

BEFORE THE
PLUMAS COUNTY SUPERINTENDENT OF SCHOOLS
COUNTY OF PLUMAS
STATE OF CALIFORNIA

In the Matter of the Statement of
Reduction in Force Against:

CAROL BERNARD,

Respondent.

Case No. 2014030850

PROPOSED DECISION

This matter was heard by Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, on April 28, 2014, in Quincy, California.

Attorney Michelle L. Cannon of the law firm Kronick, Moskovitz, Tiedemann & Girard represented Micheline Miglis, Plumas County Superintendent of Schools.

No one appeared for or on behalf of respondent Carol Bernard.

Evidence was received, the record was closed, and the matter was submitted for decision on April 28, 2014.

FACTUAL FINDINGS

1. Superintendent Miglis's actions, as well as those of the staff of the Plumas County Office of Education (COE), were taken solely in their official capacities.

2. On March 13, 2014, Superintendent Miglis adopted Resolution No. 1314-04 authorizing the reduction or discontinuance of particular kinds of services (PKS) of the COE and affecting 9.33 Full Time Equivalent (FTE) certificated positions.

3. Resolution No. 1314-04 states that it will be necessary to reduce or discontinue the following PKS of the COE, and to decrease a corresponding number of certificated employees by the COE no later than the beginning of the 2014-2015 school year:

| PKS | FTE |
|--|-------------|
| FTE 7-12 Opportunity Instruction | 2 .00 |
| FTE CTE Greenhouse Instruction | .17 |
| FTE CTE CAD Instruction | .17 |
| FTE CTE Construction Instruction | .67 |
| FTE CTE Woodshop Instruction | .50 |
| FTE CTE MS Office Instruction | .83 |
| FTE CTE Career Choices Instruction | .33 |
| FTE CTE Career Discoveries Instruction | .17 |
| FTE CTE Graphic Design Instruction | .17 |
| FTE CTE Keyboarding Instruction | .17 |
| FTE CTE Consumer Science Instruction | .17 |
| FTE CTE Desktop Publishing Instruction | .33 |
| FTE CTE Yearbook Instruction | .17 |
| FTE CTE Multimedia Instruction | .17 |
| FTE CTE Welding Instruction | .17 |
| FTE CTE Automotive Instruction | .33 |
| FTE CTE Introduction to Automotive Instruction | .17 |
| FTE CTE Mechanics Instruction | .33 |
| FTE CTE Culinary Arts Instruction | 2.17 |
| FTE CTE Pastry Instruction | .17 |
| Total | 9.33 |

4. On March 14, 2014, Superintendent Miglis timely served a letter entitled “NOTICE OF INTENT TO REDUCE OR ELIMINATE” (Notice of Intent) on respondent Bernard, a certificated employee of the COE. The Notice of Intent advised that Superintendent Miglis had determined that respondent Bernard be given preliminary written notice that her services might not be required for the 2014-2015 school year, due to reductions and/or eliminations in PKS as set forth in Resolution No. 1314-04.

5. Respondent Bernard timely filed a Request for Hearing to determine whether there was cause for not reemploying her for the 2014-2015 school year.

6. On April 7, 2014, Superintendent Miglis made and filed the Statement of Reduction in Force, and caused it to be served on respondent Bernard. Included with the Statement of Reduction in Force was a blank Notice of Participation in the Reduction in Force Hearing for respondent Bernard to sign and return, as well as a Notice of Hearing giving notice of the date, time, and location of the administrative hearing on the Statement of Reduction in Force.

