

BEFORE THE
BOARD OF EDUCATION
FOLSOM CORDOVA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the District Statement of
Reduction in Force of:

RICHARD JOHNSON,

Respondent.

OAH No. 2014030959

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, in Rancho Cordova, California, on April 10, 2014.

Kristin D. Lindgren, Attorney at Law, represented the Folsom Cordova Unified School District (District).

Andrea Price, Attorney at Law, represented Richard Johnson (respondent).

Evidence was received, the record was closed, and the matter was submitted for decision on April 10, 2014.

FACTUAL FINDINGS

1. On February 20, 2014, the Governing Board of the District adopted Resolution No. 02-20-14-24, entitled "Reduction in Certificated Staff Due to Reduction or Elimination of Particular Kinds of Services" (PKS Resolution). The PKS Resolution provided that the following services will be reduced or eliminated at the close of the 2013/2014 school year for the 2014/2015 school year:

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|-------------------------------------|------------------------|
| District Wide | FTE¹ |
| Teaching Vice Principal | 2.50 |
| Military Instructor | 1.00 |
| Reading Lab Teacher | 1.33 |
| Secondary – Grades 9-12 | |
| Social Science | 1.00 |
| Career Technical Education - Metals | .20 |
| District Total | 6.03 |

2. The PKS Resolution stated that the Governing Board had “considered anticipated certificated attrition (resignations, retirements, non-reelections, temporary teacher releases, etc.).” The PKS Resolution also stated that:

It will be necessary to retain the services of certificated employees, regardless of seniority, who possess qualifications and competencies needed in the projected educational program for the 2014/15 school year which are not possessed by more senior employees thereby subject to layoff.”

3. Respondent was timely served with a Notice of Recommendation that Services Will Not Be Required for the 2014/2015 School Year. He timely filed a Request for Hearing. He was served with a District Statement of Reduction in Force. He timely filed a Notice of Participation.²

4. Respondent has a clear Designated Subjects Special Subjects Teaching Credential in Reserve Officer Training Corp (ROTC). His seniority date with the District is January 11, 1999. Respondent is currently assigned to the Mather Youth Academy (Mather). There are no longer any ROTC classes being taught at Mather. The ROTC program has been replaced by a program whose acronym is PBIS.³ For about seven months during the current school year, respondent taught a leadership class under PBIS. That leadership class was

¹ “FTE” stands for full-time equivalent.

² Respondent was the only certificated employee served with a Notice of Recommendation that Services Will Not Be Required for the 2014/2015 School Year who filed a timely Request for Hearing. Thomas Almeida was served with a Notice of Recommendation that Services Will Not Be Required for the 2014/2015 School Year. He did not file a Request for Hearing. He did not appear at the hearing. Consequently, Mr. Almeida waived his right to a hearing in this case. (Ed. Code, § 44949, subd. (b).)

³ Respondent did not know what “PBIS” stood for, but he believed that the first two words were positive behavior, and that it was a program intended to reward students’ positive behavior.

cancelled in February 2014. He described his current duties as “just roaming” and “helping others.” He covers in-house room suspensions when students are sent out of their regular classrooms. He also helps with the movement of students.

5. Respondent has been designated for layoff as the 1.0 FTE Military Instructor. Respondent raised a number of arguments in opposition to his layoff.

6. Respondent’s primary argument against his layoff related to the Agreement for the Establishment of an Air Force Junior Reserve Officer Training Corps Unit (AFJROTC Agreement), which the District entered into with the Air Force in July 2013. Under the AFJROTC Agreement, the District has established an Air Force Junior Reserve Officer Training Corps (AFJROTC) at Cordova High School. In the AFJROTC Agreement, the Air Force agreed to provide:

... certification/licensure training to those instructors contracted by the [District] to teach and administer the AFJROTC program courses of study, provided such instructors are qualified retired Air Force commissioned officers/non-commissioned officers (NCO) and otherwise meet the acceptance standards for AFJROTC instructors prescribed by Public Law and applicable DoD and Air Force Instructions.

The AFJROTC Agreement provided further that the District agreed to “employ, as a minimum, one retired Air Force commissioned officer and one NCO whose qualifications are certified/licensed by the Air Force ... to conduct the Aerospace Science/Leadership Education courses and other AFJROTC activities.”

7. The Air Force provided the District with the names of five individuals who were qualified to teach the Aerospace Science/Leadership Education courses and conduct other AFJROTC activities under the AFJROTC Agreement. The District hired two individuals from the list. Both of these individuals have the same credential as respondent, but their hire dates are in 2013. Although these instructors are considered to be District employees, the Air Force pays half their salaries under a grant provided to the District pursuant to the AFJROTC Agreement. These instructors wear their Air Force uniforms when they teach and perform other services under the AFJROTC Agreement.

