

BEFORE THE  
BOARD OF TRUSTEES OF THE  
SUTTER UNION HIGH SCHOOL DISTRICT

In the Matter of the Reduction of Certificated  
Staff Based on the Reduction or  
Discontinuance of Particular Kinds of  
Services affecting:

Persons Occupying  
3- 1/6 Certificated Full Time Equivalent  
Positions.

Respondents.

OAH No. 2010040025

**PROPOSED DECISION**

Administrative Law Judge Ann Elizabeth Sarli, Office of Administrative Hearings, State of California, heard this matter in Sutter, California, on April 30, 2010.

Jon A. Hudak, Attorney at Law, represented the Board of Trustees of the Sutter Union High School District.

Carolyn Langenkamp, Attorney at Law, represented respondents Roger Cox, Anne-Marie Leduc and Richard Tuttle, Jr.

Oral and documentary evidence was presented and the parties offered oral closing arguments. The record was closed and the matter was submitted for decision on April 30, 2010.

**FINDINGS**

1. Ryan Robison is Superintendent/Principal (Superintendent) of the Sutter Union High School District (District). His actions, and those of the District's governing body, the Board of Trustees (Board), were taken solely in their official capacities.

2. The District is small, with one high school campus and approximately 700 students, all in Grades 9 through 12.

3. The District currently expects a significant budget shortfall for the 2010-2011 school year.

4. On March 9, 2010, the Board adopted Resolution No. 2009/2010-003 (Resolution), reducing or discontinuing particular kinds of services (PKS), affecting 3-1/6 Full Time Equivalent of certificated positions (FTE).

5. The Resolution was based on the Superintendent's March 9, 2010, written recommendation that it was necessary to reduce or discontinue particular kinds of services no later than the beginning of the 2010-2011 school year.

6. The Resolution states that it is necessary to reduce the PKS of the District, as listed below, not later than the beginning of the 2010-2011 school year.<sup>1</sup>

<u>Service to be Reduced or Discontinued</u>	<u>Full Time Equivalent (FTE)</u>
English	1.00 reduction (6 periods)
Math	1.00 reduction (6 periods)
Science	3/6 reduction (3 periods)
Academic Advisor	2/6 reduction (2 periods)
Consumer Studies	2/6 discontinuance (2 periods)
	_____
	3-1/6 Total FTE reduction and discontinuance

7. As a result of the above PKS reductions and discontinuance, the Board determined that it was necessary to decrease a corresponding number of certificated positions in the District at the close of the 2009-2010 school year, in accordance with Education Code section 44955.<sup>2</sup>

8. In making its determination to decrease 3-1/6 FTE positions, the Board considered positively assured attrition (resignations, retirements, non-reelections, temporary teacher releases and other attrition) that may occur before the start of the 2010-2011 school year.

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<sup>1</sup> All PKS reductions and discontinuances are at grade level 9-12.

<sup>2</sup> All statutory references are to the California Code of Education unless otherwise stated.

9. The Resolution gave the Superintendent or his designee authorization to give written notice of recommendation of non-reemployment to all employees whose positions will or may be affected by its reduction and discontinuance of PKS.

10. On March 12, 2010, the Superintendent timely served a letter (Preliminary Notice) on respondents. The Preliminary Notice advised that the Superintendent had recommended to the Board that the recipient be given preliminary written notice that his/her services would not be required for the 2010-2011 school year, due to reductions in PKS. The Preliminary Notice enclosed a copy of the Resolution.

11. Respondents timely filed a Request for Hearing to determine whether there was cause for not reemploying them for the 2010-2011 school year.

12. On April 1, 2010, the Superintendent executed an Accusation, and caused it to be served on respondents. Respondents timely filed Notices of Defense.

### **Process for Identifying Certificated Employees Subject to Layoff**

13. The District maintains a seniority list which identifies certificated employees, the first date of their paid service in a probationary capacity and their credentials. District staff identified the individuals serving in the positions affected by the PKS reductions. District staff used the seniority list to identify the least senior persons occupying the positions affected by the PKS reductions.

14. When the least senior persons occupying the positions affected by the PKS reductions were identified, District staff looked at each individual's credentials to determine whether he or she could displace any less senior certificated employees. Tie-breaking criteria, previously adopted by the Board, were applied to break any ties in seniority date. Certain junior employees were "skipped" in this process. Respondents do not challenge seniority dates or application of tie-breaking criteria. There are no challenges to skipping, except as addressed below.

### **Specific Challenges to Layoff**

15. Richard Tuttle is a permanent employee with a seniority date of August 7, 2006. Mr. Tuttle is teaching five periods of English and one period of theater arts. He holds a preliminary single subject in English with a single subject authorization in social science. Mr. Tuttle is the most junior certificated employee with an English credential. He is subject to layoff, due to the 1.0 FTE reduction in English teaching services. Mr. Tuttle argues that the Resolution's 1.0 FTE English reduction specifies a reduction of six periods of English. Since he is presently assigned to teach five periods of English, he maintains he cannot be laid off from the one period of theater arts. Theater arts is not a PKS identified in the Resolution.

16. The District explained that theater arts has traditionally been taught in the English department. The District does not presently intend to eliminate theater arts next year. However, the period of theater arts Mr. Tuttle currently teaches will be taught by a senior English teacher or a teacher credentialed in fine arts. The District maintained that Mr. Tuttle was properly selected for layoff because he is the most junior certificated employee occupying 1.0 FTE English.

17. The District's argument would have merit, had the Resolution not specified that the PKS to be reduced was six periods of English service. Mr. Tuttle is assigned to teach five periods of English, and these five periods are eliminated pursuant to the PKS reduction. Accordingly, Mr. Tuttle is not subject to layoff for the one period of theater arts instruction he provides.

18. Mr. Tuttle has additional challenges to his layoff. His challenges are identical to those of the remaining respondents and are discussed below.

### **General Challenges to Layoff**

#### *Decision Making Course*

19. Mr. Tuttle and Roger Cox contend that the District is retaining certificated employees with less seniority to teach the decision-making/study skills/driver's education/health course (decision-making course) offered by the District. Mr. Cox is a permanent employee with a seniority date of August 15, 2000. He holds a professional clear certificate in music. Mr. Cox had previously taught decision-making courses for the District, in 2001-2002. Mr. Cox maintains that he can displace junior employees Lori Burrow (seniority date 7/1/ 2004) and Stewart Peterson (seniority date 8/6/ 2007), who are currently assigned to teach periods of decision-making. Mr. Tuttle maintains that he can displace junior employee Stewart Peterson. Ms. Burrow holds a single subject credential in social science and Mr. Peterson holds a single subject in social science with preliminary single subjects in mathematics/foundation level and driver training.

20. The District maintains that the decision-making course is taught under the auspices of the social science department. Freshmen are required to take this course as part of their social science requirements. The course was originally taught by health teachers, physical education teachers and others, like Mr. Cox, with his music credential. However, over the years, the District has endeavored to emphasize the academic aspect of this course and has placed it within the social science arena. The District is endeavoring to use only certificated employees holding social science credentials to teach these classes. The District points to the fact that Ms. Burrow and Mr. Peterson hold single subject credentials in social science.

21. There is no certificate issued by the California Commission on Teacher Credentialing which specifically allows its holder to teach decision-making. In fact, the District maintains that it may be the only District which offers this unique course.

22. Respondents counter that there are other certificated employees, though senior, teaching this course who have a variety of credentials; for instance, Gayle Lemenager and Michael Landa. However, Ms. Lemenger has a clear standard secondary credential in home economics, social science and sociology. Mr. Landa has a clear single subject in physical education and a seniority date of July 1, 1997. The District explained that Mr. Landa is the only certificated employee teaching decision-making who does not have a social sciences credential. He is essentially “a holdover” from the years when the course was not designated as an academic social science course.

23. The fact that there is one certificated employee teaching decision-making courses who does not hold a social sciences credential, Mr. Landa, does not negate the District’s demonstrated need to retain those with social science credentials to teach these courses. Mr. Cox holds only a music credential and the fact that he was assigned to teach this course eight nine years ago does not entitled him to compel the District to continue assigning him to this course.

24. Mr. Tuttle has a stronger position in respect to his qualifications to teach decision-making courses. Mr. Tuttle holds a supplemental authorization in social science. What this supplemental authorization, he can teach social science courses in grades 9 through 12. Accordingly, Mr. Tuttle can displace junior teachers assigned to teach decision-making. The only employee junior to Mr. Tuttle who is assigned to teach decision-making is Mr. Peterson. Mr. Peterson is assigned to teach only one period of decision-making. He teaches algebra for his remaining five periods of instruction. Mr. Tuttle may displace Mr. Peterson for one period of decision-making instruction.

#### *Pupil-Teacher Ratio*

25. Respondents argue that the reduction in services authorized by the Resolution would affect the pupil-teacher ratio established by the collective bargaining agreement between the teachers and the District. This argument lacks merit. The collective bargaining agreement is not at issue in this proceeding. The only services a district may not reduce are those mandated by law.

26. Even were the collective bargaining agreement to control in this proceeding, the District demonstrated that the reduction and discontinuance of certificated services would not result in a pupil-teacher ratio in excess of that established by the collective bargaining agreement.

## LEGAL CONCLUSIONS

1. As set forth the Findings, all notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 were met. The notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Board Resolution and in the notices, adequately describe particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

2. 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.)

3. The services identified in Resolution No.2009/2010-003 are particular kinds of services that may be reduced or discontinued under 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.


4. Cause for the reduction or discontinuance of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

5. As set forth in the Findings and Legal Conclusions as a whole, and with the exception noted in Findings 15 through 17 and 24 (Richard Tuttle) 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.

## RECOMMENDATIONS

1. The District shall rescind 2/6 FTE (2 periods) of the 1.00 FTE Preliminary Notice issued to Richard Tuttle.
2. The District may give notice to the remaining respondents in the inverse order of seniority that it will not require their services for the 2010-2011 school year.

DATED: May 5, 2010

  
ANN ELIZABETH SARLI  
Administrative Law Judge  
Office of Administrative Hearings