7. Respondent Bernard timely signed and returned the Notice of Participation in the Reduction in Force Hearing.

8. On April 24, 2014, an Amended Notice of Hearing was issued on behalf of Superintendent Miglis. While the Notice of Hearing and Amended Notice of Hearing both noticed the administrative hearing for April 28, 2014, at 10:00 a.m., they each specified a different location in Quincy, California. The evidence established that respondent Bernard was properly served with the Notice of Hearing, but not the Amended Notice of Hearing. However, the evidence also established that neither respondent Bernard nor anyone acting on her behalf appeared at the location stated in the Notice of Hearing or contacted anyone at that location to inquire about the hearing at any time between 7:30 a.m. and 4:00 p.m. on April 28, 2014. Nor did she or anyone acting on her behalf appear when the matter was called for hearing on the date and at the time and location stated in the Amended Notice. Therefore, the persuasive evidence established that respondent Bernard received proper notice of the administrative hearing, and jurisdiction for the subject proceedings exists pursuant to Education Code sections 44949 and 44955. An evidentiary hearing was conducted as a default proceeding pursuant to Government Code section 11520.

9. The reduction or discontinuance of the particular kinds of services set forth in Resolution No. 1314-04 are related to the welfare of the schools and the students thereof within the meaning of Education Code sections 44949 and 44955.

10. No permanent or probationary employee with less seniority is being retained to render a service for which respondent Bernard is certificated and competent to perform.

LEGAL CONCLUSIONS

1. Education Code section 44949 provides, in pertinent part, the following with regard to Superintendent Miglis's jurisdiction to lay off certificated employees:

(a)(1) 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 for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or in the case of a school district that has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

(2) Until the employee has requested a hearing as provided in subdivision (b) or has waived his or her right to a hearing, the notice and the reasons therefor shall be confidential and shall not be divulged by any person, except as may be necessary in the performance of duties. However, the violation of this requirement of confidentiality, in and of itself, shall not in any

manner be construed as affecting the validity of any hearing conducted pursuant to this section.

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the employee. 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. The notice provided for in subdivision (a) shall advise the employee of the provisions of this subdivision.

(c) If a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency in that chapter, except that all of the following shall apply:

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

[¶]...[¶]

(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 of the schools. 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. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds.

(d) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.

Superintendent Miglis complied with all notice and jurisdictional requirements set forth above, and there was no evidence to the contrary.

2. Education Code section 44955, subdivision (b), provides the following with regard to Superintendent Miglis's authority to lay off certificated employees:

Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, whenever the governing board determines that attendance in a district will decline in the following year as a result of the termination of an interdistrict tuition agreement as defined in Section 46304, whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions 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.

3. When a county superintendent of education decides to reduce or discontinue particular kinds of services and a corresponding number of certificated employees, the

general rule is that the order of layoffs must be determined by seniority. (Ed. Code, § 44955, subd. (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.”]; *Davis v. Gray* (1938) 29 Cal.App.2d 403, 406.) This general rule is applied equally to probationary certificated employees. (*Krausen v. Solano County Junior College District* (1974) 42 Cal.App.3d 394, 402.)

4. After a county superintendent of education decides to reduce or discontinue services, the superintendent’s first step is to identify those certificated employees providing the particular services to be reduced or discontinued. (Ed. Code, § 44955, subd. (b).) The superintendent has a mandatory duty to make an initial determination whether those certificated employees who are performing the services to be reduced or discontinued are certificated and competent to perform the services of any certificated employee with less seniority who is being retained. (*Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334, 340.) But once the superintendent makes the initial determination, the burden shifts to the certificated employee asserting the right to bump the junior employee to prove that the former is certificated and competent to perform the service for which the latter is being retained. (*Moreland Teachers Association v. Kurze* (1980) 109 Cal.App.3d 648, 656.)

5. No permanent or probationary teacher with less seniority is being retained to render a service for which respondent Bernard is certificated and competent to perform.

6. Cause exists to give notice to respondent Bernard that her services will be reduced or will not be required for the 2014-2015 school year because of the reduction or elimination of particular kinds of services.

RECOMMENDATIONS

Notice may be given to respondent Carol Bernard that her services will be reduced or will not be required for the 2014-2015 school year.

DATED: May 1, 2014

COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings