1.00 FTE
Charter School English Teacher	1.00 FTE
Charter School Math Teacher	1.00 FTE
Charter School Art Teacher	1.00 FTE
Charter School Spanish Teacher	1.00 FTE
Charter School French Teacher	HOURLY
Charter School Counselor	HOURLY
Somis Elementary Counselor	HOURLY
Charter School Special Education Teachers	HOURLY
Charter School Science Teacher Physical Science/Physics	HOURLY
Charter School Science Teacher Life Science	HOURLY
Charter School Math Teacher Algebra	HOURLY

The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under Education Code section 44955.

5. With regard to services provided by the District Exhibit B attached to the Resolution and incorporated therein details the criteria to be applied to determine the order of layoff for those certificated employees with the same date of first paid probationary service.

6. The decision by the Board to reduce or discontinue services was neither arbitrary nor capricious, but rather was a proper exercise of the Board's discretion given the budgetary constraints, other factors considered by the Board, and the manner in which the decision to reduce or discontinue services was reached.

7. The reduction and discontinuation of services 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 Board.

Notice and Process

8. On February 10, 2009, pursuant to Education Code sections 44949 and 44955, the Governing Board directed that notice be given to Respondents that their services will not be required for the ensuing school year, and stating the reasons therefore.

9. Prior to March 15, 2009, Respondents were provided written notice by personal service or registered mail of the recommendation that Respondent receive notice pursuant to Education Code sections 44949 and 44955 that their services will not be required for the ensuing school year, and stating the reasons therefore.

10. Of the twenty-three noticed employees set forth in Finding 2 only Jan Ferrell filed a written request for a hearing.

Findings Re: Jan Ferrell

11. Respondent Jan Ferrell's first day of service with the District was January 9, 2002. She was then hired as a half-time elementary school teacher on a probationary status. From 1985 to 1999 she was a first grade teacher at South Bay Union School District in San Diego and achieved permanent status prior to leaving that District in 1999. Notwithstanding her prior permanent status the Somis School District did not exercise its discretion under Education Code section 44929.28 to change her probationary status with the Somis School District.

12. During her employment with the District Ms. Ferrell has had the status of a probationary teacher. On at least two occasions she was inadvertently "checked off" as "permanent" with regard to her employee status on District forms. However, at no time did she receive authorized notice from the District that she was other than a probationary employee. Ms. Ferrell has not, in any one school year with the District, served for at least 75 percent of the number of days that the schools of the District are in session. Accordingly, she has yet to serve a complete school year.

Seniority

13. The District maintains a Seniority List which contains employees' seniority dates (the first date of paid service) current assignments and locations, credentials, authorizations and employment status (permanent, probationary or temporary). No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render.

LEGAL CONCLUSIONS

1. All notices and other requirements of Education Code sections 44949 and 44955 were met. Therefore, jurisdiction was established for this proceeding as to all Respondents by reason of Findings 8, 9 and 10.

2. Cause was established as required by Education Code section 44955 to reduce the number of certificated employees due to the reduction or discontinuation of particular kinds of services by reason of Findings 3, 4 and 5. The Board's decision to reduce or eliminate the identified services set forth in Finding 4 was neither arbitrary nor capricious in that the decision relates solely to the welfare of the District's schools and the pupils within the meaning of Education Code section 44949, by reason of Findings 6 and 7.

3. Jan Ferrell is correctly categorized as a probationary employee of the District pursuant to Education Code sections 44908 and 44929.21, subdivision (b) by reason of Findings 11 and 12.

4. No permanent or probationary employee with less seniority is being retained to render a service for which Respondents are certificated and competent, by reason of Finding 13.

5. Cause exists to give notice to Respondents, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the 2009-2010 school year by reason of the whole of the Findings herein.

ORDER

Notice may be given to Respondents that their services will not be required for the 2009-2010 school year.

Dated: _____

RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:rfm