

BEFORE THE
GOVERNING BOARD
OF THE
NATIONAL SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Layoff/Accusation
Against:

58 CERTIFICATED EMPLOYEES,

Respondents.

OAH No. 2009030453

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge, at National City, California on April 27, 2009.

Richard J. Currier, Esq. and Jennifer L. Cabuccia, Esq. of Currier & Hudson, represented the National School District (the district).

89 certificated employees were originally served with Reduction in Force Notices. Subsequently, the district rescinded some of the Notices and some of the served certificated employees failed to request a hearing and/or failed to file Notices of Defense. Consequently, 58 certificated employees remain as respondents in this matter.

Two respondents, Lisa Bellon and Nancy Esquivel, represented themselves. The remaining 56 respondents were represented by Fern M. Steiner, Esq.

Oral and documentary evidence was received and the matter was submitted on April 27, 2009.

FACTUAL FINDINGS

1. On March 4, 2009, the Superintendent of the district recommended, with regard to the ensuing school year, that the Governing Board of the district (the board) reduce or eliminate particular kinds of services (PKS) provided by the district for the 2009-2010 school year.

2. On March 4, 2009, the board adopted Resolution number 08-09-24, determining that it would be necessary to reduce or discontinue PKS at the end of the current

school year. The board determined that the PKS that must be reduced for the 2009-2010 school year were the following full time equivalent (FTE) positions:

<u>PKS</u>	<u>FTE</u>
K-6 Classroom Teachers	39.0
Language Arts Specialists	7.0
Physical Education Teachers	2.0
Counselor	4.0
Librarian	1.0
Psychologist	1.0
Impact Teachers	49.0
Total FTE positions to be reduced or eliminated	<hr/> 103.0

The parties do not dispute the fact that the services listed above are PKS, which may be reduced or discontinued within the meaning of Education Code section 44955.

3. The district's recommendation and the board's decision to reduce or discontinue the services listed in Finding 2, above, were neither arbitrary nor capricious; rather, the recommendation and decision were based on the projected, \$4 million dollar, budget deficit. Thus the board's decision represents a proper exercise of its discretion.

4. 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.

5. The district is committed to retaining as many certificated employees and PKS as possible as this statutorily driven process proceeds. In this regard, on April 22, 2009, with the board's blessings, the district reduced Language Arts Teachers PKS from 7 FTE to 4 FTE. Ultimately, the number of certificated employees affected by these lay off proceedings was reduced to the current 58 and, as the employment landscape changes, the district hopes to reduce this number even more¹.

6. The Superintendent designated the respondents, permanent or probationary teachers employed by the district, by creating a seniority list, first selecting teachers to be laid off in the inverse of the order in which they were employed, then assigning and reassigning employment in such a manner that all employees to be retained will be retained so as to render any service which their seniority and qualifications entitle them to render.

7. The district does not employ any temporary certificated employees.

¹ The district has offered early retirement incentives to its employees and continues to monitor attrition in an attempt to minimize the number of respondents adversely impacted by this layoff process.

8. Prior to March 15, 2009, all respondents affected by the layoffs received written notices entitled, "Notice of Recommendation Not to Employ for the 2009-2010 School Year Pursuant to Education Code Sections 44949 and 44955." (Exh. 6.)

9. On March 24, 2009, the District Superintendent made and filed an accusation in his official capacity.

10. Prior to March 15, 2009, all respondents were served with board resolution number 08-09-24, a Notice of Accusation, the Accusation, a Notice of Defense and Request for Hearing, copies of Education Code sections 44949 and 44955 and Government Code sections 11506, 11507.5, 11507.6, 11507.7, and 11520. Additionally, the "Notice of Accusation" advised respondents as follows: "Your failure to request a hearing by filing a Notice of Defense within FIVE DAYS will constitute a waiver of your rights to a hearing." (Exh. 10)

11. 54 of the 58 of current respondents timely submitted their notices of defense requesting a hearing to determine if cause exists for not re-employing them for the ensuing year.

12. Each respondent who requested a hearing and filed a Notice of Defense was properly noticed of the date, time and place of the instant hearing.

13. All prehearing jurisdictional requirements were met.

14. Respondents are certificated permanent or probationary employees of the district.

15. The services of no permanent employee are being terminated while any probationary employee, or any permanent employee with less seniority, is being retained to render services which such permanent employee is certificated and competent to render.

LEGAL CONCLUSIONS

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

2. The services listed in Factual Finding 2 are PKS that can be reduced or discontinued under Education Code section 44955. The board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

3. Based on the Factual Findings, considered in their entirety, cause exists to reduce the number of certificated employees of the District by 100 FTE positions², due to the budget crisis described in Factual Finding 3.

4. Cause to reduce or discontinue services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

5. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

6. Cause exists to notify the 58 respondents that their services will not be needed during the 2009-2010 school year due to reduction or discontinuance of PKS.

DVISORY DETERMINATION

WHEREFORE, THE FOLLOWING ADVISORY DETERMINATION is hereby made:

The Accusation is sustained. The district shall notify the 58 respondents listed in Appendix A that their services will not be needed during the 2009-2010 school year due to lack of funds and the resulting need to reduce or discontinue PKS.

DATED: _____

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings

² As set forth in Finding 5, the district reduced Language Arts Teachers PKS by 3 FTE.

APPENDIX

A

1. Adamick, Emily
2. Bacher, Caitlin
3. Bahena, Maria
4. Barragan, Tanya
5. Bellon, Lisa
6. Benitez, Angelica
7. Bernachi, Brenda
8. Brito, Teresa
9. Burer, Kristin
10. Burnam, Jennifer
11. Cafasso, Michelle
12. Cahill, Bobbie
13. Campos, Janine
14. Carrillo, Marissa
15. Casillas, Karla
16. Castro, Maria
17. Cervantes, Jisel
18. Cueva, Mayra
19. Curcio, Anastasia
20. Damon, Daneal
21. Duran, Patricia
22. Elliott, Wendy
23. Ellis, Kristina
24. Esparza, Erica
25. Esquivel, Nancy
26. Fiszlewicz, Sara
27. Gates, Michelle
28. Greenfield, Sarah
29. Hartley, Joanna
30. Hayes, Amy
31. Hellenbrand, Lynn
32. Hernandez, Angelica
33. Isaacs, Jonathan
34. Lamas Elsas, Yenni
35. Leal, Yovanna
36. Martinez, Michael
37. Mendoza, Kathrina
38. Ochoa, Alejandro
39. Ochoa, Jessika
40. Ortiz, Lucia
41. Patino, Maria
42. Perez, Alejandro
43. Perez, Monica
44. Reynoso, Debra
45. Rodriguez, Karina
46. Satoafaiga, Semmi-Lu
47. Sbardellati, Kathryn
48. Schaefer, Mary
49. Sheppard, Cindy
50. Sobhani, Gabriela
51. Sotelo, Christina
52. Taniguchi, Kimberly
53. Vine, Bryan
54. Wappler, Sharon
55. Wert, Amy
56. Wilcox, Claudia
57. Wu, Sabrina
58. Zavala, Bertha