

BEFORE THE
BOARD OF EDUCATION
TRACY UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction of Particular
Kinds of Services Affecting:

OAH No. 2010011254

Persons Occupying
149.3 Certificated Full Time Equivalent
Positions,

Respondents.

PROPOSED DECISION

Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 13, 2010, in Tracy, California.

Marie A. Nakamura, Attorney at Law, of Kronick, Moskovitz, Tiedman & Girard, represented the Tracy Unified School District (District).

Thomas J. Driscoll, Attorney at Law, of Driscoll & Associates, appeared on behalf of respondents, except Doreen Bolding, Lisa Coffman, Anthony Crivello, Rochelle Gumpert, Amber Holder, Judith Kent-Fabris, Randy McMillan and Holly Sowers.

Anthony Crivello,¹ Holly Sowers,² Doreen Bolding and Judith Kent-Fabris appeared.

Randy McMillan³ did not appear.

Lisa Coffman, Rochelle Gumpert, and Amber Holder, did not appear. On proof of compliance with Government Code sections 11505 and 11509, and Education Code sections 44949 and 44955, this matter proceeded as a default in respect to these respondents, pursuant to Government Code section 11520.

1. The Layoff Notice which the District issued to Anthony Crivello was rescinded pursuant to the Stipulation discussed below.

2. The Layoff Notice which the District issued to Holly Sowers was rescinded pursuant to the Stipulation discussed below.

3. The Layoff Notice which the District issued to Randy McMillan was rescinded pursuant to the Stipulation discussed below.

During lengthy negotiations prior to the commencement of the hearing, the District and those respondents represented by Mr. Driscoll entered into a written “Stipulation Between The Parties” (Stipulation). At hearing, the Stipulation and exhibits were admitted in evidence. The Stipulation is attached to this Proposed Decision as Attachment A, and incorporated herein. Testimony was taken from Judith Kent-Fabris. The matter was submitted for decision and the record was closed on April 13, 2010.

FACTUAL FINDINGS

1. James Franco is the Superintendent of the Tracy Unified School District. His actions were taken in his official capacity.

2. Before March 9, 2010, the Superintendent determined that funding for the 2010-2011 school year would be reduced, thereby necessitating the reduction or elimination of certain particular kinds of services. The Superintendent recommended to the Board that certain particular kinds of services be reduced or eliminated, affecting employees occupying 151.7 full-time equivalent (FTE) positions. The Superintendent’s resolution to eliminate and reduce teaching services was made solely for the welfare of students.

3. On March 9, 2010, the Board adopted Resolution No. 09-23, providing for the reduction or elimination of particular kinds of services, resulting in reduction or elimination of 149.3 certificated positions.

4. On March 12, 2010, the Superintendent served on persons affected by the reduction and elimination of particular kinds of services a “Recommendation That Services Will Not Be Required” for the ensuing school year, 2010–2011 (Layoff Notice or Notice). The Notice stated that the Superintendent had recommended to the Board that notice be given to respondents pursuant to Education Code sections 44949 and 44955, that their services would not be required for the ensuing school year. The Notice advised that the Board had passed a Resolution reducing or discontinuing particular kinds of services which reduced the certificated staff, and enclosed a copy of the Resolution, identifying the particular kinds of services to be reduced or eliminated.

5. On March 30, 2010, the Board adopted Resolution No. 09-29, which directed the Superintendent, or his representatives, to rescind multiple Notices due to a reduction in the number of particular kinds of services the Board had initially identified for reduction or elimination. The District complied with this resolution and rescinded certain Notices.

6. Respondents timely requested a hearing to determine if there is cause for not re-employing them for the ensuing school year.

7. The Superintendent made and filed Accusations against each of the employees who requested a hearing. The Accusations with required accompanying documents and blank Notices of Defense were timely served on those employees.

8. Respondents timely filed Notices of Defense to the Accusations.

9. At hearing, the District and respondents (except Anthony Crivello, Holly Sowers, Doreen Bolding and Judith Kent-Fabris) entered into the Stipulation attached hereto. The Stipulation provides that Layoff Notices issued to certain respondents identified in the Stipulation, (including Anthony Crivello and Holly Sowers) are rescinded or are partially rescinded.

10. The Stipulation rescinds the Layoff Notices issued to the following employees:

ABNEY-XUEREB, KAREN	McMILLAN, RANDY
ARNETT, JEFFREY	MINARICH, RICHARD
BECK, MICHAEL	MYERS, CHRISTOPHER
BRACKMO, MARIE	NADEAU, CYNTHIA
BARTSCHI, DIANA	NETTO, MATTHEW
CHAVARRIA, BRANDY	PERRY, SUSAN
COSTA, MICHAEL	PETERSON, ERIC
CRIVELLO, ANTHONY	RAINS, ELISA
DUNCAN, MARK	ROSENBLUM-STIME, CELIA
DUPREE HENDERSON, CECILE	RUSSELL, FREDERICK
FELDMAN, ANETTE	SMUTNY, CATHERINE
FORNACIARI, KATHLEEN	SOWERS, HOLLY
GALLEGOS, EVE	SPRINGER, JEANETTE
HENSEL, JO	SZOSTAK, SCOTT
HILL, KRYSTAL	VILLA, DAVID
KEENEY, PAULETTE	WYANT, CAROL
KLO, JACQUELYNNE	
KOLSTAD, TXE	HALL, EUSTACIA
LEDESMA, ALEJANDRA	IRVIN, CHAD
LEE, KENNETH	LUIS, LUCIA
LILLEY, ANTOINETTE	SOETH, MATTHEW

11. The Stipulation partially rescinds the Layoff Notices issued to the following employees:

AFAN, KRISTINA	.4 FTE Rescission
HUNTER, JOHN	.4 FTE Rescission
JOHNSON, DEBRA	.6 FTE Rescission
ODOKO, BOLANOLE	.2 FTE Rescission
RIVAS, MARIA	.4 FTE Rescission

12. In light of the defaults of Lisa Coffman, Rochelle Gumpert and Amber Holder, and the agreements reached in the Stipulation, the only respondents who remain in this proceeding are Doreen Bolding and Judith Kent-Fabris. Doreen Bolding is a permanent certificated employee, with a seniority date of August 2, 2005. She holds a multiple subject

teaching credential and presently teaches eighth grade at the Monte Vista School. Ms. Bolding did not present a defense to her layoff.

13. Judith Kent-Fabris received a Notice of Layoff as a precautionary measure, as the District regards her as a temporary employee. On August 7, 2009, Ms. Kent-Fabris accepted and signed an “Offer of Temporary Employment” with the District. Pursuant to the offer, the “duration” of employment was identified as “August 10, 2009, to not exceed May 27, 2010.” Ms. Kent-Fabris testified that she had some concerns about whether she was indeed a temporary employee. However, she did not produce evidence to support her position.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 were met.

2. The anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under section 44955. As stated in *San Jose Teachers Assn v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under that section, and, “in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction.” The District must be solvent to provide educational services and cost savings are necessary to resolve its financial crisis. The Superintendent’s decision to reduce particular kinds of services was a proper exercise of his discretion.

3. The services identified in Board Resolution No. 09-23, are particular kinds of services that could be reduced or discontinued under Education Code section 44955. 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 County’s schools and pupils within the meaning of section 44949.

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. The Notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be

reduced, both in the Board's Resolution and in the Notices, adequately describe particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

6. Cause exists under Education Code sections 44949 and 44955 to provide final Notice to respondent Doreen Bolding that her services will not be required in the ensuing school year.

7. As set forth in Finding 13, Judith Kent-Fabris is a temporary employee; consequently, she is not entitled to the protections of Education Code sections 44949 and 44955. The District issued her a Notice of Layoff as a precaution, in the event she established that she was a probationary or permanent employee. The District need not provide Final Notice to Ms. Kent-Fabris that her services will not be required in the ensuing school year. As Ms. Kent-Fabris is not represented by counsel in this proceeding, the District may choose, as a precautionary measure or as a courtesy, to provide Ms. Kent-Fabris with a Final Notice that her services will not be required in the ensuing school year. Should the District choose to provide said Final Notice, the District's action shall not be deemed to be a waiver of its position that Ms. Kent-Fabris is a temporary employee. Nor shall the District's action in providing a Final Notice affect Ms. Kent-Fabris's status as a temporary employee.

ORDER

1. Notice shall be given to respondent Doreen Bolding that her services will not be required for the 2010-2011 school year, because of the reduction and discontinuance of particular kinds of services.

2. Pursuant to Stipulation, the District shall rescind Layoff Notices issued to the following employees;

ABNEY-XUEREB, KAREN
ARNETT, JEFFREY
BECK, MICHAEL
BRACKMO, MARIE
BARTSCHI, DIANA
CHAVARRIA, BRANDY
COSTA, MICHAEL
CRIVELLO, ANTHONY
DUNCAN, MARK
DUPREE HENDERSON, CECILE
FELDMAN, ANETTE
FORNACIARI, KATHLEEN
GALLEGOS, EVE
HENSEL, JO

HILL, KRYSTAL
KEENEY, PAULETTE
KLO, JACQUELYNNE
KOLSTAD, TXE
LEDESMA, ALEJANDRA
LEE, KENNETH
LILLEY, ANTOINETTE
McMILLAN, RANDY
MINARICH, RICHARD
MYERS, CHRISTOPHER
NADEAU, CYNTHIA
NETTO, MATTHEW
PERRY, SUSAN
PETERSON, ERIC
RAINS, ELISA

ROSENBLUM-STIME, CELIA
RUSSELL, FREDERICK
SMUTNY, CATHERINE
SOWERS, HOLLY
SPRINGER, JEANETTE
SZOSTAK, SCOTT

VILLA, DAVID
WYANT, CAROL
HALL, EUSTACIA
IRVIN, CHAD
LUIS, LUCIA
SOETH, MATTHEW

3. Pursuant to Stipulation, the District shall partially rescind Layoff Notices issued to the following employees;

AFAN, KRISTINA	.4 FTE Rescission
HUNTER, JOHN	.4 FTE Rescission
JOHNSON, DEBRA	.6 FTE Rescission
ODOKO, BOLANOLE	.2 FTE Rescission
RIVAS, MARIA	.4 FTE Rescission

DATED: April 20, 2010



ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings