

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

In the Matter of the Accusation Against:

JAMIE BUTCHER, et al.,

Respondents.

OAH No. 2011030627

PROPOSED DECISION

Ruth S. Astle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 6, May 6, and May 10, 2011, in Cupertino, California.

Jonathan A. Pearl, Attorney at Law, represented the Cupertino Union School District.

Christopher Schumb, Attorney at Law, represented respondents.

The matter was submitted on May 10, 2011.

SUMMARY

The Superintendent of Cupertino Union School District determined to reduce or discontinue particular kinds of services provided by teachers and other certificated employees for budgetary reasons. The decision was not related to the competency or dedication of the individuals whose services are proposed to be reduced or eliminated.

A list of employees to whom the district proposes to serve final notices is attached¹ as Attachment 1.

FACTUAL FINDINGS

1. Phil Quon made the accusation in his official capacity as the Superintendent of the Cupertino Union School District (District).

2. At the hearing the District rescinded March 15 Notices for Jamie Butcher, Rebecca DeSagan, Amanda Driscoll, Melissa Maisen, Diana Parsons, Maureen Riccomini, Rebecca Regosin, Chantel Dangler, Deborah Lopez, Elizabeth Westagate, Catherine Baken, Tejaswini Ranade, and Stephanie Watkins. The district agreed to change the seniority dates and status of Sarah Della Majorie to August 20, 2008/Probationary 2, Ashley Failing to January 5, 2009/Probationary 2, Alexis Sharpe to January 29, 2009/Probationary 2, and Sara Somers to January 5, 2009/Probationary 2.

3. On February 23, 2010, the Governing Board adopted Resolution No. 10-11-19 directing notices be given to certificated employees that their services will not be required for the 2011/2012 school year. The resolution reduces or eliminates 92.13 FTE of particular kinds of services for the 2011/2012 school year. A copy of the resolution is attached as Attachment 2.

4. On March 15, 2010, pursuant to Education Code sections 44949 and 44955 the Superintendent gave written notice to respondents of his recommendation that notice be given to them that their services would not be required for the ensuing school year. The written notice set forth the reasons for the recommendation.

5. All respondents² filed timely requests for a hearing. The Superintendent or his designee filed and served the Accusation against respondents, who requested a hearing. The Accusation with required accompanying documents and a blank Notice of Defense were timely served on respondents. All respondents who were served with an Accusation and appeared at the hearing either personally or through their attorney participated in the hearing.

6. All jurisdictional requirements have been met.

7. Subsequent to adoption of the Board's Resolution, the District identified vacancies in school year 2010-2011 due to retirements, release of temporary teachers, and resignations. In consideration of such attrition the District did and/or will rescind a corresponding number of notices.

¹ At the hearing the district rescinded a number of notices as set forth in Factual Finding 2.

² A list of respondent's as modified was entered into evidence as Exhibit "A."

8. On February 23, 2010, the Governing Board of the District adopted Resolution No. 10-11-16, as the criteria for establishing the order of termination among respondents who have the same first date of paid service for the District. This resolution complies with the requirements of Education Code section 44955, subdivision (b).

9. No issues remain concerning the application of the tie-breaking criteria.

10. The District hires temporary teachers. In general, the District has fewer temporary employees than it has employees on leave. Some of the employees are on leave because they are assigned to categorically funded positions. It is acceptable for the District to hire temporary teachers to replace those employees who are on leave from their regular positions because they are assigned to categorically funded positions. The district argued that the teachers who were hired as Classroom Size Reduction (CSR) teachers are in categorically funded positions and therefore can be counted to balance teachers on leave with temporary teachers. That argument is not persuasive. The CSR teachers are not on leave from any regular positions. Further, there was no competent evidence presented to establish that these teachers are paid out of separate categorical funds.

11. A temporary employee is specifically defined in Education Code section 44920 as a certificated teacher who is employed for up to one school year to replace a certificated employee on leave. If that temporary employee is reemployed for the following school year to fill a vacant position, that teacher is no longer temporary.

a. Freda Wong was offered a temporary contract on April 27, 2007, to begin August 20, 2007. The Status line on the offer of Certificated Employment had an "x" to indicate temporary contract. Ms. Wong testified that she did not read the offer carefully and did not understand the consequences of being hired as a temporary teacher. She discovered that a temporary teacher could be terminated from employment at any time when she met with her principal for her first evaluation. Ms. Wong further testified that she would not have taken the position if she had known since she had been offered another position at a different school district. Ms. Wong signed a contract on July 23, 2007, to begin teaching August 20, 2007. The contract specifically stated that: "You are hereby classified by this Board as a Temporary employee subject to acceptance of this offer." Again, Ms. Wong testified that she did not read the contract carefully. Ms. Wong was properly classified as a temporary teacher. She had an obligation to carefully read the contract and ask questions if she had any.

b. Freda Wong and Staci Yee claim that they should be classified as probationary since the district was "out of balance" when they were hired between the employees on leave and the employees with temporary contracts. The teachers argue that at the time they were hired as temporary employees the district was briefly out-of-balance between teachers on leave and temporary teachers. Further, the teachers argued that certain employees other than the CSR teacher should not be counted as teachers on leave. The district has made a good faith effort to balance the number of teachers on leave with the number of temporary teachers. The number of teachers on leave and the length of a teacher's leave changes

constantly throughout the year. At one time the district believed it was out of balance and converted a number of temporary teachers to probationary teachers. The teachers chosen for this conversion were those that had been in service to the district for the longest time. This was a reasonable action taken by the district. Ms. Wong and Ms. Yee contend that they should have been hired as probationary teachers instead of having the district balance the leaves with temporary teachers by converting the teacher with longer service to the district from temporary to probationary. This argument is not persuasive. First, it was not established that the district was out of balance for any significant amount time, if at all; and second, it would be an unreasonable burden on the district if they had to determine the “balance” on a particular date when a temporary teacher was hired. Ms. Wong and Ms. Yee are properly classified as temporary.

12. Mahzaz Pirani claims that her first date of paid service should be changed to August 19, 2009, since she was expected to attend a parent meet-and-greet. She was not paid for attending this function. Attending such a function does not constitute the first date of paid service for the District pursuant to Education Code section 44845. Her first date of paid service for the district will remain August 20, 2009.

13. All other teachers not specifically noted here were correctly categorized as temporary or have the proper seniority date.

14. Other than set forth in the Findings above, no certificated employee junior to respondents will be retained to perform the services that a more senior employee is certificated and competent to render.

15. The reduction or discontinuance of services is related to the welfare of the District and its pupils.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. Cause exists to reduce the number of certificated employees at the Cupertino Union School District due to the reduction or discontinuance of particular kinds of services pursuant to Education Code section 44955. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

3. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

ORDER

1. Notice may be given to respondents in accordance with the Legal Conclusions above, that their services will not be required for the 2011-2012 school year because of the reduction and discontinuance of particular kinds of services.
2. Notice shall be given in inverse order of seniority.
3. The district shall change the seniority dates and status of the respondents as set forth in Factual Finding 2.

Dated: _____

RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings