

BEFORE THE
GOVERNING BOARD
OF THE
COLTON JOINT UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force
Involving 142 Permanent and Probationary
Certificated Employees of the Colton Joint
Unified School District,

Respondents.

OAH No. 2010030310

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Colton, California, on April 30, 2010.

John W. Dietrich, Attorney at Law, represented the Colton Joint Unified School District. Jerry Almendarez, Assistant Superintendent, Human Resources, also appeared on behalf of the Colton Joint Unified School District.

Dana S. Martinez, Attorney at Law, represented all respondents who filed requests for hearing including respondent Heather Baird. Dan Bartlett, Regional Uniserv Staff, Alford Colton Uniserv, was present on behalf of the California Teachers Association.

No respondent in this proceeding represented himself or herself.

The matter was submitted on April 30, 2010.

FACTUAL FINDINGS

Jurisdictional Matters

1. On February 18, 2010, the Governing Board of the Colton Joint Unified School District (the district) determined that it was in the best interests of the district and the welfare of the schools and the pupils thereof to reduce or discontinue particular kinds of services due to adverse financial conditions, resulting in a lessening of the number of certificated employees of the district. The reduction of services of regular certificated employees was not based upon the decline of average daily attendance during the past two

years. In accordance with its determinations, the Governing Board passed Board Resolution 10-06, which reduced and eliminated various particular kinds of services totaling 141 full time equivalent positions. The Governing Board's resolution directed that the reduction of certificated staff be achieved by terminating regular employees and not by terminating temporary and substitute employees. The Governing Board enacted other measures related to "competency" and tie-breaking criteria that were to be applied to employees holding the same seniority date. The Governing Board directed that the District Superintendent or his designee initiate layoff procedures and give appropriate notices to certificated employees affected by the resolution pursuant to Education Code sections 44955 and 44949.

2. The particular kinds of services identified in the governing board's resolution were services the governing board was authorized to reduce and discontinue. In accordance with Board Resolution 10-06, preliminary layoff notices were timely served upon the most junior employees holding those positions that were subject to reduction and elimination. Each employee who was served with a preliminary layoff notice was advised of the right to a hearing. All respondents other than Heather Baird timely requested a hearing. Heather Baird did not file her request for a hearing within the time specified by the district, but the district waived any objection to her late filing of the request. Each employee who requested a hearing became a respondent in this proceeding. As to those employees, all jurisdictional requirements were met. The reduction in force hearing was set for April 30, 2010.

3. On April 30, 2010, the hearing was called to order by James Ahler, Administrative Law Judge, Office of Administrative Proceedings. John W. Dietrich, Attorney at Law, appeared on behalf of the Colton Joint Unified School District. Jerry Almendarez, Assistant Superintendent, Human Resources, also appeared on behalf of the Colton Joint Unified School District. Dana S. Martinez, Attorney at Law, appeared on behalf of most respondents who filed requests for hearing as well as respondent Heather Baird. Dan Bartlett, Regional Uniserv Staff, Alford Colton Uniserv, was present on behalf of the California Teachers Association and its members. No respondent in this proceeding represented himself or herself.

The Stipulations

4. The district waived any objection to respondent Heather Baird's late filing of her request for a hearing and stipulated that Heather Baird was properly a respondent in the reduction in force proceeding. No other party objected.

5. It was stipulated that the preliminary notices served upon all respondents be rescinded and that the accusations filed upon all respondents be withdrawn.

LEGAL CONCLUSIONS

Statutory Authority

1. Education Code section 44944 provides in part:

“No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year . . . the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefor . . .

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year . . . If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute his or her waiver of his or her right to a hearing . . .

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with . . . the Government Code and the governing board shall have all the power granted to an agency therein, except that all of the following shall apply:

(1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing in the accusation.

. . .

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board. Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. . . .”

2. Education Code section 44955 provides in part:

“(a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

(b) Whenever . . . a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year . . . and when in the opinion of the governing board of the district it shall have become necessary . . . to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. 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.

. . .

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof . . .

. . .

(c) Notice of such termination of services shall be given before the 15th of May . . . and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. However, prior to assigning or reassigning any certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

(d) 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, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, 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.

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.”

Jurisdiction

3. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and other jurisdictional requirements contained in those sections were satisfied as to all respondent employees identified herein.

Determination

4. As a result of the stipulation of the parties in this proceeding, cause exists to recommend to the Governing Board that the Colton Joint Unified School District rescind the preliminary notices served upon the respondents identified hereafter and withdraw the accusations filed against those respondents.

RECOMMENDATIONS

It is recommended that the preliminary layoff notices issued to the following respondents be rescinded and that the accusations filed against them be dismissed:

1. Anderson, Brittany
2. Arguelles, Yesenia
3. Arroyo, Cecilia
4. Ashford, Pennie
5. Baird, Heather
6. Barre, Michael
7. Bathgate, Anna
8. Bautista, Leilani
9. Benevente-Barrera, Christine
10. Bihlmeier, Sharon
11. Boone, Stephen
12. Borja, Miriam
13. Boyd, Amanda
14. Branham, Mason
15. Brown, Katharine
16. Brown, Sanya
17. Brugger, Sherra
18. Burch, Cassandra
19. Castleman, Derek
20. Cervantes, Cathy
21. Connor, Cathy
22. Contreras, Daisy
23. Cross, Daria

24. Crow, Joei
25. D'Silva, Naomi
26. Daniels, Sheila
27. Deackoff, Christine
28. DeJongh, Yvonne
29. Delgado, Michael
30. DePuyt, Christina
31. Diaz, Bonnie
32. Dumke, Patricia
33. Duran, Cari
34. Duran, Johnny
35. Esquivel, Michael
36. Flores, Kelly
37. Flores, Valerie
38. Fraijo, Edrina
39. Galbreath, Kate
40. Garcia, Terry
41. Gardner, Kenna
42. Gillette, Nickole
43. Gonzales, Rosenda
44. Gordon, Steven
45. Gordon, Tiffany
46. Graham, Lindsay
47. Grandusky, Awenda
48. Green, Molly
49. Guadagnoli, Kimberly
50. Guiles, Jesse
51. Guillen, Sarah
52. Gutierrez, Fernando
53. Harper, Laura
54. Herrera, Holli
55. Heusterberg, Robyne
56. Hill, Christina
57. Hoang, John
58. Hochevar, Andrea
59. Hoss, April
60. Isham, Melinda
61. Junio, Sherwin
62. Ladd, Sarah
63. Larivee, Robert
64. LaRue, Aquarius
65. Leach, G. Jeannette
66. Lieu, Rocky
67. Linek, Erin
68. Lingenfelter, Christopher
69. Lopez, Esperanza

70. Lovell, Jacqueline
71. Lyles, Melinda
72. Maness, Christopher
73. Martin, Tiffany
74. Matthews, Gerald
75. McColeman, Karen
76. Megee, Jamie
77. Meyer, Cheryl
78. Miller, Rosemary
79. Morales, Liza
80. Moran, Megan
81. Mordoff, Annette
82. Morgan, Daniel
83. Morris, Heather
84. Mueller, Veronica
85. Murillo, Maria
86. Negrete, Georgina
87. Nepomuceno, Jair
88. Nguyen, Trish
89. Northcott, Carrie
90. Olsen, Stacey
91. Ontiveros, Jessica
92. Orrence, Amanda
93. Paez-Herrera, Azucena
94. Parrales, Meylin
95. Peterson, Patricia
96. Phillips, Dwana
97. Ponce, Armando
98. Portillo, Lucy
99. Priest, Laura
100. Puraci, Ligia
101. Putman, Steven
102. Quesada, Vanessa
103. Quinones, Jr., Benjamin
104. Quiroz, Rosa
105. Ramos, Laurenda
106. Ramos, Michelle
107. Redshaw, Tamorah
108. Reyes, Elizabeth
109. Ritzi, Brandi
110. Rivera, Sara
111. Rodriguez, Krissee
112. Rodriguez, Sandra
113. Romano, Barbara
114. Ruiz, Luis
115. Salazar, Celia

116. Sandoval, Mark
117. Schmitt, Hillary
118. Schweigert, Melissa
119. Servin, Judith
120. Sexton, Victoria
121. Sharp, Shannon
122. Silveira, Stephan
123. Simpson, Melissa
124. Sotelo, Michelle
125. Steffens, Carly
126. Sutherland, Matthew
127. Sutherland, Seth
128. Sutton, Diana
129. Tapia, Tania
130. Taylor, Starlett
131. Torres, Idalia
132. Treff, Star
133. Tyler, Lauren
134. Unda, Lucy
135. Underwood, Angela
136. Urquhart, Robin
137. Vasquez, Sandra
138. Vizcaino, Jeanne
139. Wang, David
140. Ward, Wendy
141. Wilkinson, Cari
142. Yang, Sharon

DATED: _____

JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings