

BEFORE THE
SUPERINTENDENT OF
THE AMADOR COUNTY OFFICE OF EDUCATION
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

CERTAIN CERTIFICATED PERSONNEL
EMPLOYED BY THE AMADOR
COUNTY OFFICE OF EDUCATION,

OAH No. 2010030966

Respondents.

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, in Jackson, California, on May 10, 2010.

Ben Hance, Attorney at Law, represented the Amador County Office of Education (ACOE).

Thomas J. Driscoll, Jr., Attorney at Law, represented the respondents listed on Attachment A hereto (represented respondents). Respondent David Holman represented himself and was not represented by Mr. Driscoll.

On May 10, 2010, ACOE and the represented respondents agreed to the Joint Stipulations, as defined below.

FACTUAL FINDINGS

Represented Respondents

1. At the commencement of the hearing, ACOE and the represented respondents notified the ALJ that they had agreed to the Joint Stipulations, and that the Joint Stipulations would result in a settlement of the matters set forth in ACOE's Accusation dated April 5, 2010 (Accusation), a copy of which is attached as Attachment B hereto, with respect to the represented respondents.

2. ACOE and the represented respondents stipulate and agree as follows:
- a. The matters set forth in paragraphs I, II, III, IV, V, VI, VIII (subject to the other Joint Stipulations) and IX of the Accusation are true and correct.
 - b. ACOE shall rescind 0.5 FTE of the preliminary layoff notice issued to respondent Sheila Bonito with respect to the Visual Impairment teaching services provided by Ms. Bonito.
 - c. ACOE shall reclassify respondent Pamela Radmilovic as a permanent employee of ACOE. Ms. Radmilovic's seniority date shall remain August 9, 2005.
 - d. ACOE shall treat respondent Kari Koche as having an earlier seniority date than respondent Ambren Neville for all purposes associated with this reduction in force and their respective reemployment rights associated therewith, as applicable.
 - e. Respondent Robert Lynch is the most junior certificated employee of ACOE providing County Community School teaching services.
 - f. Respondent Rosalyn Vermeulen is the most junior certificated employee of ACOE providing Speech Language Hearing teaching services.
 - g. ACOE shall rescind the preliminary layoff notice issued to respondent Paul Neville.

The joint stipulations set forth above in this Finding 2 are referred to herein as the "Joint Stipulations."

David Holman

3. Nina Neville, Director of Personnel of ACOE, credibly testified that ACOE had properly and timely served Mr. Holman, among others, with all notices required under Education Code sections 44949 and 44955. Included among these notices was a Notice of Layoff Hearing, dated March 30, 2010, which stated that the hearing would be held on May 10, 2010, at 9:30 a.m. Mr. Holman did not appear at the hearing. Because Mr. Holman did not appear at the hearing on May 10, 2010, this matter proceeded as a default against him under Government Code section 11520.

4. Ms. Neville further testified that ACOE had properly and timely served Mr. Holman, among others, with a Statement to Respondents, dated March 30, 2010, pursuant to Government Code section 11505, which stated that unless a written request to contest the

charges was delivered to the Superintendent of ACOE (County Superintendent) within five days of the date of the Accusation and such Statement to Respondents were personally served or mailed to said respondent, the County Superintendent may proceed upon the Accusation without a hearing. The County Superintendent did not received a Notice of Defense from Mr. Holman. Because Mr. Holman did not serve a Notice of Defense upon the County Superintendent, Mr. Holman has waived his right to a hearing to determine if there is cause for not reemploying him for the ensuing year pursuant to Government Code section 11506, subdivision (c).

Extension of Statutory Deadlines

5. The hearing of this matter was continued from its originally scheduled date of April 1, 2010 to May 10, 2010 by OAH Order dated March 25, 2010 pursuant to Government Code section 11524. Pursuant to Education Code section 44949, subdivision (e), the dates prescribed in subdivision (c) of such section which occur on or after the date of granting the continuance and the date prescribed in subdivision (c) of Education Code section 44955 which occurs after the date of granting the continuance shall be extended for a period of time equal to the continuance.

LEGAL CONCLUSIONS

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

2. The services identified in Resolution No. 09/2010-06COE, dated February 24, 2010, of the County Superintendent are particular kinds of services that may be reduced or eliminated under Education Code section 44955. The County Superintendent's decision to reduce or eliminate the identified services was neither arbitrary nor capricious, and was a proper exercise of his discretion.

3. Cause exists to reduce certificated employees of ACOE due to the reduction or elimination of particular kinds of services and/or due to a decline in the average daily attendance in all schools of the Amador County Unified School District for the first six months in which school was in session for the current school year of 2009-2010 below that of the corresponding period of the first six months of one or both of the comparison school years.

4. The reduction or elimination of services relates solely to the welfare of the schools and pupils of the schools served by ACOE within the meaning of Education Code section 44949.

5. Subject to giving effect to the agreements set forth in the Joint Stipulations, no junior employee is scheduled to be retained to perform services that a more senior respondent is certificated and competent to render.

6. Cause exists to give notice to the represented respondents consistent with the agreements set forth in the Joint Stipulations and to Mr. Holman.

7. This matter shall proceed as a default against Mr. Holman under Government Code section 11520.

8. Mr. Holman has waived his right to a hearing to determine if there is cause for not reemploying him for the ensuing year pursuant to Government Code section 11506, subdivision (c), due to his failure to serve a notice of defense upon the County Superintendent.

RECOMMENDATION

1. The County Superintendent shall adopt the Joint Stipulations reached by ACOE and the represented respondents. The County Superintendent may, if he so chooses, adopt the Joint Stipulations by implication via his adoption of this Proposed Decision in the form submitted to the County Superintendent.

2. Notice may be given to the represented respondents that their services will be reduced or will not be required for the 2010-2011 school year, consistent with the Joint Stipulations. Notice may be given to Mr. Holman that his services will be reduced or will not be required for the 2010-2011 school year. Notice will be given in inverse order of seniority.

3. Copies of this Proposed Decision shall be submitted to the County Superintendent and to the employee(s) on or before June 2, 2010 pursuant to Education Code section 44949, subdivision (c). Notice of termination of services shall be given before June 11, 2010 pursuant to Education Code section 44955, subdivision (c).

DATED: May 28, 2010

KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
SUPERINTENDENT OF
THE AMADOR COUNTY OFFICE OF EDUCATION
STATE OF CALIFORNIA

ATTACHMENT A

LIST OF REPRESENTED RESPONDENTS

SHEILA BONITO
KARI KOCHÉ
ROBERT LYNCH
AMBREN NEVILLE

PAUL NEVILLE
PAMELA RADMILOVIC
TERI WILT
MARC YONAN

BEFORE THE
SUPERINTENDENT OF
THE AMADOR COUNTY OFFICE OF EDUCATION
STATE OF CALIFORNIA

ATTACHMENT B

ACCUSATION

[Attached]