

BEFORE THE GOVERNING BOARD
OF THE
ACALANES UNION HIGH SCHOOL DISTRICT

In the Matter of the Accusation Against:

MICHELLE ALESSANDRIA, et al,

Respondents.

OAH No. 2008030103

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, State of California, Office of Administrative Hearings, heard this matter in Lafayette, California, on April 21, 2008.

Elizabeth B. Mori, Attorney at Law, Fagen Friedman & Fulfrost LLP, represented the Acalanes Union High School District.

Respondent Michelle Alessandria did not appear and was not represented by counsel.

Margo Feinberg, Attorney at Law, Schwartz, Steinsapir, Dohrmann & Sommers LLP, represented the remaining Respondents.¹

The record was left open until 5:00 p.m. on April 22, 2008, to allow Ms. Feinberg to submit a written brief. A brief was timely received and marked Exhibit K for identification.

The record closed on April 16, 2003.

SUMMARY

The Governing Board of the Acalanes Union High School District decided to reduce or discontinue particular kinds of services provided by certificated employees for the 2008/2009 school year for budgetary reasons. The action was not related to the competency and dedication of the teachers whose services were proposed to be reduced or eliminated.

District staff carried out the Board's decision by using a selection process involving review of credentials and seniority. Except as to Erica Amundson and Harvey Benstein, the selection process complied with Education Code requirements.

¹ See Appendix A, attached, for a complete list of Respondents.

FACTUAL FINDINGS

1. James P. Negri filed the Accusations in his official capacity as Superintendent of the Acalanes Union High School District (District).

2. All of the Respondents are certificated employees of the District.

3. On March 5, 2008,² the District's Governing Board (Board) adopted Resolution No. 07-08-12, which sets forth the Board's determination that it will be necessary for the District to reduce or discontinue particular kinds of services for the 2008/2009 school year. The reasons for the reductions are solely budgetary. A total of 8.8 certificated full-time equivalent (FTE) positions were targeted for reduction:

| <u>Title</u> | <u>Full Time Equivalent</u> |
|--------------------|-----------------------------|
| Art | 1.4 |
| Choral Music | 0.6 |
| Drafting | 0.6 |
| Drama | 0.6 |
| English | 1.2 |
| Instrumental Music | 0.6 |
| Social Science | 0.2 |
| Special Education | 2.6 |
| Work Experience | 1.0 |

4. Board Resolution No. 07-08-12 contains the general statement that:

[T]he services of no permanent employee will be terminated 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.

It also contained the Board's determination that:

[I]t will be necessary to retain the services of certificated employees in the 2008-2009 school year regardless of seniority, who possess qualifications needed for the following program:

Regional Occupational Program: Funded for the 2007-08 and 2008-09 school years. (Professional Clear, Life, General, Preliminary Credentials, District/University Intern Credential, and/or authorizations.)

² All dates are in 2008.

5. The District maintains a list of certificated employees that includes seniority dates (first date of paid service), current assignments and locations, advanced degrees, credentials and authorizations. The list (referred to as the Seniority List) was posted at school sites to allow employees to comment.

6. On February 20, prior to the adoption of Resolution No. 07-08-12, the Board adopted Resolution No. 07-08-10. This resolution sets forth the criteria to be used to determine the order of termination of certificated employees for the 2008/2009 school year who first rendered paid service to the District on the same date. The criteria ascribe a point value to each of six criteria. If application of the criteria results in a tie, it is to be broken by use of a lottery.

7. By letter dated March 6, Frank Acojido, Director of Human Resources, gave written preliminary notice to 13 certificated employees that the Superintendent had recommended to the Board that their services would not be required by the District for the 2008/2009 school year. Each notice contained the reasons for the recommendation and a copy of Board Resolution No. 07-08-12.

8. Each of the Respondents filed a timely request for hearing to determine if there is cause for terminating his or her services for the 2008/2009 school year. Accordingly, Accusations were filed and served. Each Respondent filed a timely notice of defense and this hearing followed.

9. No jurisdictional issues were raised. The Parties stipulated that all notices were timely and properly served.

10. The evidence established that the District will be reducing services for the 2008/2009 school year.

11. The evidence established that the reduction or discontinuance of services is related solely to the welfare of the District and its pupils.

12. The District considered attrition in its initial determination of the reductions that were necessary and some notices have been rescinded due to information subsequently received.

Proposed deviations from seniority:

A. Robert Porter

13. Robert Porter is a full-time art teacher (0.8 Art and 0.2 ROP) at Acalanes High School. The District seeks to retain him despite the fact that other teachers possess more seniority. Porter was hired by the District starting August 27, 2007, because of his special experience and qualifications to teach Digital Web Design/Video Production, a computer-based course. An art or computer science credential is sufficient to teach such course in the

regular curriculum. One of the sections of this course, however, is funded by the Contra Costa County Office of Education (CCOE) as a regional occupational program (ROP) class. For that section the instructor must have a Designated Subjects Vocational Education Credential or a Single Subject Credential plus three years of industry experience. In addition, the CCOE may not agree to fund unless it determines that the District has in place a teacher it considers to be qualified. Porter holds a Clear Credential in Art and has over three years' industry experience. His qualifications have been approved by the CCOE, which has made a verbal commitment to fund at least one section of the course in 2008/2009.

Currently, Porter teaches one period of ROP web design. He also teaches non-ROP web design, digital photography, and digital video production.

Two teachers credentialed in art with more seniority than Porter contend that they are certificated and competent to teach all of the courses taught by Porter.

14. Erica Amundson took a course in digital imaging as part of her credential program. Amundson notes that she was originally hired by the District to teach two-dimensional art. This year she is also teaching three-dimensional art. She took classes last summer in metalwork and casting to prepare for that assignment. She is familiar with Adobe Dreamweaver software and has used it in a non-professional capacity. She is confident that she could successfully teach the classes taught by Porter if she had a summer to prepare. Amundson has never worked in private industry in the field of web design, video production, or digital photography. She clearly lacks the qualifications to teach an ROP section, but she demonstrated that she is competent to teach the other art courses taught by Porter.

15. Nancy Ingersoll holds a Vocational Education Credential with two subjects designated: Drafting and Commercial Photography. In addition, she has done freelance digital design in recent years and has taught digital photography. Ingersoll is credentialed and competent to teach not only the regular, but also the ROP section, of Digital Web Design/Video Production.

16. Porter and Ingersoll possess the same date of hire; thus, the District applied the tie-breaking criteria to determine their placement on the Seniority List. Ingersoll contends that the tie-breaking criteria were not accurately applied to her because she was given credit for only one credential when she actually has two. Ingersoll is mistaken. In fact, she was issued one credential and is authorized to teach in two subject areas pursuant to that credential. Even if this were not the case, Porter would still have more points by virtue of his satisfaction of other criteria.

17. The District has not established written competency criteria regarding the Digital Web Design/Video Production course.

B. Sarah Downs and Bruce Lengacher

18. Sarah Downs and Bruce Lengacher teach choral music. Harvey Benstein teaches instrumental music. All three teachers hold the same music credential. The District proposes to skip Downs and Lengacher, who are junior to Benstein, because it contends that choral music is a special course of study and that Benstein is not competent to teach it. No evidence was submitted regarding the qualifications of Downs and Lengacher, other than that they currently teach choral music.

Benstein asserts that he is competent to teach choral music. His assertion is corroborated by his wide-ranging and extensive education, training, and experience in the field of music education, both at the high school and college levels. Although the focus of Benstein's teaching has been instrumental music, he has conducted musical works for both orchestra and voice.

19. The District has not established written competency criteria regarding choral or vocal music.

Proposed reductions in special education

20. Mr. Acojido credibly testified concerning the basis for the proposed reduction of 2.6 FTE in special education. The decision was based upon the numbers of special education students in the District, the numbers known to be coming into the District and those who are graduating. The different types of special education services, including mild to severe and resource specialists, and the varied needs of the students were also considered. Special education is a mandated service, but Acojido is confident that the District will be able to provide it as required with the proposed reductions. In addition, as of the hearing date, the reduction had been reduced to 0.6 FTE based on updated attrition information.

LEGAL CONCLUSIONS

1. The District established jurisdiction for this proceeding as to all Respondents. All notices and other requirements of Education Code sections 44949 and 44955 have been provided or satisfied.

2. Cause exists pursuant to Education Code section 44955 to reduce the number of certificated employees in 8.8 FTE positions due to the reduction and discontinuation of particular kinds of services.

3. The proposed reductions and/or discontinuation of services are related to the welfare of the schools and the pupils as required by Education Code section 44949, subdivision (c)(3).

4. Districts have significant discretion in the assignment of teachers, however, seniority cannot be disregarded unless the District establishes a specific need for personnel to teach a specific course, that the less senior employee has special training or experience that is necessary to teach the course, and that any more senior employees do not have the necessary training or experience. (Ed. Code, § 44955, subd. (d).) The burden of proof in this respect is on the district. (*Davis v. Gray* (1938) 29 Cal.App.2d 403, 408; *Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3d 555, 566-567.)

5. Based upon the matters set forth in Findings 13 through 17, the District established cause to skip Robert Porter only as regards his assignment to teach ROP classes. Erica Amundson, a teacher with more seniority than Porter, is credentialed to teach art. The District does not have written competency criteria for the non-ROP art courses. It is clear that the District hired Porter based upon his experience and seeks to retain him because of that experience. But the District did not prove that Amundson does not have the training or experience that is necessary to teach the non-ROP courses. Therefore, to the extent Porter is being retained to teach non-ROP courses, Amundson must also be retained.

6. Based upon the matters set forth in Findings 18 and 19, the District did not establish cause to skip Sarah Downs and Bruce Lengacher. The District did establish a specific need for personnel to teach choral music and that less senior employees have the necessary qualifications. The District did not prove, however, that the senior teacher is not qualified. The District has no written competency criteria concerning choral music. Harvey Benstein is credentialed to teach music and the District did not prove that he lacks the training and experience necessary to teach choral music. To the contrary, the evidence demonstrated that he is competent. Therefore, Benstein must be retained.

7. Other than as set forth in Legal Conclusions 5 and 6, no permanent or probationary employee with less seniority is being retained to render a service for which any Respondent is certificated and competent to render.

8. All contentions made by Respondents not specifically addressed herein are found to be without merit and are rejected.

ORDER

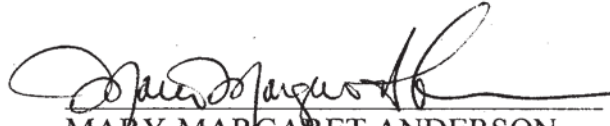
1. Notice may only be given to Erica Amundson that her services will be reduced by 0.2 FTE for the 2008-2009 school year.

2. Notice may not be given to Harvey Benstein that his services will not be required for the 2009-2009 school year.

3. Notice may be given to Michelle Alessandria, Nancy Ingersoll, Stacey Kikkawa, Michael Ramsay-Leavitt, Wendy Reeves-Hampton, Melissa Ridings and E.

Kimberly Smith that their services will not be required for the 2008-2009 school year because of the reduction or discontinuation of particular kinds of services.

DATED: May 6, 2008


MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

APPENDIX A-- LIST OF RESPONDENTS

1. Alessandria, Michelle
2. Amundson, Erica
3. Benstein, Harvey
4. Ingersoll, Nancy
5. Kikkawa, Stacey
6. Ramsay-Leavitt, Michael
7. Reeves-Hampton, Wendy
8. Ridings, Melissa
9. Smith, E. Kimberly