

BEFORE THE
GOVERNING BOARD OF THE
KELSEYVILLE UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ROCHELLE BELL, KERRY BRAIDER,
HEATHER CARTER, CHERYL MOSTIN,
EVA SCOTT, AND CHERIE SEELY,

Respondents.

OAH No. 2010031380

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Kelseyville, California, on April 28, 2010.

Joseph C. Kinkade, Attorney at Law, Lozano Smith, represented complainant David McQueen, Superintendent of the Kelseyville Unified School District.

James D. Allen, Attorney at Law, represented respondents.

The matter was submitted for decision on April 28, 2010.

FACTUAL FINDINGS

1. David McQueen made and filed the accusation in his official capacity as Superintendent of the Kelseyville Unified School District.
2. Respondents Rochelle Bell, Kerry Braider, Heather Carter, Cheryl Mostin, Eva Scott and Cherie Seely are certificated employees of the district.
3. All of the jurisdictional requirements of Education Code sections 44949 and 44955 have been met in this proceeding.
4. On March 9, 2010, the Board of Trustees of the district adopted Resolution No. 09/10-13. The board resolved to reduce or discontinue the following services for the 2010-2011 school year:

1. Eliminate the equivalent of two (2) full-time Middle School Positions:

- | | |
|------------------------------|--------------------------------------|
| 1 Section 6th Grade P.E. | 2 Sections 7th Grade History |
| 2 Sections 7th Grade Science | 2 Sections 7th & 8th Grade Electives |
| 2 Sections 7th Grade Math | 1 Section 8th Grade English |
| 2 Sections 7th Grade English | 1 Section 8th Grade History |

2. Eliminate the equivalent of three (3) full-time High School Positions:

- | | |
|---------------------------------|--------------------------------|
| 1 Section of Music | 1 Section Driver's Education |
| 2 Sections of CAHSEE Support | 1 Section French II-IV |
| 2 Sections of Cooking | 2 Sections Woods |
| 1 Section of ROP Pastry/Dessert | 1 Section ROP Turf & Landscape |
| 1 Section ROP Culinary Arts | 2 Sections ROP Construction |
| 1 Section Advanced Art | 1 Section Work Experience |
| 1 Section Art | 1 Section Trigonometry |

3. Eliminate the equivalent of five and one-half (5 1/2) full-time equivalent Elementary School Positions.

4. Eliminate the equivalent of one (1) full-time Counselor Position.

The total full-time equivalent certificated positions reduced or eliminated by the resolution is 11.5.

5. The services set forth above are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955. None of the reductions is for a mandated service.

6. All known attrition was taken into consideration prior to the issuance of the March 15 notices to respondents.

7. Eva Scott holds a clear multiple subject credential and is assigned to Mount Vista Middle School. The district has given respondent Scott a seniority date of November 9, 2001, which corresponds with her first date of paid service as a certificated employee in a probationary position.

Respondent Scott was a classified employee of the district prior to obtaining her teaching credential. She was employed in the capacity as an Instructional Aide and as a Health Aide. Her first date of paid service as a classified employee of the district was November 16, 1995. The board accepted Scott's resignation from her classified position on October 11, 2001, with an October 31, 2001 effective date of the resignation.

Scott testified that there was no break in time from her employment as a classified employee and that as a certificated employee. This is not accurate. There was a break in her employment with the district of nine days, the time between the effective date of her resignation as a classified employee and the date of her employment as a certificated employee.

8. Respondent Mostin holds a clear multiple subject credential and a single subject credential in physical education. She has a seniority date of August 27, 2001, and is assigned to Kelseyville Elementary School.

Mostin shares the same seniority date with other certificated employees who hold elementary school positions. As required by Education Code section 44955, subdivision (b), the district applied its tie-breaking criteria¹ to this group of teachers to determine the order of termination. Respondent Mostin was one of three teachers in this group to receive a layoff notice.

One of the tie-breaking criterion is the ability to speak Spanish, which warrants one point. Mostin did not receive credit for being able to speak Spanish because she did not notify the district of this ability until after she received her layoff notice. Mostin concedes that the order of termination would not alter were she given one point for her ability to speak Spanish. She believes this may be important, however, in determining her rank order for rehiring.

The tie-breaking criteria was applied to the group of teachers who share the 2001 seniority date before the March 15 notices were issued by the district. The district did not err in failing to give Mostin credit for something which was not brought to its attention prior to March 15. Mostin's rehire rights are not a matter to be considered in this proceeding.

9. It was not established by competent evidence that the district noticed more teachers for layoff than necessary to effectuate the reduction in services set forth in the board's resolution.

10. Any other assertions put forth by respondents at the hearing and not addressed above are found to be without merit and are rejected.

11. No permanent or probationary certificated employee with less seniority than a respondent is being retained to provide a service for which a respondent is credentialed and competent to render.

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

¹ The tie-breaking criteria are set forth in Board Policy 4115.

LEGAL CONCLUSIONS

1. Respondent Scott argues that she should be entitled to tack on her years of employment as a classified employee to give her an earlier seniority date as a certificated employee of the district. This contention is without merit. Education Code section 44845 provides that a certificated employee is deemed to be employed on the date he or she first renders paid service in a probationary position. The seniority date given to Scott complies with this provision.

Respondent Scott's reliance on Education Code section 44064 is misplaced. This section provides in relevant part:

If an employee of a school district . . . employed in a position in the classified service is assigned to a position in the same district requiring certification qualifications, the employee shall retain all sick leave, vacation, and other rights and benefits accumulated by the employee at the time he or she is assigned to a position requiring certification qualifications. *All seniority and permanency rights shall be secured to the employee during the period of time he or she occupies a position in the certificated service. . . .*

(Italics added.)

Education Code section 44064 does not apply to respondent Scott because she was not assigned to a certificated position while she was a classified employee. Respondent Scott resigned from her position in the classified service and was hired into a position requiring certification qualifications. But even if this section were found to be applicable to respondent Scott, it would not allow her to tack on her years of service as a classified employee to her seniority as a certificated employee. Section 44064 clearly states that seniority rights are secured only during the period of time the certificated position is occupied. The district correctly assigned respondent Scott a seniority date that matches her first date of paid service as a certificated employee.

2. Because of the reduction or elimination of particular kinds of services set forth in Finding 4, cause exists pursuant to Education Code section 44955 to give notice to respondents that their services will not be required for the 2010-2011 school year. This cause solely relates to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

Notice may be given to respondents Rochelle Bell, Kerry Braider, Heather Carter, Cheryl Mostin, Eva Scott and Cherie Seely, that their services will not be required for the 2010-2011 school year.

DATED: _____

MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings