

BEFORE THE
BOARD OF EDUCATION OF THE
LOS ALAMOS SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2009031286

SALLY FISHER, JOEL MASON,
and SHERI RAE MORRIS,

Respondents.

PROPOSED DECISION

Michael A. Scarlett, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 27, 2009, at the Los Alamos School District, in Los Alamos, California.

Michael C. Blacher, Attorney at Law, Liebert Cassidy Whitmore, represented the Los Alamos School District (District).

Adam A. Acevedo, Attorney at Law, Hathaway, Perrett, Webster, Powers, Chrisman & Gutierrez, represented Respondents Sally Fisher and Sheri Rae Morris, who were both present at hearing. Angela Marese Boyle, California Teachers Association, was also present on behalf of Respondents Fisher and Morris.

Respondent Joel Mason was present at hearing and represented himself.

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

FACTUAL FINDINGS

1. The Los Alamos School District (District) operates one (K-8) elementary school.
2. Ron Barba is the Interim Superintendent of the District and Principal of the elementary school.

3. On March 5, 2009, the Board of Education of the District (Board) was given notice of the Superintendent's recommendation that three (3) Full Time Equivalent (FTE) employees be given notice that their services would not be required for the next school year and stating the reasons for that recommendation.

4. Board Resolution No. 2009-05, adopted on March 5, 2009, proposed a layoff of three (3) FTE certificated employees. Specifically, Board Resolution No. 2009-05 provided for the reduction or elimination of the following particular kinds of services:

Elementary Teaching	<u>3</u>	FTE
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5. On March 10, 2009, the District personally served on each Respondent a written notice that it had been recommended that notice be given to Respondents pursuant to Education Code sections 44949 and 44955 that their services would not be required for the next school year. Each written notice set forth the reasons for the recommendation and noted that the Board had passed a Resolution reducing the certificated staff by three (3) "elementary teaching" FTE positions. Certificated employees timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year.

6. On April 2, 2009, the Superintendent made and filed Accusations against each of the certificated employees who requested a hearing. The Accusations with required accompanying documents and blank Notices of Defense were timely served on those certificated employees.

7. Notices of Defense were timely filed by Respondents Fisher and Morris' counsel on their behalf on April 8, 2009. Respondent Mason filed his Notice of Defense on April 6, 2009.

8. Respondents in this proceeding are probationary or permanent certificated employees of the District.

9. The services set forth in Factual Findings 3 and 4 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.¹

10. In response to a Financial Report Analysis conducted by the Santa Barbara County Education Office in January and February 2009, the Board took action to reduce or discontinue the services set forth in Factual Findings 3 and 4 in order to comply with fiscal measures recommended by the Financial Report and to balance its budget for the 2009-2010 school year. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

¹ All further references are to the Education Code.

11. The reduction of services set forth in Factual Findings 3 and 4 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.

12. Board Resolution No. 2009-06, adopted on March 5, 2009, established 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 its students in accordance with the following: (1) CLAD Credential; (2) teaching experience in the District; (3) breadth of credentials; (4) bilingual ability; (5) teaching experience in different subjects. No Respondent challenged the accuracy or validity of the District's tie-breaking criteria. The District properly applied and implemented the tie-breaking criteria and procedure.

13. Board Resolution No. 2009-07, adopted on March 5, 2009, established the criteria for determining competency among employees possessing the same credential. It provided that as to any employee seeking to move into a position requiring certification qualifications held by a less senior certificated employee, i.e. "bumping" rights, the following criteria will be used: (1) EL Certification: a. BCLAD b. CLAD c. LDS; (2) NCLB compliance in the discipline; (3) degree or subject matter test in discipline; and (4) prior experience teaching in the discipline within the last ten years.

14. The District maintains a seniority list which contains employees' seniority dates (first date of paid service), current assignments and locations, advanced degrees, credentials, and authorizations. Credential and authorization data are obtained from the records of the County Office of Education, at which certificated employees must register such documents.

15. Ron Barba was responsible for implementation of the technical aspects of the layoff. To assure the accuracy of seniority dates and other data, the District made the seniority list available to the certificated employees.

16. The District used the seniority list to develop a proposed layoff and "bumping" 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 "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.

17. Respondents do not challenge the accuracy of or validity of the District's seniority list. They do not argue that they are entitled to "bump" or "skip" any other certificated employee on the seniority list based upon being certificated and competent to render the service another employee is being retained to provide. Rather, Respondents Fisher and Mason assert that the Board's Resolution No. 2009-05 did not reduce or

discontinue services or positions in which either of them occupied. Thus, Respondents Fisher and Mason argue that their positions are excluded from the Board's Resolution. Respondent Morris asserted no argument for retention.

18. The District is an elementary school district with one school, kindergarten through eighth grade. There are only ten school teachers in the District. Each certificated teacher is required to have a multiple subject credentials to work as a teacher in the District. Respondents Morris, Fisher, and Mason are the least senior of the ten certificated employees in the District, ranking eight (8), nine (9), and ten (10), respectively.

19. Respondent Fisher contends that she teaches three classes of science to sixth, seventh, and eighth grade students, and therefore is excluded from the Board's Resolution because "science" is not a particular kind of service being reduced. Fisher has a Clear Multiple Subject credential and a Clear Single Subject credential in "Agriculture."

20. Respondent Mason similarly claims that he teaches three classes of history to sixth, seventh, and eighth graders. Mason has a Clear Multiple Subject credential. As of March 15, 2009, Mason did not possess a single subject credential in social studies, although at the time of the hearing his application for the single subject credential was pending.

21. The District properly identified the particular kind of services to be reduced in its Resolution as "elementary teaching." The District is an elementary school district and has only one school. The teachers all have Clear Multiple Subject credentials which authorize each teacher to provide multiple subject instruction in self-contained classrooms at the District's K-8 elementary school. The District has broad discretion to define the particular kind of services reduced as "elementary teaching," particularly in light of the small size and number of teachers in the school district. Thus, Respondents Fisher and Mason's assertion that the Board's Resolution 2009-05 excluded "science" and "history" as a particular kind of service is not persuasive.

22. Respondents Fisher and Mason taught classes that more senior certificated employees with Clear Multiple Subject credentials are certificated and competent to teach. Although, Respondent Fisher has a single subject credential in Agriculture, and Respondent Mason has a single subject credential application pending, these factors are not determinative of the appropriateness of the Board's Resolution. A single subject credential is not required to teach science or history in the District's K-8 elementary school classroom.

23. No certificated employee junior to any of the Respondents was retained to render a service which any Respondents are certificated and competent to render.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in sections 44949 and 44955 were met.

2. The services identified in Board Resolution 2009-05 are particular kinds of services that could be reduced or discontinued under section 44955, by reason of Factual Findings 3, 4, and 9. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion, by reason of Factual Findings 3,4, 9, 10, and 11. 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.

Section 44955, subdivision (b) provides in relevant part that:

(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 . . . 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 school year . . . *[T]he 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.* (Emphasis added.)

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.)

3. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services, by reason of Factual Findings 1 through 23. The District identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued.

"In the setting of an elementary school, a reduction in the number of teachers is often the only way that services may be reduced." (*Zalac v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838, 854.) "Because elementary schools, for the most part, are limited to identifying a service simply as 'classroom teaching,' this must be recognized as a particular kind of service in order that elementary schools are able to reduce the only services they provide." (*Zalac v. Governing Bd. of Ferndale Unified School Dist.*, *supra*, 98 Cal.App.4th at p. 854; *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d

627, 637.) “In PKS cases the determination of the amount by which a service is to be reduced is the determination of the number of positions to be eliminated.” (*Zalac v. Governing Bd. of Ferndale Unified School Dist.*, *supra*, 98 Cal.App.4th at p. 854; *San Jose Teachers Assn. v. Allen*, *supra*, 144 Cal.App.3d at p. 636.)

The Board properly identified the particularly kind of services to be reduced or discontinued in Resolution No. 2005-05 as “elementary teaching.” The Board has discretion, particularly in small school districts, as is here, to broadly define the services that will be reduced for purposes of a layoff. (*Zalac*, *supra*, 98 Cal.App.4th at p. 854.) Although Respondents Fisher and Mason asserted the Board’s Resolution failed to include “science” or “history” as a particular kind of service, where as here, the curriculum is being taught in a self-contained elementary school (K-8) classroom setting, the District is not required to specifically identify science or history as services being reduced. (*Id.*)

The evidence also established that more senior certificated employees, who were competent and certificated to teach Respondents’ science and history classes, were properly retained by the District. Respondents Morris, Fisher and Mason were the least senior teachers on a seniority list that included ten teachers. All seven teachers retained by the District had Clear Multiple Subject credentials which authorized them to teach the subjects Respondents taught. According to the California Commission on Teacher Credentialing:

“The Multiple Subject Teaching Credential authorizes the holder to teach in a self-contained classroom such as the classrooms in most elementary schools. However, a teacher authorized for multiple subject instruction may be assigned to teach in any self-contained classroom (preschool, K–12, or in classes organized primarily for adults). In addition, the holder of a Multiple Subject Teaching Credential may serve in a core or team teaching setting.”

(*State of California, Commission on Teaching Credentialing: Multiple Subject Teaching Credential: website www.ctc.ca.gov*.)

Thus, Respondents’ possession of a single subject credential is not relevant in the context of an elementary school (K-8) in which instruction is being provided in a self-contained classroom.

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

ORDER

1. Notice may be given to Respondents Sheri Morris, Sally Fisher, and Joel Mason, employees occupying three (3) full-time equivalent certificated elementary school

teacher positions, that their services will not be required for the 2009-2010 school year because of the reduction and/or discontinuance of particular kinds of services.

2. Notice shall be given in inverse order of seniority.

Dated: May 6, 2009

Michael A. Scarlett
Administrative Law Judge
Office of Administrative Hearings