

BEFORE THE GOVERNING BOARD OF THE
FAIRFIELD-SUISUN UNIFIED SCHOOL DISTRICT
COUNTY OF SOLANO, CALIFORNIA

In the Matter of the Non-Reemployment of:

CERTAIN CERTIFICATED EMPLOYEES,

Respondents.

OAH No. 2010020965

PROPOSED DECISION

This matter was heard before Diane Schneider, Administrative Law Judge, State of California, Office of Administrative Hearings, in Fairfield, California, on April 20, 2010.

Sandra Woliver, Attorney at Law, Dannis, Woliver and Kelley, 71 Stevenson Street, Nineteenth Floor, San Francisco, California, represented the Fairfield-Suisun Unified School District.

David Weintraub and David Coleman, Attorneys at Law, Beeson, Tayer & Bodine, 1404 Franklin Street, Fifth Floor, Oakland, California, represented all respondents listed in Attachment C.

Respondent Jeffery A. Wurth was present at the hearing and represented himself.

There was no appearance by or on behalf of respondents Diannah Cox, Barbara J. Guzzo, Staci A. Mitchell, Douglas A. Moore, Erika Murillo, Steven M. Phillips, Nathan E. Rose, Leslyn J. Skog, and Eileen E. Witt-Albedi.

FACTUAL FINDINGS

1. Jacki Cottingim-Dias, Ph.D., made and filed the Accusations in her official capacity as Superintendent of the Fairfield-Suisun Unified School District (district).

2. On March 2, 2010, the district's Governing Board adopted Resolution No. 21-0910 (Revised), which sets forth the board's determination that it will be necessary for the district to reduce or discontinue particular kinds of services (PKS) for the 2010-2011 school year, for a total of 207 certificated full-time equivalent (FTE) positions.

3. All notices were timely and properly served. All notices and other jurisdictional requirements contained in Education Code sections 44949 and 44955 have been provided or satisfied.

4. At the hearing, counsel entered into a written stipulation (Attachment F).

5. The respondents represented by Mr. Weintraub and Mr. Coleman are identified in Attachment C. The following respondents filed notices of defense but were neither present nor represented at the hearing: Diannah Cox, Barbara J. Guzzo, Staci A. Mitchell, Douglas A. Moore, Erika Murillo, Steven M. Phillips, Nathan E. Rose, Leslyn J. Skog, and Eileen E. Witt-Albedi.

6. The list of respondents in this matter, as revised by the district on the day of the hearing, are identified in Attachment B.¹ At the hearing, the district fully rescinded the layoff notices sent to the respondents listed on Attachment D, and partially rescinded the layoff notices sent to the respondents listed on Attachment E.

7. On February 29, 2010, the Governing Board of the Fairfield-Suisun Unified School District adopted Resolution No. 20-0910. This resolution sets forth the criteria to be used to determine the order of termination of certificated employees for the 2010-2011 school year who first rendered paid service to the district on the same date. A point value is ascribed to each of these criteria. If application of the criteria results in a tie, it is to be broken by use of a lottery.

8. The district properly applied the criteria set forth in Resolution No. 20-0910 to respondents.

9. Two respondents testified at the hearing.

10. Karen C. Zimmerman, a third grade teacher, has a technology certification relating to “smart boards.” Ms. Zimmerman believes that the district should have retained her because she possesses special training in “smart board” technology.

11. Jeffrey A. Wurth, a second grade teacher, turned in his application for a supplementary credential in English and Science. He does not, however, presently hold such a credential because he did not complete all of the required paperwork. He believes that the district should give him credit for possessing such a credential because he completed the coursework necessary to obtain the credential and paid a \$55 credential fee. Ronald K. Hawkins, Assistant Superintendent, Human Resources, testified that the district cannot give a teacher credit for a credential until he actually receives the credential. When Mr. Wurth receives his credential, the district will take his credential into account in its rehiring process.

¹ Attachment B also identifies the positions that will be partially laid off.

12. The frustration and disappointment expressed by Ms. Zimmerman and Mr. Wurth are understandable. Their contentions, however, do not constitute a legal basis upon which to challenge their layoffs.

12. The reduction or discontinuation of services is related to the welfare of the district and of its pupils.

13. Any contentions raised by respondents and not discussed above are found to be without merit and are hereby rejected.

14. No junior employee is being retained to render a service that any of the respondents are certificated and competent to perform.

LEGAL CONCLUSIONS

1. The services identified in Attachment A are particular kinds of services that may be reduced or discontinued under Education Code section 44955. The board's decision to reduce or discontinue the identified services complied with the guidelines set forth in Education Code section 44955. The board's decision was neither arbitrary nor capricious, and was a proper exercise of its discretion.

2. Cause exists because of the reduction or elimination of particular kinds of services pursuant to Education Code section 44955 to give notice to respondents listed in Attachment B that their services will not be required for the 2010-2011 school year. The cause relates to the welfare of the schools and the pupils thereof within the meaning of section 44949.

ORDER

Notice may be given to respondents listed in Attachment B that their services will not be required for the 2010-2011 school year because of the reduction or discontinuation of particular kinds of services. Notice shall be given in reverse order of seniority.

Dated: _____

DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings

List of Attachments

Attachment A: Revised PKS List

Attachment B: Revised List of Respondents

Attachment C: Respondent's Represented by Mr. Weintraub and Mr. Coleman

Attachment D: List of Full Rescissions

Attachment E: List of Partial Rescissions

Attachment F: Stipulation between Counsel