

BEFORE THE
BOARD OF TRUSTEES
SHORELINE UNIFIED SCHOOL DISTRICT

In the Matter of the Accusation Against:

BEN DEMSHER, ANNE HALLEY,
MELISSA RILEY and RACHEL
SOMERVILLE,

Respondents.

OAH No. 2010031382

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on April 29, 2010, in Tomales, California.

Joseph C. Kinkade, Attorney at Law, Lozano Smith, represented the Shoreline Unified School District.

James D. Allen, Attorney at Law, represented respondents Ben Demsher, Anne Halley, Melissa Riley and Rachel Somerville, who were present.

The matter was submitted for decision on April 29, 2010.

FACTUAL FINDINGS

1. Stephen Rosenthal made and filed the accusation in his official capacity as Superintendent of the Shoreline Unified School District.
2. Respondents Ben Demsher, Anne Halley, Melissa Riley and Rachel Somerville are certificated employees of the district.
3. On March 2, 2010, the district's Board of Trustees adopted Resolution No. 9 reducing the following particular kinds of services (PKS) for the 2010-2011 school year and directing the superintendent to initiate and pursue procedures necessary to not reemploy certificated employees in 3.5 full-time equivalent (FTE) positions:

<u>Services</u>	<u>FTE</u>
Self-contained classroom teaching	2.5
Secondary Art teaching	0.4

Secondary English teaching	<u>0.6</u>
Total	3.5

4. Before March 15, 2010, Superintendent Rosenthal gave written notice to respondents and one other certificated employee, Kavitha Goldowitz, of the recommendation that their services will not be required for the 2010-2011 school year. The reasons for the recommendation were set forth in these preliminary layoff notices.

5. Respondents each filed a timely request for hearing to determine if there is cause for terminating their services for the 2010-2011 school year. (Kavitha Goldowitz filed a request for hearing but later withdrew it.) An accusation was served on each respondent, and a joint notice of defense was timely filed on their behalf. All prehearing jurisdictional requirements have been met.

6. Superintendent Rosenthal recommended that the board make the PKS reductions because of the uncertainty of school funding for the 2010-2011 school year. This district is a “basic aid” district (versus a “revenue limit” district), which means that its funding comes primarily from local property taxes. Because of lower property value assessments, county property tax revenues are predicted to be lower for the next school year. To reduce district expenditures, Superintendent Rosenthal’s position has been cut from 230 to 190 days per year, and the board notified school principals that their positions may be cut by five days. Additional personnel cuts are necessary to assure the district’s fiscal solvency next year.

7. The district’s contract with the teachers’ union contains tie-breaking criteria to determine the order of seniority for employees with the same first date of paid service in a probationary position. Respondents Melissa Riley and Ben Demsher share the same first date of paid service and both are elementary teachers. The district did not apply the tie-breaking criteria to determine their relative seniority because both are subject to layoff. Riley is on leave from a .5 FTE Spanish teaching position, and Gilda Obrador, a 1.0 FTE Spanish teacher, has the same first date of paid service as Riley. Even if Riley were determined to have more seniority than Obrador, she would not have the right to “bump” into Obrador’s position because a part-time employee does not have the right to displace a full-time employee. *Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334.

Respondents contend that the district was required to apply the tie-breaking criteria and its failure to do so makes the layoff arbitrary and capricious. This contention is without merit. Education Code section 44955, subdivision (b), provides: “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 need of the district and the students thereof.” Here, the district did not have to determine the order of termination between Riley and Demsher since both are subject to layoff. If it becomes necessary to determine their relative seniority, e.g., if the district is able to rescind any layoff notices or rehire any elementary teachers, the district will have to apply the tie-breaking criteria at that time.

8. Respondent Rachel Somerville is a full-time Art and Yearbook teacher at Tomales High School who has received a layoff notice for .4 FTE of her position. There is a lot of demand for her classes, and Somerville expects enrollment in her classes to be larger next year than this year.

The district contracts with Shannon Hobbs, a credentialed art expert, to teach art to some classes at Tomales Elementary School on a very part-time basis. (Superintendent Rosenthal believes she teaches one day a week for fewer than 36 weeks.) Hobbs receives a stipend which is funded from the local parcel tax. Her contract ends in June, and it is unknown whether Hobbs will have a contract with the district next year.

While acknowledging that Hobbs does not have a position that Somerville could bump into, respondents argue that the district should not be allowed to lay off Somerville while using an outside contractor to teach art. However, the fact that the district has a contract with Hobbs this year, and might have a contract with her next year, does not preclude it from laying Somerville off for .4 FTE. It is within the district's discretion to reduce secondary art teaching by .4 FTE, and Somerville is the only certificated employee in the district providing this service. There is nothing legally wrong with the district utilizing parcel tax funds this year or next to pay Hobbs a stipend to provide some art instruction at the elementary level.

9. Respondents argue, in essence, that the district abused its discretion when picking the particular kinds of services to reduce. They assert that the district is "overloaded" with social science teachers at the high school level and should have made cuts in that area rather than "targeting" employees at the bottom of the seniority list. The evidence does not support respondents' legal argument or the underlying factual assertions. The board has broad latitude to determine what services to reduce or discontinue, and it did not abuse its discretion.

10. All contentions made by respondents not specifically addressed above are found to be without merit and are rejected.

11. No certificated employee junior in seniority to any respondent is being retained by the district to perform services that any respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

2. Cause exists because of the reduction of particular kinds of services pursuant to section 44955 to give notice to respondents that their services will not be required for the

2010-2011 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of section 44949.

ORDER

Notice may be given to respondents that their services will not be required for the 2010-2011 school year because of the reduction of particular kinds of services.

DATED: _____

NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings