

BEFORE THE
GOVERNING BOARD OF THE
HERMOSA BEACH CITY SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

OAH No. 2009030746

Certificated Employees of the Hermosa Beach
City School District,

Respondents.

PROPOSED DECISION

David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 16, 2009, in Hermosa Beach, California.

Atkinson, Andelson, Loya, Ruud & Romo, by Aaron V. O'Donnell, Attorney at Law, represented the Hermosa Beach City School District (District).

Trygstad, Schwab & Trygstad, by Deborah Eshaghian, Attorney at Law, represented Respondents Robyn Alatorre and Deborah Stadler, who were present at the hearing.

Evidence was received by way of stipulation, testimony and documents. The record was closed and the matter was submitted for decision on April 16, 2009.

SUMMARY OF PROPOSED DECISION

The Governing Board of the District determined to reduce or discontinue particular kinds of services provided by certificated teachers for budgetary reasons. The decision was not related to the dedication of the individuals whose services are 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. The selection process was in accordance with the requirements of the Education Code. The Board may proceed as indicated herein.

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FACTUAL FINDINGS

Jurisdiction and Parties

1. The District employs approximately 60 teachers and provides educational services for approximately 1,182 students in grades kindergarten through eight at two school sites. The District employs certificated staff in permanent or probationary positions.

2. Bruce C. Newlin, Ed.D., is the Superintendent of the District, and his actions were taken in that official capacity. Dr. Newlin and his staff were responsible for implementation of the technical aspects of the layoff.

3. Before March 15, 2008, the District served numerous teachers, including Respondents, by personal service and/or certified mail, with a written notice (notice) that it had been recommended that notice be given to them pursuant to Education Code sections 44949 and 44955 that their services would not be required for the next school year. Each notice set forth the reasons for the recommendation and noted that the Board had passed a Resolution reducing the certificated staff by 20.80 full-time equivalent (FTE) positions.

4. Respondents submitted timely written requests for a hearing to determine if there is cause for not reemploying them for the ensuing school year.

5. The Superintendent made and filed Accusations against each of the Respondents. On April 3, 2009, the District served the Respondents either in person or by certified mail with an Accusation along with required accompanying documents and blank Notices of Defense.

6. Respondents completed Notices of Defense that were served on the District.

7. Respondents are permanent certificated employees of the District.

The Governing Board and the Layoff Resolution

8. The Governing Board of the District (Board) was given notice of the Superintendent's recommendation that 20.80 FTE employees be given notice that their services would not be required for the next school year and stating the reasons therefore.

9. Board Resolution number 10:08/09, adopted on February 25, 2009, proposed a layoff of 20.80 FTE certificated employees (Resolution). Specifically, the Resolution provided for the reduction or elimination of the following particular kinds of services:

Science laboratory teaching services, 1.0 FTE
Grades K-5 classroom teaching services, 13.0 FTE
Grades K-5 vocal music teaching services, 1.0 FTE
Grades 1-5 physical education services, 1.0 FTE

Middle School Exploratory Technology Teaching Services, 0.60 FTE
Middle School Exploratory Computer Skills Teaching Services, 0.20 FTE
Middle School Exploratory Health Teaching Services, 0.20 FTE
Middle School Exploratory Geography Teaching Service, 0.20 FTE
Middle School Spanish Language Teaching Services, 0.20 FTE
Middle School Art Teaching Services, 0.60 FTE
Middle School Exploratory Multimedia Teaching Services, 0.20 FTE
Middle School Exploratory Writers Workshop Teaching Services, 0.20 FTE
Middle School Academic Counseling Services, 0.40 FTE
Grades K-8 technology director services, 1.0 FTE
Grades 2-8 assistant principal services, 1.0 FTE

10. The Board also adopted tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. It provided that the order of termination shall be based on the needs of the District and the students in accordance with the criteria stated therein.

11. The Resolution also recognized that the Board was “authorized by Education Code Section 44955 to deviate from terminating certificated employees in order of seniority where the district demonstrates a specific need for personnel to teach a specific course or course of study.” Therefore, the Resolution determined “that ‘competency’ as described in Education Code sections 44955(b), 44956, and 44957, for the purposes of bumping and rehire rights, shall necessarily include possession of a valid credential in the relevant subject matter area, an appropriate EL authorization (if required by the position), and experience in the position or assignment within the last five (5) years.”

12. The Resolution was required by the District’s fiscal crisis and need to reduce services to balance its budget for the welfare of students.

13. The decision to reduce services was not related to the dedication of the individuals whose services are proposed to be reduced or eliminated.

The Seniority List and the Layoffs

14. The District maintains a seniority list which contains employees’ seniority dates (first date of paid service), current assignments and credentials.

15. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. The District then determined whether the least senior employees held credentials in another area and were entitled to displace, or “bump,” other employees. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and whether they could “bump” other employees.

16. The District determined that Respondents could not bump other employees with less seniority because Respondents were not competent, as set forth in the Resolution (see Factual Finding 11), to perform the services for which Respondents were properly certificated to perform.

17. The District used information from the seniority list and personnel files to apply the tie-breaker criteria.

18. The services identified in the Resolution are particular kinds of services that could be reduced or discontinued under Education Code section 44955. The Board's decisions to reduce or discontinue the identified services were neither arbitrary nor capricious, and were a proper exercise of its discretion. The decisions were based on the welfare of the District and its pupils.

19. The District identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

Respondents' Contentions

20. Respondents contend that they are certificated and competent to perform assignments for which the District is retaining personnel who are more junior to them on the seniority list. Respondents also contend that the District served more notices than were required to be sent. Although numerous other possible contentions were raised in Respondents' Administrative Law Brief (Exhibit A), no evidence was submitted to support such contentions and they are rejected.

21. With respect to Respondents' contentions, the following evidence was submitted.

(a) Robyn Alatorre is the District's art teacher covering 60 percent of her assignment. The other 40 percent of her assignment is teaching social studies. The reduction in force proceedings address her 0.60 FTE for art. Ms. Alatorre holds other credentials, certificates and authorizations, including a Professional Clear Multiple Subject Credential that would entitle her to teach in a self-contained elementary school classroom. The last time she taught in a self-contained elementary school classroom was in 1998.

(b) Deborah Stadler is the District's vocal music teacher. Ms. Stadler holds other credentials, certificates and authorizations, including a Clear Multiple Subject Credential General Subjects that would entitle her to teach in a self-contained elementary school classroom. The last time she taught in a self-contained elementary school classroom was in 1981.

(c) The District is retaining more junior teachers than these two Respondents to teach in self-contained elementary school classrooms. Such employees hold the appropriate credentials to perform this service and have performed this service within the last five years.

(d) According to Dr. Newlin, the reason for the language in the Resolution defining “competence” as requiring, among other things, “experience in the position or assignment within the last five (5) years” was that state standards for curriculum in specific subject matters such as math, science and language arts, change on a seven-year cycle and he believed, and the Board agreed, that teachers who actually were utilizing the standards daily were better able to meet the needs of the District and its students.

(e) Ms. Alatorre and Ms. Stadler both provide valuable services to the District and have significant experience in teaching. They are passionate about their work and are willing to take assignments as teachers in self-contained elementary school classrooms.

(f) According to Dr. Newlin, the District served one more notice than was necessary under the strict application of the law because of the need for flexibility should any of the notices be found defective.

LEGAL CONCLUSIONS AND DISCUSSION

1. Education Code¹ section 44944, subdivision (a), states in pertinent part:

“No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefor.”

2. Section 44955 provides, in pertinent part:

“(a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

“(b) Whenever . . . 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 have become necessary by reason of any of these conditions to decrease the number of permanent employees in 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

¹ All citations are to the Education Code.

school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

“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. . . .

“(c) . . . [S]ervices of such employees shall be shall be terminated in the reverse order in which they were employed, as determined by the board in accordance with Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

“The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. . . .

“(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

“(1) The district demonstrates a specific need for personnel to teach a specific course or course of study . . . and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.”

3. Sections 44944 and 44955 establish jurisdiction for this proceeding. The notice and jurisdictional requirements set forth in sections 44944 and 44945 were met. (Factual Findings 3 through 7.)

4. A District may reduce services within the meaning of section 44955, subdivision (b) “either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may ‘reduce services’ by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved.” (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

5. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the District’s schools and pupils within the meaning of section 44949. (Factual Findings 8 through 19.)

6. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position.

(*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.)

7. A school district may deviate from strict seniority in layoffs and skip employees if it can demonstrate a “specific need” and that the employees have “special training and experience . . . which others with more seniority do not possess.” (Section 44955, subd. (d)(1), set out in more detail in Legal Conclusion 2.)

8. A governing board has the discretion to establish criteria of competency, considered as within the special expertise of school districts, which must be upheld if they are reasonable. A board’s definition of competence will be upheld as long as the board has considered the skills and qualifications of the teachers. (*Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555.) The competency criteria examined and approved in *Duax* required that the employee must have taught in a specific subject area the equivalent of one year in the past ten years to be considered competent to render a service for purposes of “bumping” a junior employee. Although *Duax* was decided relating to prior statutes that governed layoffs of community college teachers, the statutory language is similar to the laws applicable to this matter, and the reasoning is sound.

9. The contention that the proceedings should be dismissed because the District sent one more notice than was required is not supported by law and is rejected.

ORDER

1. Notice may be given to employees occupying 20.80 full-time equivalent certificated positions that their services will not be required for the 2009-2010 school year because of the reduction and discontinuance of particular kinds of services. Such notices may be given to both Respondents.

2. Notice shall be given in inverse order of seniority. Each Respondent shall receive such a notice.

DATED: April 17, 2009.

DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings