

BEFORE THE
GOVERNING BOARD
OF THE
LA MESA-SPRING VALLEY SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Layoff/Accusation
Against:

11 CERTIFICATED EMPLOYEES,

Respondents.

OAH No. 2010020340

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge, at La Mesa, California on April 23, 2010.

Kelly R. Minnehan, Esq. of Fagen, Friedman & Fulfroost, LLP represented the La Mesa-Spring Valley School District (the district).

Fern M. Steiner, Esq. of Tosdal, Smith, Steiner & Wax represented all 11 respondents.¹

Oral and documentary evidence was received and the matter was submitted on April 23, 2010.

FACTUAL FINDINGS

1. On March 2, 2010, the Governing Board of the district (the board) adopted Resolution number 09-10-21, 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 2010-2011 school year were the following full time equivalent (FTE) positions:

¹ Two certificated employees, Rachel Ballenger and Olga Koeppen failed to submit requests for hearing and at the outset of the hearing the preliminary layoff notice served on Gerald Hoffman was rescinded and the accusation was dismissed as to Hoffman; consequently, this hearing focused on the 11 remaining certificated employees (respondents).

<u>PKS</u>	<u>FTE</u>
Counseling Services	6.5
Elementary Primary Language Program Teaching Services	5.0
Elementary Teaching Services	61.0
English Learner Resource Teaching Services	2.0
Middle School Dean of Students/Teacher on Special Assignment	4.0
Middle School English Teaching Services	3.0
Middle School Math Teaching Services	3.0
Middle School Music Teaching Services (Chorus)	1.0
Middle School Physical Education Teaching Services	3.0
Middle School Science Teaching Services	2.0
Middle School Social Studies Teaching Services	2.0
Middle School Spanish Teaching Services	1.5
Supplemental Reading Program Teaching Services	4.0
Total FTE positions to be reduced or eliminated	<hr/> 98.0

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

2. On March 3, 2010, based on the board's resolution, the Assistant Superintendent, Human Resources, designee for 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 2010-2011 school year by notifying the certificated employees listed in Finding 6 that their services will not be required for the 2010-2011 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 8.9 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 Assistant 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 services which their seniority and qualifications entitle them to render.

6. Prior to March 15, 2010, the following 11 certificated employees (respondents) affected by the layoffs received written notice/precautionary notice notifying them that, pursuant to Education Code sections 44949 and 44955, their services “will be terminated at the end of the current school year:”

- | | |
|--------------------------|---------------------|
| 1. Rachel Balinger | 7. Stefanie Lindsay |
| 2. Rhonda Brown | 8. Adriana Marin |
| 3. Veronica Chalco | 9. Virginia Pontius |
| 4. Cortney Feige | 10. Melissa Sanchez |
| 5. Laurel Fielding | 11. Amy Symons |
| 6. Theresa Hawkins-Gilly | |

7. On March 3, 2010, the Assistant Superintendent, Human Resources, by delegation of authority from the Superintendent of the district made and filed an accusation in her official capacity.

8. Prior to March 15, 2010, all respondents were served with board resolution number 09-10-21, board resolution number 09-10-20,² board policy number 4117.3, a Notice of Recommendation that Services Will Be Terminated, a Statement to Respondent, the Accusation, a Notice of Defense, a Request for 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 be Terminated advised respondents as follows:

“You are advised you may request a hearing to determine if there is cause for not reemploying you for the 2010-2011 school year.

² Board resolution number 09-10-20, which was adopted by the board on February 2, 2010 established tie-breaking criteria.

For that purpose, enclosed is a document entitled 'Combination Request for Hearing and Notice of Defense' for your use.

Your completed Combination Request for Hearing and Notice of Defense must be returned to [information deleted], on or before 4:00 p.m., March 19, 2010. If you fail to request the hearing on or before this date, your failure will constitute a waiver of your right to a hearing." (Exh. 4.)

9. The 11 respondents listed in Finding 6 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 prehearing jurisdictional requirements were met.

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

13. The district has considered, and continues to consider all positively assured attrition.

14. The layoffs will not reduce any of the district's offerings in code mandated courses below the level required by law.

15. Two respondents testified about special qualifications they have related to the Bullying Prevention Program and Project Peace; however, district testimony established that those respondents were properly slated for layoff because they did not meet skipping criteria and Project Peace was a specially funded program for which the district had "lost the funding."

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/met, as required.

2. The services listed in Factual Finding 1 are PKS that can be reduced or discontinued pursuant to 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 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 2010-2011 school year due to reduction or discontinuance of PKS.

ADVISORY DETERMINATION

WHEREFORE, THE FOLLOWING ADVISORY DETERMINATION is hereby made:

The Accusation is sustained. The district shall notify respondents that their services will not be needed during the 2010-2011 school year due to lack of funds and the resulting need to reduce or discontinue PKS.

DATED: April ____, 2010

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings