

BEFORE THE
GOVERNING BOARD OF THE
NORTH COUNTY JOINT UNION SCHOOL DISTRICT

In the Matter of the Non-Reemployment of
Certificated Employees:

RENEE KRETZ, PATRICIA STARRITT,
and GINA TOMASINI,

Respondents.

OAH No. 2010030950

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, State of California, Office of Administrative Hearings, heard this matter in Hollister, California, on April 13, 2010.

Lawrence M. Schoenke, Attorney at Law, Dannis Woliver Kelly, represented the North County Joint Union School District.

Michelle A. Welsh, Attorney at Law, Stoner, Welsh & Schmidt, represented Respondents Renee Kretz and Gina Tomasini.

Respondent Patricia Starritt represented herself.

The record closed on April 13, 2010.

SUMMARY

The Board of Trustees of the North County Joint Union School District decided to discontinue particular kinds of services provided by teachers in the 2010-2011 school year for budgetary reasons. The decision was not related to the competency and dedication of those whose services were proposed to be eliminated. Except as to skipping criterion number 1, the process complied with Education Code requirements.

FACTUAL FINDINGS

1. Evelyn Muro filed the Accusation in her official capacity as Superintendent of the North County Joint Union School District (District).

2. Renee Kretz, Patricia Starritt, and Gina Tomasini (Respondents) are certificated employees of the District.

3. On March 4, 2010, the Board of Trustees of the North County Joint Union School District adopted Resolution Number #09/10-13, in which the Board resolved to reduce or eliminate particular kinds of services no later than the beginning of the 2010-2011 school year, as follows:

PARTICULAR KINDS OF SERVICES	NUMBER OF FULL- TIME EQUIVALENT POSITIONS
1. Grades K-1 Multiple Subject Classroom Teaching	1.0
2. Grade 3 Multiple Subject Classroom Teaching	1.0
3. Grades 6-8 Multiple Subject Classroom Teaching	1.0

4. The Resolution also contained criteria that the District decided were sufficiently important to warrant deviating from seniority order when instituting the reductions:

It will be necessary to retain the services of certificated employees in the 2010-2011 school year regardless of seniority, who possess qualifications needed for the following programs:

1. Alameda County Office of Education - Educator-on-Loan Program.

2. Special Education, Response to Intervention (RTI), and English Language Development (ELD) Teaching position – Current employee teaching special education students, providing RTI services, and providing ELD service in one teaching position and who will be assigned to teach Special Education students for 2010-2011 and continue to provide RTI and ELD service and who possesses or will be eligible to possess any document from the California Commission on Teacher Credentialing entitling that teacher to teach special education students with Mild/Moderate Disabilities.

Muro testified that the skipping criteria were created with two teachers in mind and that they apply only to those two teachers. Criterion number 1 applies to Gabriella Armento-Ito and Criterion number 2 applies to Respondent Starritt.

5. The District's Seniority List was used to determine who would receive notices. On March 5, 2010, written notice of the recommendation that their services will not be required for the 2010-2011 school year (the preliminary notice) was served personally on

five teachers: Lisa Sinclair, Gabriella Armento-Ito, and all three Respondents. Each notice contained the reasons for it.

Each of the three Respondents filed a timely request for hearing. Accordingly, an Accusation was filed and served. Each Respondent filed a timely notice of defense and this hearing followed.

6. Superintendent Muro credibly testified about the reasons for the Board's resolution. The District serves approximately 710 students in grades Kindergarten through eight. Due to an anticipated shortage of funds, the District was required to look at areas to reduce. As a result of the reductions, class sizes will be increased and the District expects to employ a total of just 29 teachers.

7. After the preliminary notices were sent, the District was informed of one retirement and of one teacher who was electing not to return. Accordingly, the District has rescinded the notices to Respondent Tomasini and to Lisa Sinclair.

8. The Board's decision to reduce or discontinue the identified services was made solely on the basis of the needs of the District and its pupils.

Skipping criterion number 1– the Educator-on-Loan Program position

9. On March 3, 2010, the District contracted with the Alameda County Office of Education (ACOE) that District teacher Gabriella Armento-Ito would be released to work for the ACOE for the 2010/2011 school year pursuant to the ACOE's Educator-On-Loan Program (Program). ACOE annually contracts with districts for educators to fill approximately 100 of these positions. Under the contract, Armento-Ito remains a District employee, but ACOE reimburses the District for all her salary, benefits, and expenses. If the contract were rescinded, Armento-Ito would be eligible to return to her classroom assignment with the District.

Armento-Ito and Respondent Kretz hold the same multiple subject credential and this year both are classroom teachers. Armento-Ito holds a supplemental credential in math, although Kretz teaches math pursuant to her multiple subject credential. Kretz has more seniority than Armento-Ito.

Skipping criterion number 2 – the Special Education position

10. Respondent Starritt holds the position described in criterion number 2. She previously worked for the District for seven years before retiring to have knee surgery. She currently holds just one credential: multiple subject. In October of 2009, Starritt returned to teach in the District as a long-term substitute. The District advertised a special education position, and although Starritt does not hold the required credential, she was asked to apply. The District applied for and obtained a temporary permit for her to teach special education while she worked on obtaining the required credential.

Starritt has applied to California State University at Monterey Bay to enroll in the program she needs to obtain a credential. By letter dated April 12, 2010, Josh Harrower, Ph.D., coordinator, Special Education Program, CSU, Monterey Bay, advised that “pending admissions’ review of her transcripts I fully expect to admit Ms. Starritt to the program for the Fall 2010 term.”

11. Respondent Starritt and Respondent Kretz have the same seniority date and hold the same multiple subject credential. The only differences that are important in this matter are that Starritt holds a temporary permit to teach special education and has applied to enroll in a program to earn a special education credential. These things are not true as to Respondent Kretz.

LEGAL CONCLUSIONS

1. All notices and other requirements of Education Code sections 44949 and 44955 have been provided as required. The District established jurisdiction for this proceeding as to each Respondent.

2. Cause was established as required by Education Code section 44955 to reduce the number of certificated employees of the District due to the reduction or discontinuation of particular kinds of services.

Skipping issues

3. Education Code section 44955, subdivision (b), requires a district to proceed in inverse order of seniority when effectuating an economic layoff. An exception to this provision is contained in Education Code section 44955, subdivision (d)(1), which allows deviation from seniority when:

. . . the district demonstrates a specific need for personnel to teach a specific course or course of study . . . and that the certificated employee has special training or experience necessary to teach that course or course of study or to provide those services . . . which others with more seniority do not possess.

4. The District did not demonstrate that that the Educator-on-Loan Program qualifies as a “specific course or course of study” requiring “special training or experience” within the terms of section 44955, subdivision (d)(1). It is not a District course or course of study; it is a program administered and paid for by another county’s office of education. Accordingly, criterion number 1 is not valid and the District may not skip Gabriella Armento-Ito.

5. Criterion number 2, in contrast, does describe a specific course of study in the District: a special education position. The fact that Respondent Starritt does not yet possess a full credential is irrelevant. She possesses a permit to teach in the position and is teaching it. Respondent Kretz is not qualified to teach in the position.

6. Cause was established to allow the District to deviate from seniority order pursuant to Education Code section 44955 in effectuating the layoff as regards a special education position (criterion number 2). The District may exempt Respondent Starritt from layoff, although it is not required to do so.

Retention of employees

7. Education Code section 44955, subdivision (b), provides seniority protection for permanent employees. A district may not retain an employee with less seniority over another employee who is certificated and competent to render the same service.

The District failed to notice Armento-Ito for layoff despite her lack of seniority because of the mistaken impression that she could be validly skipped. But Respondent Kretz and Armento-Ito hold the same permanent positions with the District as classroom teachers, and Kretz is senior to Armento-Ito. It therefore follows that Respondent Kretz may not be laid off.

ORDER

1. The Accusation against Gina Tomasini is dismissed.
2. The Accusation against Gina Renee Kretz is dismissed.
3. Notice may be given to Patricia Starritt that that her services will not be required for the 2010-2011 school year because of the reduction or discontinuation of particular kinds of services.

DATED: _____

MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings