

BEFORE THE
GOVERNING BOARD
OF THE
FALLBROOK UNION ELEMENTARY SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Employment Status of
the 39 Certificated Employees Receiving
Notice of Recommendation that Services
Would Not Be Required for the 2008-2009
School Year,

OAH No. 2008030400

Respondents.

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Indio, California, on April 25, 2008.

Mark W. Thompson and William Diedrich, Attorneys at Law, represented the Fallbrook Union Elementary School District.

Jon Y. Vanderpool, Attorney at Law, represented respondents Amy Schwenke, Kerry Pinto, Emily Just, Catherine Girkins, Jennifer Cox, Erin Corduan, Laura Brumund, James Sheffield, Keely Smith, Caryl Crowell, Stephanie Wilcox-Hall, Jennifer Matsumoto, and Christa Rhine.

No appearance was made by or on behalf of the remaining certificated employees of the Fallbrook Union Elementary School District who received notice of the recommendation that their services would not be required for the 2008-2009 school year.

The matter was submitted on April 25, 2008.

FACTUAL FINDINGS

The Fallbrook Union Elementary School District

1. The Fallbrook Union Elementary District (the District) is headquartered in Fallbrook, California. The Fallbrook Union Elementary School District is located in a semi-rural, agricultural area in northern San Diego County. The District is bound by the San Luis

Rey River on the south, the Santa Margarita River on the north, Interstate 15 on the east, and includes parts of Camp Pendleton Marine Corps Base to the west.

The District arose out of the consolidation of numerous small one-school school districts that had been in operation since the 1870's. The District was known as the West Fallbrook District until 1946, when the District changed its name to the Fallbrook Union Elementary School District.

The District currently provides educational services to approximately 5,500 elementary school students. The District maintains a certificated staff totaling nearly 300. About 87.5 percent of the District's \$55 million budget goes to pay the salaries of these credentialed employees.

The District maintains eight schools, two of which are located on the Camp Pendleton Marine Corps Base. The schools within the District include Maie Ellis Elementary (opened in 1885), Iowa Street Elementary School (opened in 1913 as Fallbrook High School), Fallbrook Street Elementary (opened in 1949), Mary Fay Pendleton Elementary (opened in 1953), Potter Junior High (opened in 1964), La Paloma Elementary (opened in 1969), San Onofre Elementary (opened in 1974), Live Oak Elementary School (opened in 1991), and William H. Frazier Elementary (opened in 1999).

2. The District is governed by an elected five member Governing Board (the Board). The Board's Chief Executive Officer is Janice Schultz, Ed. D., who is the Superintendent of Schools. James Whitlock is the Assistant Superintendent of Schools, and he is responsible for personnel and employee relations. The District's administrative staff includes Naomi Monthei, who is the Supervisor of Personnel Services.

The Fiscal Crisis – Economic Layoffs

3. Proposition 13 limited the imposition of local property taxes and reduced a major source of assured revenue for funding public education in California. Since the passage of Proposition 13, public school districts have looked primarily to the State of California and to other governmental entities for funding.

A school district cannot determine the level of state funding it will receive until the state budget is chaptered, an event usually occurring in late June. Before then, a school district's governing board must take steps to make certain that ends meet if the worst-case financial scenario develops. California's current economic crisis has made the budgeting problems far more complicated than they were before.

A school board's legal obligation to balance its budget often requires that some teachers, administrators and/or other certificated employees be given preliminary layoff notices, warning them that their services will not be required for the next school year. Under Education Code section 44949, these preliminary layoff notices must be given to certificated employees no later than March 15.

The economic layoff statutes found in the Education Code generally require the retention of senior employees over more junior employees and the retention of permanent employees over probationary employees and other employees with less seniority.

A public school district may deviate from the general rule requiring termination in reverse order of seniority only if it can demonstrate that identifiable junior employees possess a credential, special training or experience necessary to teach a course of study or to provide services which more senior employees do not possess.

The District's Response

4. In early 2008, the District's administration (as well as the administrators of most other school districts) became acutely aware of the State of California's massive economic problems. As a result of the financial crisis and the Governor's proposed budget, the District projected a budget deficit of about \$5 million for the 2008-2009 school year. The District was required to look into ways to meet the projected budget shortfall.

Under the direction of Dr. Schultz and Assistant Superintendent Whitlock, budgetary cuts were considered across the board including reduction of transportation expenses, the reduction of facility and supply expenses, and elimination and reduction of particular kinds of services being provided by certificated employees. Before March 3, 2008, the District's administrative staff prepared a recommendation that Dr. Shultz presented to the Board on March 3, 2008, concerning the reduction and elimination of particular kinds of services.

5. On March 3, 2008, the Board passed Resolution No. 13-07/08, which directed that certain services would be reduced or eliminated for the 2008-2009 school year and other matters. The resolution provided:

Resolution No. 13-07/08

(Education Code Sections 44949 and 44955)

WHEREAS, Sections 44949 and 44955 of the Education Code require action by the Governing Board in order to reduce or discontinue services and permit the layoff of certificated employees and;

WHEREAS, the Superintendent of the Fallbrook Union Elementary School District has recommended to the Governing Board that particular kinds of services be reduced or discontinued no later than the beginning of the 2008-2009 school year; and

WHEREAS, the Governing Board has determined that a reduction or discontinuance of particular kinds of services is needed no later than the beginning of the 2008-2009 school year; and

WHEREAS, the Governing Board has considered all positively assured attrition which has occurred as of this time, that is, all deaths, resignations, retirements and other permanent vacancies in reducing these services and, but for the attrition already assured, would have found it necessary to reduce additional particular kinds of services and/or full time equivalents.

NOW, THEREFORE, BE IT RESOLVED by the Governing Board of the Fallbrook Union Elementary School District:

1. That all of the foregoing recitals are true and correct.
2. That because of the financial constraints resulting from revenue being insufficient to maintain the current levels of programs, and necessary program changes resulting therefrom, the Governing Board hereby determines to reduce or discontinue those particular kinds of services and positions set forth in Exhibit A, attached hereto and incorporated by reference herein, listing by level, subject field or classification, and full time equivalent, those particular kinds of services and positions which shall be reduced or eliminated no later than the beginning of the 2008-2009 school year.
3. That because of the discontinuance and reduction of particular kinds of services listed in Exhibit A it is necessary to terminate at the end of the 2007-2008 school year permanent and/or probationary certificated employees equal in number to the positions affected in the reduction or discontinuance of the above-described service.
4. That the seniority and qualifications of some of the employees in the services being reduced or eliminated are such that they have displacement rights by virtue of seniority, and that no employee will be terminated while a less senior employee is retained to render a service which the more senior employee is both certificated and competent to render, except as permitted by law.
5. Subject to requirements (if any) within the Educational Employment Relations Act, that for purposes of "bumping" (displacement) rights and the determination of "competency" with the meaning of Education Code Section 44955(b), to the extent such might apply, "competency" shall be based upon possession and current filing (no later than March 1, 2008) of a preliminary or clear credential for the subject matter into which the employee would bump for the 2008-2009 school year and highly qualified status within the meaning of the No Child Left Behind Act.
6. That in selecting those probationary and permanent certificated employees who shall receive notice of termination pursuant to this Resolution, Education Code Section 44955 requires the Governing Board to state specific criteria to be used in determining the order of termination of certificated employees who first rendered paid service to the Governing Board in a probationary position on the same date.
7. That the criteria to be used in determining the order of termination of certificated employees who first rendered paid service to the Governing Board in a probationary position on the same date are listed and described in Exhibit B, which is attached hereto and incorporated by reference herein.
8. That the criteria to be used in determining the order of termination of certificated employees who first rendered paid service to the Governing Board in a probationary position on the same date, listed and described in Exhibit B, are based solely on the needs of the Fallbrook Union Elementary School District and the students thereof.
9. That in selecting those probationary and permanent certificated employees who shall receive notice of termination pursuant to this Resolution, Education Code Section 44955,

subdivision (d), allows the Governing Board to deviate from terminating a certificated employee in order of seniority.

10. That the criteria that will be applied to deviate from terminating certificated employees who may otherwise be terminated by order of seniority will be based on the criteria within Education Code section 44955, subdivision (d); the Governing Board hereby delegates, pursuant to Education Code section 35161, to the District Superintendent and the Superintendent's designee(s), the implementation and determination of such deviations from the order of seniority in terminating the District's certificated employees.

11. That the Superintendent or his designated representative(s) will send appropriate notices to all employees possibly affected by virtue of the reduction and discontinuance of particular kinds of service.

12. That the action of this Governing Board will not, in any way, be considered to prejudice the rights of certificated employees to whom notice will be given as to the Superintendent's consideration of any proposed decision by an administrative law judge in the event a hearing is requested by any employee.

6. Exhibit A to the resolution described the particular kinds of services that were being eliminated or reduced. It provided:

PARTICULAR KINDS OF SERVICES AND FULL TIME EQUIVALENTS TO BE REDUCED OR DISCONTINUED

Particular Kinds of Services	Number of Full Time Equivalent Positions
Assistant Principal services*	3.0
Counselor services: elementary*	2.4
Counselor services: junior high school*	2.6
Lead Teacher services*	4.4
VAPA (vocal and performing arts) Coordinator services*	0.5
Teacher on special assignment services (district-wide resource teacher)*	1.0
Junior high school language arts teaching services	3.0
Third through sixth grade SEI teaching services* (newcomer teacher)	1.0
Kindergarten through sixth grade classroom teaching services	18.5
Program support personnel services*	2.0
Total:	38.4

* These services are being discontinued.

7. Exhibit B to the resolution contained the Board's tie-breaking criteria for employees having the same seniority date. It provided:

**Criteria to be Applied to Determine Order of Layoff
for those Certificated Employees with the Same Date
of First Paid Probationary Service**

The following criteria will be applied in the priority order indicated to determine which certificated employees meet the particular needs of the District and its students in the event that a seniority tie needs to be broken. Criteria referencing credentials, authorizations, certificates, or the like, require completion of procedures required by law for those documents to be legally effective, such as possession and, when applicable, filing with the county office of education. These criteria meet and are based solely upon the particular needs of the District and its students at the present time:

1. Highly qualified within the meaning of the No Child Left Behind Act.
2. Persons with preliminary or clear credentials.
3. ~~Persons with one or more credentials.~~ Persons with more than one credential.
4. Persons with preliminary or clear credentials or certificates authorizing services in classes for limited or non-English proficient students priority listed as follows:
 - A. Bilingual Cross Cultural Language and Academic Development (BCLAD)
 - B. Cross Cultural Language and Academic Development (CLAD), SB 1969 or SB 395 Certificates
 - C. Language Development Specialist Certificate
 - D. Supplemental Authorization for English as a Second Language
 - E. Specially Designated Academic Instruction in English (SDAIE)
5. Persons with supplementary authorization to teach Math and/or Science.
6. Persons with other supplementary authorizations.
7. Persons with Reading Specialist certification.
8. Persons holding a School Nurse certification.
9. Earliest teaching experience in the District in any capacity, including as a day to day certificated substitute.
10. Random Drawing

8. In preparation for possible layoffs, the administrative staff reviewed the District's credentialed employee seniority list. That list contains the names of all credentialed employees from the most senior employee to the most junior employee in descending order of longevity of service; the employee's seniority date (first date of paid service with District on a probationary basis); whether the employee was permanent, probationary 2, or probationary 1; the employee's current assignment; the site where the employee provided services; the type of credential the employee held; and what percent of full time service the employee provided, with 1.00 FTE (full time equivalent) indicating the employee held full time employment.

The District's seniority list was sent to the employees' association and employees were invited to make any changes or corrections to the seniority list.

9. Ms. Monthei was assigned the task of revising the seniority list, preparing a certificated layoff tiebreaker matrix, and preparing a certificated layoff bump analysis. In order to determine who should receive a preliminary layoff notice, Ms. Monthei had to review the Board's resolution, apply the reductions of particular kinds of services to the seniority list, and determine whether employees being displaced as a result in the elimination or reduction of a particular kind of service could displace a more junior employee in an area in which the more senior employee was competent and qualified to render services. The purpose of this exercise was to meet the Education Code retention requirements.

The Board's resolution called for the elimination or reduction of 38.4 FTEs in particular kinds of services. Ms. Monthei determined who the 39 most recently hired certificated employees were that were providing the services that were scheduled to be eliminated under the resolution.

10. On or before March 15, 2008, each certificated employee who is party to this proceeding was given notice that the Superintendent had recommended that his or her services with the District would be terminated at the conclusion of the current school year and that his or her services would not be needed by the District for the 2008-2009 school year. Each employee was notified of the right to a hearing. The preliminary notices were duly served on the 39 employees, 19 of whom requested a hearing. An accusation packet was served on the 19 employees requesting a hearing, and 15 of those employees filed a notice of defense. All jurisdictional requirements were met.

The Administrative Hearing

11. On April 25, 2008, the record in the administrative hearing was opened. The District gave an opening statement. Jurisdictional documents were presented, a written stipulation to jurisdictional facts was received, respondents' joint amended notice of defense was filed, opening statements were given, sworn testimony and documentary evidence was received, closing arguments were given, the record was closed and the matter was submitted.

The Particular Kinds of Services

12. The services identified by the Board for reduction or elimination in Exhibit A (Factual Finding 6) were particular kinds of services that could properly be reduced and discontinued. The reduction and elimination of those services was neither arbitrary nor capricious, and the reduction or elimination of those services constituted a matter well within the proper exercise of the Board's discretion. The layoff related to the welfare of the District, the schools, and the students. No services were reduced below levels required by federal and state laws.

The Seniority List

13. The District maintains a credentialed seniority list. With few exceptions, which do not impact the layoffs in this matter, but which could affect the order of rehiring, the seniority list was accurate. The District agreed to make corrections to the seniority list as appropriate following the hearing in this matter.

The District's Layoff Procedure

14. According to Assistant Superintendent Whitlock, the District staff reviewed the Board's resolution and determined who the most junior employees were who were providing the particular kinds of services that were scheduled to be reduced or eliminated under the Board's resolution. For these employees, the District attempted to determine if a displaced employee could "bump" a more junior employee.¹ The Board adopted a tie-breaking procedure, a method by which employees having the same seniority date could be ranked for layoff purposes. The tie-breaking criteria were based on the welfare and needs of the students. The use of the tie-breaking procedure was not necessary to resolve any dispute related to the layoffs in this matter. Through this elimination process, the District correctly determined which employees should receive preliminary layoff notices.

Preliminary layoff notices were sent to 39 employees, essentially the same number of FTEs that were being reduced or eliminated under the Board's resolution. Ultimately, no junior employee was retained by the District to provide services a more senior employee was available to provide.

LEGAL CONCLUSIONS

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

2. A school board's decision to reduce or discontinue particular kinds of services (PKS) need not be tied to any statistical computation, such as a reduction in the number of students. The number of terminations through PKS reductions depends totally upon the decision about how many services to reduce. It is within a board's discretion to determine the extent to which it will reduce a particular service. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627.)

A school board may "reduce services" by eliminating certain types of service or by reducing the number of district employees providing such services. A school board's decision to reduce or discontinue a particular kind of service is not unfair or improper simply

¹ A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who holds that position.

because the school board made a decision it was empowered to make. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

3. Education Code section 44955, subdivisions (b) and (c), sets forth a general rule requiring school districts to retain senior employees over more junior employees and to retain permanent employees over temporary employees. Any exception to this general rule must be based on statute. For employees hired on the same date, Education Code section 44955, subdivision (b) provides:

“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.”

4. Seniority determines the order of dismissals; between employees with the same first date of paid service, the order of termination is determined on the “basis of the needs of the district and its students.” Senior employees are given “bumping” rights and will not be terminated if junior employees are being retained who render services which the more senior employee is certificated and competent to render. (*Alexander v. Board of Trustees* (1983) 139 Cal.App.3d 567.)

A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or “bump” a junior employee who holds that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.)

5. As a result of the District’s lawful reduction of particular kinds of services, cause exists under Education Code section 44955 for the District to give notice to all respondents who were served with preliminary layoff notices that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2008-2009 school year.

This conclusion is based on all Factual Findings and on all Legal Conclusions.

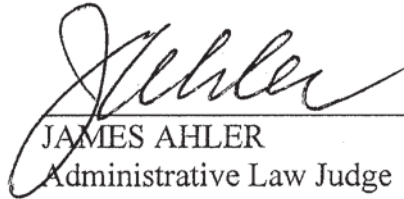
RECOMMENDATION

It is recommended that the Board give notice to all respondents previously served with a preliminary layoff notice that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2008-2009 school year.

These employees include Devon Alcorn, Candelaria Angeles, Guadalupe Araiza, William Billingsley, Stephanie Blinco-Martinez, Crystal Branker, Laura Brumund, Catherine Cade, Erin Corduan, Jennifer Cox, Caryl Crowell, Heather Dannecker, Claire Dewhirst, Mark Epley, Nancy Foster, Susan Freije, Claire Gingerich, Catherine Girkins, Stephanie Hall, Katie Hamro, Laura Herter, Emily Just, David Kootman, Megan Leech, Caron Lieber, Inelda Luna, Jennifer Matsumoto, Claudia Miramontes, Jennifer Moore, Kerry Pinto, Debra

Ralston, Christa Rhine, Amy Schwenke, Catherine Shabestari, James Sheffield, Heather Sherer, Keely Smith, Leticia Stamos, and Steven Stillman.

DATED: 4/29/08



JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings