

BEFORE THE
GOVERNING BOARD
OF THE
BONSALL UNION SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Layoff/Accusation
Against:

16 CERTIFICATED EMPLOYEES,

Respondents.

OAH No. 2009030914

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge, at Bonsall, California on April 30, 2009.

Clifford D. Weiler, Esq. of Atkinson, Andelson, Loya, Ruud & Romo, represented the Bonsall Union School District (the district).

Carlos R. Perez, Esq. of Reich, Adell & Cvitan represented all of the respondents who appeared at the hearing.

Oral and documentary evidence was received and the matter was submitted on April 30, 2009.

FACTUAL FINDINGS

1. On February 19, 2009, the Governing Board of the district (the board) adopted Resolution number 09-02-03, determining that it would be necessary to reduce or discontinue particular kinds of services (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>
Music Itinerant Instruction Services, Kindergarten through 6 th grade	.40
Counseling Services, Kindergarten through 8 th grade	1.0
Physical Education Teaching Services, Kindergarten through 6 th grade	1.0
Physical Education Teaching Services, 6 th through 8 th grade	1.0
Classroom Teaching Services, Kindergarten through 6 th grade, self-contained classrooms	10.0
Classroom Teaching Services 6 th through 8 th grade, core model	1.0
Title 1 Teacher on Special Assignment Teaching Services, Kindergarten through 5 th grade, pull-out, remedial Support teaching services	1.0
Principal Services	1.0
Total FTE positions to be reduced or eliminated	<hr/> 16.40

The services listed above are PKS, which may be reduced or discontinued within the meaning of Education Code section 44955.

2. On March 9, 2009, based on the board's resolution, the Superintendent of the district recommended, with regard to the ensuing school year, that the board reduce or eliminate the specified PKS provided by the district for the 2009-2010 school year by notifying the certificated employees listed in Finding 6, below, that their services will not be required for the 2009-2010 school year.

3. The district's recommendation and the board's decision to reduce or discontinue the services listed in Finding 1, above, were neither arbitrary nor capricious; rather, the recommendation and decision were based on the projected, \$800,000 to \$1.1 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 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.

6. Prior to March 15, 2009, the following 16 certificated employees (respondents) affected by the layoffs received written notice notifying them that pursuant to Education Code sections 44949 and 44955, their services “will not be required for the ensuing 2009-10 school year:”

1. Allen, Michelle
2. Anderson, Beth
3. Bolton, Gretchen
4. Branson, Jennifer
5. Bridgeman, Laura (0.40 FTE)
6. Furr, Amanda
7. Felix, Whitney
8. Gould-Pilz, Amy
9. Hansen, Michelle
10. Quinones, Julia
11. Pura, Debbie
12. Shaffer, Stephanie (0.20 FTE)
13. Stone-Latimer, Valerie (0.40 FTE)
14. Thomas, Jolene
15. Triana, Jessica
16. Wise, Jennifer

7. On March 31, 2009, the Superintendent of the district made and filed an accusation in his official capacity.

8. Prior to March 15, 2009, all respondents were served with board resolution number 09-02-03, a Notice of Recommendation that Services Will Not be Required, the Accusation, a Notice of Defense, a Notice of Hearing, and 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 Recommendation that Services Will Not Be Required advised respondents as follows:

“Your request for a hearing must be in writing and must be delivered to [the Superintendent’s office] no later than 4:00 p.m., Monday, March 23, 2009. If you fail to request a hearing on or before that date, your failure to do so shall constitute a waiver of your right to a hearing and your services will accordingly be terminated as

indicated above and for the reasons indicated above, without a hearing. For your convenience, a form is enclosed for requesting a hearing; if you desire a hearing, you may use that form or another form as you desire. (Exh. 5.)”

9. Thirteen (13) respondents timely submitted their notices of defense requesting a hearing to determine if cause exists for not re-employing them for the ensuing year.

10. 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.

11. All pre-hearing jurisdictional requirements were met.

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

13. The following concerns were raised during the hearing:

a. Several respondents believe that they should have been allowed to bump into teaching positions, which were not impacted by these reduction in force (RIF) proceedings, held by less senior employees, Clair Warkentien and Julie Urquhart, who teach “6/Science/Math” and “7 Lang Core,” respectively; and,

b. Several respondents asserted that one certificated employee, Domingo Anguiano, has an incorrect seniority date and should have been included in the RIF proceedings.

14. In connection with these concerns, the evidence established the following:

a. None of the respondents are qualified and/or competent to “bump” either Clair Warkentien or Julie Urquhart; and,

b. Domingo Anguiano began working for the district on January 7, 2005 as a “permanent”/“on-site” substitute teacher. At the time, Mr. Anguiano was working under an emergency credential. Mr. Anguiano worked “every day” and filled in for absent teachers, as necessary. On some days there were no absences so Anguiano worked in “Title 1” and helped students on an individual, “pull-out” basis. Sometimes, if there were no teaching duties for him to perform, Anguiano performed some non-teaching tasks. Anguiano worked full-time in this capacity until he received his Intern Credential on August 20, 2007, and began teaching the following specific assignments: “PE/Math 6/Elective.” (Exh. 9.) The district assigned Mr. Anguiano a seniority date of 01/05/05, the date he was hired as a “permanent”/“on-site” substitute teacher. Respondents assert the following: Mr. Anguiano’s current seniority date is wrong, he should have been given 08/20/07 as his seniority date, and if that were his seniority date then he should have been included in the instant RIF proceedings. Assuming, arguendo, respondents are correct, there would be no change in the results of the current RIF proceedings. There is a Physical Education teacher, Michelle Hansen (seniority date of 11/03/08), who would still lose her position as part of the RIF

proceedings even if Mr. Anguiano's seniority date were changed to 11/03/08. The question then arises as to whether any of the remaining respondents is qualified and competent to perform Mr. Anguiano's assignment and "bump" him.

As part of his current assignment, Mr. Anguiano teaches Physical Education to 6th, 7th, and 8th grade male students. In this assignment, Mr. Anguiano spends most of his time supervising the male students in the men's locker room to ensure their safety and to make sure they get "dressed out" and off to their physical education training. Although at least one respondent was offended by the fact that gender enters into the discussion/decision, the fact of the matter is that sometimes gender does matter. It is not feasible to have a female physical education teacher supervise teenage males in a locker room setting where the students are changing clothes and showering. To hold otherwise would, at the very least, violate the male students' privacy rights and would not be socially acceptable. Consequently, since all of the respondents are female, none of them would qualify to bump Mr. Anguiano. Thus, Mr. Anguiano's seniority date is not relevant to the outcome of this matter and is, therefore, not properly before this forum. Although Mr. Anguiano was a witness in these proceedings he was not a party to them and did not have representation. Consequently, ruling on the appropriateness of Mr. Anguiano's seniority date would violate his due process rights by not affording him proper notice, an opportunity to prepare a defense, an opportunity to seek legal advice and be represented, and an opportunity to be fully heard on the matter. Thus, the accuracy of Mr. Anguiano's seniority date is a matter that remains between Mr. Anguiano and 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 1 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 16 FTE positions, 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 respondents that their services will not be needed during the 2009-2010 school year due to reduction or discontinuance of PKS.

ADVISORY DETERMINATION

WHEREFORE, THE FOLLOWING ADVISORY DETERMINATION is hereby made:

1. The Accusation is sustained. The district shall notify the 16 respondents listed in Finding 6 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: May ____, 2009

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings