

BEFORE THE
GOVERNING BOARD
FALLBROOK UNION HIGH SCHOOL DISTRICT
SAN DIEGO COUNTY, CALIFORNIA

In the Matter of the Accusations for Lay-Off
of Certificated Employees against:

OAH No. L2006030673

ALANA DE JONG, DAVID HILL, AND
DANIEL LODER,

Respondents.

PROPOSED DECISION

Greer D. Knopf, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Fallbrook, California on May 1, 2006.

William Wood Merrill, Best, Best & Krieger, attorneys at law, appeared and represented the Fallbrook Union High School District.

Fern Steiner, Tosdal, Smith, Steiner & Wax, attorneys at law, appeared and represented respondents Alana De Jong, David Hill, and Daniel Loder, who were also present at the hearing.

The matter was submitted on May 1, 2006.

FACTUAL FINDINGS

1. Michael Millerick ("Millerick"), Director of Human Resources of the Fallbrook Union High School District, made and filed the accusations dated March 30, 2006 in his official capacity as Director of Human Resources of the Fallbrook Union High School District ("the District"). The accusations were filed against respondents Alana De Jong, David Hill, and Daniel Loder.

2. Respondents Alana De Jong, David Hill, and Daniel Loder ("respondents") are all certificated employees of the District.

3. On February 13, 2006, in accordance with Education Code sections 44949 and 44955, Thomas R. Anthony, Superintendent of the District ("the Superintendent") notified

the Governing Board of the District ("the Board") in writing of the Superintendent's recommendation to reduce or discontinue services for the ensuing school year. The Superintendent stated the reasons for the recommendation. The Superintendent recommended the reduction of particular kinds of services of a total of 14.8 full time equivalents ("FTE"), as follows:

<u>Particular Kinds of Services</u>	<u>Number of FTE Positions</u>
Career Technical Education	2.2 FTE's
English	5.0 FTE's
Math	2.6 FTE's
Physical Education	1.2 FTE's
Science	0.4 FTE's
Social Studies	1.8 FTE's
Visual & Performing Arts	0.6 FTE's
World Language	1.0 FTE's

4. On February 27, 2006, the Board adopted a resolution accepting the Superintendent's recommendations for the reduction of these particular kinds of services provided by the District for the 2006-2007 school year. The Board directed the Superintendent to determine which employees' services would not be required for the 2006-2007 school year as a result of the reduction of these particular kinds of services. The Board further directed the Superintendent to take all steps necessary under the law to layoff those certificated employees of the District.

5. Prior to March 15, 2003, a written notice of termination ("written notice") was delivered to each respondent, either by personal delivery or by depositing the notice of termination in the United States registered mail, postage prepaid and addressed to the respondent's last known address. The written notice notified respondents that his or her services will not be required for the upcoming 2006-2007 school year. The written notice specifically stated that each of the respondents' services would not be required for the ensuing year. Each notice set forth the reasons for the recommendation.

Each written notice advised respondents they each had a right to a hearing, each respondent had to deliver a request for a hearing in writing to the person sending the notice of termination within seven days after the notice of termination was served, and the failure to request a hearing would constitute the waiver of the right to a hearing. Each respondent timely filed a written request for a hearing to determine if there was cause for not reemploying that respondent for the ensuing year.

6. Subsequently, on March 30, 2006, the Superintendent filed and timely served on behalf of the District the accusation herein for each of the respondents. Each of the respondents herein filed a timely Notice of Defense. All pre-hearing jurisdictional requirements were met.

7. The Board's February 27, 2006 resolution to reduce services for the ensuing school year reduced the following particular kinds of services for the 2006-2007 school year:

<u>Particular Kinds of Services</u>	<u>Number of FTE Positions</u>
Career Technical Education	2.2 FTE's
English	5.0 FTE's
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Physical Education	1.2 FTE's
Science	0.4 FTE's
Social Studies	1.8 FTE's
Visual & Performing Arts	0.6 FTE's
World Language	1.0 FTE's

The reductions adopted by the Board's resolution on February 27, 2006 totaled 14.8 FTE positions.

8. The services were "particular kinds of services" that could be reduced or discontinued within the meaning of Education Code section 44955. The Board's decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious, but constituted a proper and reasonable exercise of discretion. The Board's action was taken after consideration of necessary cuts in the 2006-2007 District budget for the ensuing school year. The Board's action to reduce services is a proper exercise of its discretion to address the need for budget cuts for the 2006-2007 school year.

9. The reduction or discontinuation of particular kinds of services is related solely to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Board.

10. Subsequent to the action the Board took on February 27, 2006 to reduce services by 14.8 FTE positions, the District continued to evaluate personnel needs in the District. Since the Board's action, after taking into consideration upcoming attrition, resignations, transfers, and retirements, the District has now determined it can meet its fiscal needs by reducing services by a total of 3.0 FTE positions for the 2006-2007 school year. To accomplish this reduction of services, the District needs to give final notices of termination to the three respondents in this proceeding.

11. No certificated employee junior to any respondent is being retained to perform any services which any respondent is certificated and competent to render.

12. Two other employees that teach world languages have the same first day of paid service with the District as respondent Daniel Loder and they are being retained by the District. Between these employees who first rendered paid service to the District on the same date, the Board determined their order of termination solely on the basis of needs of the District and the students. The specific criteria used to determine the order of termination was

based on the tie-breaking criteria adopted by the Board on March 13, 2006. The criteria were fairly applied to rank those employees hired on the same date. Under these criteria, the District properly retained Carole Vivona and Esther Mireles since they both have clear single subject credentials in language whereas respondent only holds a preliminary single subject credential. The criteria were fairly applied to rank these employees hired on the same date. Therefore, under the tie-breaking criteria, respondent Loder was properly given notice that his services would no longer be required for the ensuing school year.

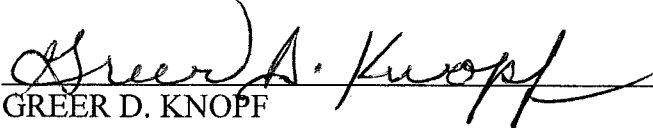
LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.
2. Cause exists under Education Code sections 44949 and 44955 for the Fallbrook Union High School District to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuation of particular kinds of services is related solely to the welfare of the schools and the pupils thereof. A preponderance of the evidence sustained the charges set forth in the accusations herein. Cause exists for the Board to give Respondents notice before May 15, 2006, that their services will no longer be required by the District in the ensuing school year.

ORDER

The accusations served on respondents are sustained and notice shall be given to respondents Alana De Jong, Daniel Loder, and David Hill before May 15, 2006 that their services will not be required in the next school year because of the reduction or discontinuation of particular services as indicated.

DATED: 5-3-06


GREER D. KNOPF
Administrative Law Judge
Office of Administrative Hearings