

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

In the Matter of the Accusations Against:

OAH No. 2010021007

JOHN ALFARO, JENNIFER  
BRINKMAN, STEVEN CLEEK,  
CHRIS COSTIN, JAMES DEWING,  
ELIZABETH INMAN, LOIS KELLER,  
JULIE NOEL, JASON OLSON,  
ELISA PEREZ, MELISSA PEREZ,  
HEATHER PRATT, REBECCA  
SCHMIDT, LAURA SKAVDAHL,  
CHRIS STEFFANIC, SUSAN  
STEPHENSON, and DAVID YEAKLE,

Respondents.

**PROPOSED DECISION**

Marilyn Anne Woollard, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 15, 2010, in Salida, California.

Marisa R. Lincoln, Attorney at Law, Atkinson, Andelson, Loya, Ruud & Romo, represented the Salida Union School District (District). Interim Superintendent Twila Tosh was present on the District's behalf.

Ernest Tuttle, IV, Attorney at Law, Law Offices of Ernest Tuttle, IV, represented all respondents.

Testimony was heard, documents were introduced, and the parties offered oral closing arguments. The record was then closed and the matter was submitted for decision on April 15, 2009.

## FACTUAL FINDINGS

1. The Salida Union School District (District) provides education to students from kindergarten through the eighth grade (K-8). It currently operates four elementary kindergarten through fifth grade (K-5) schools, with 400 to 500 pupils at each site, and a middle school for 986 sixth through eighth grade students. The District also has an independent study charter school with 20 students. Due to an approved school closure, beginning in the 2010 through 2011 school year, the District will only have three elementary schools.

2. Twila Tosh is the Interim Superintendent of the District. Ms Tosh has served in this capacity for approximately two months. Ms. Tosh has worked at the District for 12 years in a variety of positions, including as a classroom teacher, a program specialist, a learning coordinator and as an assistant superintendent for educational services. Since becoming Interim Superintendent, Ms. Tosh has worked with the District's Governing Board (Board) to determine the need for, and to take the necessary legal steps toward, a reduction in certificated employees for the 2010 through 2011 school year.

Ms. Tosh described the District's financial problems. The District is currently in "self-qualified" status, which means that it is unable to meet its financial obligations for the current year or for the next two consecutive years. It needs to reduce \$3.2 million dollars from its general fund budget, based on various factors, including permanent reductions in state ADA funding, negative COLAs, an accounting error that had to be rectified, and the fiscal effect of some declining enrollment. As a result of its qualified status, the Stanislaus County Office of Education assigned a fiscal advisory consultant, Teri Ryland, to the District, who prepared a Recovery Plan that reduces \$3.2 million dollars. The Recovery Plan has been adopted by the Board.

### *Board Resolution*

3. On March 8, 2010, at the Interim Superintendent's recommendation, the Board adopted Resolution No. 0910-18 (Resolution) entitled "Resolution of the Governing Board of the Salida Union School District Regarding the Reduction or Discontinuance of Particular Kinds of Services (Certificated Layoff)." Pursuant to the Resolution, the Board determined it was necessary to reduce or discontinue 24.35 full-time equivalent (FTE) certificated positions, no later than the beginning of the 2010-2011 school year:

1.00 FTE	Principal
2.00 FTE	Counselors
2.60 FTE	Music Teacher
16.40 FTE	K-6 Elementary
1.00 FTE	Physical Education Teacher
0.60 FTE	Learning Coordinator
0.75 FTE	Independent Study Teacher

*Notice of Recommendation for Lay Off*

4. On March 11, 2010, Ms. Tosh served on the affected certificated employees a “Notice of Recommendation That Your Services Will Not Be Required for the Ensuing School Year” (Notice), advising them of her recommendation to the Board that they be given notice, 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 24.35 FTE positions. Copies of the Resolution and Education Codes were attached to each notice.

The Notices and related documents were either personally served by Ms. Tosh or were served by certified mail, return receipt requested.

None of the respondents challenged the District’s compliance with the Notice requirement of Education Code section 44949, subdivision (a).

*Request for Hearing*

5. Each of the above-named respondents filed a timely request of a hearing.

*Accusation*

6. On March 24, 2010, Interim Superintendent Tosh, in her official capacity, made and served an Accusation against each of the certificated employees who timely requested a hearing. The Accusation requests authorization for the Board to give notice to each respondent that their certificated services be terminated for the 2010-2011 school year, based upon its Resolution reducing or discontinuing particular kinds of service. The Accusations, with required accompanying documents and blank Notices of Defense, were timely served on those certificated employees.

*Notice of Defense/Respondents*

7. Notices of Defense were timely filed by 13 certificated employees, named as respondents in this matter. In addition to these respondents, four certificated employees wished to participate in the hearing, but had failed to file, or failed to timely file, Notices of Defense. These individuals are John Alfaro and Jennifer Brinkman (no Notices of Defense), and Heather Pratt and Chris Steffanic (untimely Notices of Defense).

At hearing, the District advised that it had no objection to allowing these four certificated employees to participate as respondents in the layoff hearing, despite their failure to file or failure to timely file Notices of Defense. Thus, 17 certificated employees are named respondents in this matter.

### *Seniority Lists*

8. In determining which certificated employees were affected by the reduction in force required by the Resolution, the District's Human Resources Department prepared two seniority lists. Ms. Tosh supervised the preparation of these lists.

The "Amended Certificated Seniority List" (Seniority List), current as of March 26, 2010, is a basic list containing employees' seniority dates and credentials. The District shares this Seniority List with certificated staff on request, as well as with the Salida Teachers' Association. The Seniority List contains a notation on the bottom of each page, advising teachers to contact the District's Human Resource Personnel "with any discrepancy or question." Prior to the commencement of layoff proceedings, the District sent its certificated employees a memorandum reminding them to verify the accuracy of the information contained on the Seniority List.<sup>1</sup>

The "2009-2010 Low-Seniority Certificated Employees Seniority List" (Low Seniority List) contains all the information from the Seniority List, with additional information relating to each certificated employee's area of assignment, contract signing date, supplemental authorizations, and CLAD status. The District used this list to determine which of its certificated employees were subject to layoff pursuant to the PKS Resolution.

None of the respondents raised any challenges to the accuracy of either of these seniority lists.

### *Attrition*

9. As indicated in the Resolution and in Ms. Tosh's testimony, in determining which certificated employees were affected by the reduction in force, the Board considered all positively assured attrition, including all deaths, resignations, retirements, non-reelections, and other permanent vacancies for the 2010-2011 school year.

### *Competency Criteria*

10. Ms. Tosh testified that, in determining which certificated employees were affected by the reduction in force, it was not necessary for the District to apply the competency criteria adopted in the Resolution. There were no issues pertaining to more senior certificated employees "bumping" into positions held by less senior certificated employees.

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<sup>1</sup> Ms. Tosh testified that three respondents (Steven Cleek, Lois Keller and David Yeakle) informed the District of discrepancies in their information on the seniority list (principally, updating credentials). It was determined that these discrepancies did not affect the layoff of these respondents, but pertained primarily to rehiring rights.

None of the respondents raised any challenges to the District's competency criteria or to its determination that it was not necessary to apply the competency criteria for bumping purposes.

#### *Tie Breaking Criteria*

11. In the Resolution, the Board adopted "tie breaking" criteria to determine relative seniority between employees with the same first date of paid service to the District. Ms. Tosh testified that, in determining which certificated employees were affected by the reduction in force, it was not necessary to apply these criteria to any of the respondents.

None of the respondents raised any challenges to the District's determination that it was not necessary to break any seniority ties.

#### *Particular Kinds of Services to Be Reduced or Discontinued*

12. None of the respondents raised any challenges to the District's determination of the particular kinds of services to be reduced or discontinued. The services identified in the Resolution are particular kinds of services that may be reduced or discontinued.

#### *District Recovery Plan*

13. The District's "Recovery Plan Budget Options 2010-11," prepared by Ms. Ryland, identifies \$3,244,840 in planned reductions to the District's general fund. The Recovery Plan includes cost savings from various sources, including the release of all eleven District temporary teachers, the reduction of one nurse due to retirement, the closure of one elementary school, and 10 FTE teacher reductions by use of a student to teacher ratio of 30:1.

#### *Class Size Reduction*

14. In December 2009, the District entered into a Memorandum of Understanding (MOU) with the Salida Teachers' Association regarding "K-3 Class Size Flexibility." In pertinent part, the MOU provides that, "for the 2010-2011 school year only, the parties agree to amend Article 7 to provide a maximum class size of 25 students in the District's K-3 classes. No District teacher shall receive any additional stipends or compensation for teaching a K-3 class that does not exceed 25 students."

Ms. Tosh helped to negotiate the MOU, under the direction of the District's former Superintendent. At the time the District agreed to the MOU, an accounting error existed which made it appear as if its general fund was not in a deficit status. The District learned of the error and the deficit after the MOU was executed. Ms. Tosh testified that the Board was aware of this MOU at the time it signed the Resolution, and that the Board considered the MOU in calculating the layoffs required. According to Ms. Tosh, maintaining the District's fiscal integrity is paramount. As set forth in the Recovery Plan, the 30:1 ratio is required to help the District meet its budget. The K-3 student teacher ratio will increase to 30:1 in 2010-

2011, unless the Salida Teachers' Association agrees to cost-saving concessions. If the student teacher ratio of 25:1 was maintained in K-3 in the next year, only 10.4 FTE would be reduced, rather than the 16.4 FTE discontinued by the Board in the Resolution.

Respondents' contention that the District has abused its discretion because the Resolution demonstrates that it intends to violate a legally-binding MOU is without merit. Such an assertion is mere speculation. The District and STA are engaged in ongoing negotiations. Further, the purpose of this hearing is to determine whether the District has complied with the Education Code so that the Board may proceed with the reduction in force. This is not the proper forum to raise possible collective bargaining disputes that may arise between the District and the Salida Teachers' Association in the future.

15. No more junior employees are being retained to render services that more senior respondents are certificated and competent to perform.

16. The District's reductions and discontinuances of particular kinds of services relate solely to the welfare of its schools and pupils.

#### LEGAL CONCLUSIONS

1. Education Code section 44949 provides, in pertinent part, as follows:

(a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

[¶]. . . [¶]

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. . . . If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute his or her waiver of his or her right to a hearing. The notice provided for in subdivision (a) shall advise the employee of the provisions of this subdivision.

2. Education Code section 44955 provides, in pertinent part, that:

(b) Whenever in any school year . . . 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 by reason of any of these conditions 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. Except as otherwise provided by statute, the 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.

[¶] . . . [¶]

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

(c) Notice of such termination of services shall be given before the 15th of May in the manner prescribed in Section 44949, and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

3. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. As set forth in Factual Findings 1 through 7, all notices and jurisdictional requirements contained in those sections were satisfied. The District has the burden

of proving by a preponderance of the evidence that the proposed reduction or elimination of particular kinds of services and the preliminary notice of layoff served on respondents are factually and legally appropriate. The District has met its burden.

4. The Governing Board may reduce, discontinue or eliminate a particular kind of service and then provide the needed services to the students in another manner. (*Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571; *California Teachers Association v. Board of Trustees of Goleta Union School Dist.* (1982) 132 Cal.App.3d 32.) A school board may reduce services within the meaning of the statute either by determining that a certain type of service shall not be performed at all or by reducing the number of district employees who perform such services. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

As set forth in Factual Findings 3 and 12, the services identified in the Resolution are particular kinds of services that may be reduced or discontinued under Education Code sections 44949 and 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. Cause for the reduction or discontinuance of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949 and 44955.

5. As set forth in the Factual Findings and Legal Conclusions as a whole, the District has established that no employees junior to respondents are being retained to perform the services which respondents are competent and certificated to render.

#### ORDER

1. Notice shall be given to employees occupying 24.35 full-time equivalent certificated positions that their services will not be required for the 2010-2011 school year because of the reduction and discontinuance of particular kinds of services.

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

DATED: April 20, 2010

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MARILYN A. WOOLLARD  
Administrative Law Judge  
Office of Administrative Hearings