8. Respondent is not a retired Air Force commissioned or non-commissioned officer. He was in the Army and the National Guard. At hearing, respondent recognized that he was not qualified to teach under the terms of the AFJROTC Agreement. But he pointed to a provision in that agreement that stated that the District “has the right to terminate employment of certified AFJROTC instructors in accordance with [District] rules and regulations.” Respondent testified that, at the end of the last school year, when the District was looking at the AFJROTC program, they had two qualified and experienced teachers then employed (respondent and another teacher) who were capable of teaching ROTC. He asserted that the District should have hired him to teach in the junior ROTC program at

Cordova High School, instead of laying him off. Respondent's arguments were not persuasive.

9. Respondent is not qualified to bump into one of the positions currently occupied by the two instructors hired to teach under the AFJROTC Agreement. The requirements that a teacher who has been selected for layoff must meet in order to bump into another position are set forth in Education Code section 44955, subdivision (b), which, in relevant part, provides:

Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

While respondent may have the same credential as the instructors retained under the AFJROTC Agreement, he is not competent to render the services that those instructors are now rendering to the District. Respondent is not a retired Air Force commissioned or non-commissioned officer. There was no evidence that he is qualified to teach the Aerospace Science/Leadership Education courses or conduct the other AFJROTC activities that these more junior employees are providing. There is no provision in Education Code section 44955, subdivision (b), that would require the District to terminate the employment of the two AFJROTC instructors or the AFJROTC Agreement in order to retain respondent as a certificated employee.

10. The District argued that it could skip the two AFJROTC instructors under Education Code section 44955, subdivision (d), which, in relevant part, provides:

Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) 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 and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

11. The District's argument was persuasive. The District demonstrated that it had a specific need for the two AFJROTC instructors to teach a specific course of study, the Aerospace Science/Leadership Education courses, and that these instructors had the special training and experience necessary to teach these courses that respondent does not possess. It was within the discretion of the District to enter into the AFJROTC Agreement. Respondent

did not establish that the District should have terminated the positions of the two AFJROTC instructors under that agreement and retained his services instead.

12. Respondent also argued that the District was laying him off in retaliation for having obtained a decision in his favor after last year's reduction in force hearing. The proposed decision issued by the administrative law judge in OAH No. 2013030572, which was adopted by the Governing Board as its decision, found that respondent, as a "Principal's Designee," was certificated and competent to perform the services of a more junior "Teaching Vice Principal." Consequently, respondent's preliminary layoff notice last year was rescinded under Education Code section 44955, subdivision (b). After last year's layoff decision was issued, respondent's assignment as a Principal's Designee was terminated.

13. The termination of respondent's Principal's Designee assignment is not a proper issue for determination in this reduction in force proceeding. Karen Knight, the District's Assistant Superintendent of Human Resources, persuasively testified that the Military Instructor position was being eliminated for reasons relating to the welfare of the District's schools and pupils. As respondent testified, there is no longer an ROTC program at Mather where he teaches. The parties stipulated that these proceedings "are based solely on the grounds set forth in Education Code sections 44949 and 44955, and in no way relate to any individual's ability or performance." Respondent did not establish that he was being laid off this year in retaliation for having his layoff notice rescinded last year.

14. Respondent testified that he would like to be considered for a position as a Child Welfare Attendance (CWA) officer. He pointed to a "wish list" created for the Governing Board's review that recommended the creation of a CWA officer position. No CWA position has been created by the Governing Board in response to the wish list. Respondent also testified about a Behavior Support Aide (BSA) who had been hired and the complaints she had made against him. He did not demonstrate that the retention of the BSA or any of her complaints had any relevance to his layoff. He testified further about the cancellation of his leadership class. Once again, there was no evidence to demonstrate that the cancellation of his leadership class had any relationship to his layoff.

15. When all the evidence presented at the hearing is considered, respondent did not establish that the District is retaining any probationary employee or other employee with less seniority to render a service which he is certificated and competent to render. He failed to establish that the decision of the District to eliminate his Military Instructor position was done for any purpose other than the welfare of the District's schools and pupils. Consequently, respondent did not establish that his preliminary layoff notice should be rescinded.

16. Any other assertions put forth by respondent and not addressed above are found to be without merit and are rejected.

LEGAL CONCLUSIONS

1. The District complied with all notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955.

2. The services identified in the PKS Resolution are particular kinds of services that may be reduced or eliminated under Education Code section 44955. The Governing Board's decision to reduce or eliminate the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or elimination of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

3. Cause exists to reduce certificated employees of the District due to the reduction or elimination of particular kinds of services.

4. No more junior certificated employee is scheduled to be retained to perform services that respondent is certificated and competent to render.

5. Cause exists to give notice to respondent that his services will not be required for the 2014/2015 school year because of the elimination of a 1.0 FTE Military Instructor position.

RECOMMENDATION

1. Cause exists to reduce or eliminate certificated positions no later than the beginning of the 2014/2015 school year in accordance with the PKS Resolution.

2. Notice may be given to respondent Richard Johnson that his services will not be required for the 2014/2015 school year.

DATED: April 11, 2014

KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings