

BEFORE THE
GOVERNING BOARD OF THE
LA GRANGE ELEMENTARY SCHOOL DISTRICT
STANISLAUS COUNTY, STATE OF CALIFORNIA

In the Matter of the Accusation (Layoffs) of:

CATHY BULJAN, LINDA GNIPP,
KIMBERLY MARTIN, SARAH POWERS,
JOHN REESMAN, and MISTY
WESTCOTT,

OAH No. 2008030449

Respondents.

PROPOSED DECISION

Administrative Law Judge Marilyn A. Woollard, Office of Administrative Hearings (OAH), State of California, heard this matter in La Grange, California, on April 15, 2008.

Attorney Janice J. Hein represented La Grange Elementary School District (District). District Superintendent Joseph Magnu was also present.

Attorney Ernest Tuttle IV represented respondents Cathy Buljan, Linda Gnipp, Kimberly Martin, Sarah Powers, and John Reesman, who were present.

There was no appearance by or on behalf of respondent Misty Westcott.

FACTUAL FINDINGS AND DISCUSSION

1. Joseph Magnu is the Superintendent-Principal of the La Grange Elementary School District (District). Mr. Magnu's actions and the actions of the District Governing Board (Board) were taken in their official capacities.
2. The District serves students from kindergarten through eighth grades at its La Grange Elementary School (La Grange Elementary) and the La Grange Charter Academy (Charter Academy). Until recently, the District was a one-room rural school, with Mr. Magnu as its sole teacher and principal.

In approximately 2004, the District began to experience increasing enrollment by students who lived closer to La Grange Elementary than to the elementary schools in their own districts of residence. These non-District students were granted inter-district transfers to attend La Grange Elementary. Beginning in September 2006, the District established the Charter Academy as a "school of choice" within La Grange Elementary to accommodate these non-District students. During the 2007-2008 school year, the District's "school within a school" model which resulted from the creation of the Charter Academy served 15 District students and 51 non-District students.

3. Respondents are permanent and probationary certificated employees of the District. Three of the five respondents were hired following the creation of the Charter Academy. Respondents' first dates of paid service with the District occurred at the beginning of the following school years: 2004-2005 (Cathy Buljan), 2005-2006 (Linda Gnipp), 2006-2007 (Sarah Powers and John Reesman); and 2007-2008 (Misty Westcott). Since their hire, respondents have taught both District students and non-District students at the combined La Grange Elementary-Charter Academy.

4. On March 4, 2008, the Board adopted Resolution No. 2008-01, regarding the reduction or discontinuance of particular kinds of service (PKS). The Board determined that it was necessary to reduce or eliminate the following PKS not later than the beginning of the 2008-2009 school year: 6.0 FTE Elementary Teachers.

In its Resolution, the Board adopted tie breaking criteria to be used to determine relative seniority between employees who had the same initial date of paid service with the District, and to determine the order of reemployment. The Board defined "competent" and/or "competency," pursuant to Education Code section 44955(b), as "possessing the appropriate and necessary credential for a class and having taught the class in question at least one (1) semester in the past ten (10) years." Finally, the Board directed the Superintendent or his designee to send appropriate notices to all affected certificated employees.

5. On March 12, 2008, the District notified each of the respondents that it had recommended to the Board that they be given notice that their services would be discontinued for the 2008-2009 school year. Respondents were advised of their right to request a hearing. Each respondent was provided this letter, with a copy of Resolution 2008-01, a blank Request for Hearing form, and copies of Education Code sections 44949 and 44955. The notice and accompanying documents were personally served on each respondent by the superintendent.

6. Each of the respondents timely requested a hearing.

7. On March 21, 2008, Superintendent Magnu prepared and signed an Accusation and a Statement to Respondents (Statement) for layoff pursuant to Resolution 2008-01 and Education Code sections 44949 and 44955. Respondents

were advised of their right to request a hearing. The Accusation, Statement, blank Notice of Defense form, and pertinent statutes were personally served on each respondent by Superintendent Magnu.

8. With the exception of respondent Misty Westcott, all respondents timely filed a Notice of Defense contesting the Accusation and requesting a hearing. No response was received from Ms. Westcott.

9. *Waiver of Right to Hearing by Respondent Westcott:* Education Code section 44949, subdivision (b), provides that where 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."

The evidence establishes that the District properly served Ms. Westcott with the Accusation and accompanying documents, including a blank Notice of Defense Form which explained her right to request a hearing. By failing to file a Notice of Defense, Misty Westcott has waived her right to a hearing in this matter, and the District may proceed with her layoff.

Reduction of PKS

10. The Board's determination to reduce the PKS of six elementary teachers was within its discretion. A particular kind of service includes a service or curricular offering which cannot be eliminated, but can be reduced to the minimum level required by law. Elementary teaching is a particular kind of service that may be reduced or eliminated under Education Code section 44949 and 44955. *California Teachers Association v. Goleta Union School District* (1982)132 Cal. App. 3d 32, 36.

11. The Board's resolution to eliminate and reduce these PKS was made after considering financial reports and information regarding the District's current and projected income and expenses.

The District worked in close conjunction with Sandra Putnam, director of external business services for Stanislaus County Office of Education (COE), in the preparation of its Fiscal Year 2007-2008 Second Interim Report with general fund financial projections for the next two fiscal years, 2008-2009 and 2009-2010. The Board considered the declining state and federal revenues, and its expenses, including those associated with operating the Charter Academy. As explained by Mr. Magnu, the financial data revealed that most of the District's deficit spending was in relation to the Charter Academy, which was thus negatively affecting the District's students. Specifically, each year, the Charter Academy had to borrow significant funds from La Grange Elementary's reserve account. The reduction in PKS was necessary to reduce costs and to address a loss of revenue that placed the District in the "qualified" category for fiscal oversight and intervention by the COE if the layoffs do not occur. Ms. Putnam agreed that the District would still have an appropriate general fund

reserve at the end of the 2008-2009 school year. Ms. Putnam also testified that the COE cannot wait until a District goes into bankruptcy before it intervenes and that such a result is probable if the District continued its current staffing.

12. Respondents challenged the necessity of PKS reduction this year and questioned whether it was necessary to reduce all six FTE, when the second interim financial projections do not indicate a significant deficit until fiscal year 2009-2010. There is no merit to this challenge. The Board has an obligation to protect the fiscal integrity of the District; this includes taking proactive steps to avoid fiscal peril. The Board did not act arbitrarily or capriciously by resolving to sharply reduce PKS at this time. There is no evidence that this reduction in PKS resulted in the reduction of services below the minimum level required by law. The Board's decision to reduce PKS at this time relates solely to the welfare of the District and its students by maintaining its financial viability.

13. *Status of Superintendent-Principal-Teacher Mr. Magnu:* The effect of the Resolution is to eliminate the Charter Academy and to concentrate District resources solely on La Grange Elementary for the benefit of the students who reside in the District. During the 2008-2009 school year, La Grange Elementary will return to its prior model where Mr. Magnu is the sole teacher for the District's students. Mr. Magnu was not given a layoff notice by the District.

Mr. Magnu has worked for the District for eight years, during which he has performed a combination of teaching and administrative (principal/superintendent) duties. Since the increase in the District's certificated staff, Mr. Magnu's teaching time has decreased; however, he continues to teach special education, and he monitors the special education caseload. As indicated in the Charter Academy document, Mr. Magnu is a master's level special education specialist with 16 years of classroom experience and seven years of administrative experience. Mr. Magnu meets the Resolution's definition of "competence." Respondents did not argue that Mr. Magnu had less seniority or that any of the respondents should have been retained to provide services that he was not certificated and competent to perform.

14. Pursuant to Education Code section 44955, layoffs must take place in the inverse order of seniority. The District must prove, by a preponderance of the evidence, that its decision to layoff or reduce the services of a more senior teacher, while retaining the services of a less senior teacher, is appropriate. In pertinent part, the statute provides that:

(b) . . . 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.

The record as a whole establishes that no employee with less seniority is being retained to render a service for which any of the other respondents is certificated and competent to perform. While there is a variation in hiring dates among the six employees, the reduction in PKS eliminates all six positions. As a consequence, it was unnecessary to apply the tie breaker criteria to determine which of the respondents would receive a layoff notice.¹

15. *Best Interests*: Respondents questioned whether it was in the best interests of the District's students to return to a one room school where kindergarten and first grade students would be in the same class, and taught by the same teacher, as an eighth grade student. Respondents also believed that the Charter Academy helped to foster a better sense of community within the District. Respondents demonstrated an altruistic concern for the welfare of their students.

Nevertheless, the District's decision to eliminate the Charter Academy and to lay off six FTE teachers was neither arbitrary nor capricious. The District established that its actions were motivated by a legitimate concern for the welfare of its students; the layoffs related to the welfare of the District's school and its students.

LEGAL CONCLUSIONS

1. As set forth in Factual Findings 1 through 8, 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.

¹ The Resolution provided that, pursuant to Education Code section 44846, for persons who have a statutory reemployment preference, the order of rehire as between employees who first rendered paid service on the same date shall be determined according to the same tie breaker criteria. Several respondents testified that they worked several in-service days in August of the year they were hired and that the District's Certificated Seniority List incorrectly provided their initial date of service as September.

(Rutherford v. Board of Trustees of Bellflower Unified School District (1976) 64 Cal.App.3d 167.)

3. As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly in Factual Findings 4, 10, and 11, the services identified in Resolution No. No. 2008-01 are particular kinds of services that can be reduced or discontinued under section 44955. The Board's decision to reduce or discontinue these identified services was neither arbitrary nor capricious, was a proper exercise of its discretion, and relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

4. As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly in Factual Findings 13 and 14, the District has established that no employee junior to respondents are being retained to perform the services which respondents are competent and certificated to render.

RECOMMENDATION

1. Notice shall be given to Cathy Bujlan that her services will be reduced by 1.00 FTE in the 2008-2009 school year, due to the reduction and discontinuance of particular kinds of services.

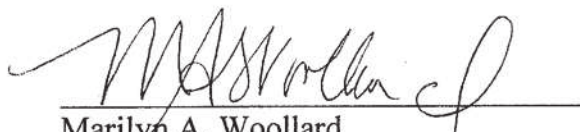
2. Notice shall be given to Linda Gnipp that her services will be reduced by 1.00 FTE in the 2008-2009 school year, due to the reduction and discontinuance of particular kinds of services.

3. Notice shall be given to Kimberly Martin that her services will be reduced by 1.00 FTE in the 2008-2009 school year, due to the reduction and discontinuance of particular kinds of services.

4. Notice shall be given to Sarah Powers that her services will be reduced by 1.00 FTE in the 2008-2009 school year, due to the reduction and discontinuance of particular kinds of services.

5. Notice shall be given to John Reesman that his services will be reduced by 1.00 FTE in the 2008-2009 school year, due to the reduction and discontinuance of particular kinds of services.

DATED: May 2, 2008


Marilyn A. Woollard
Administrative Law Judge
Office of Administrative Hearings