

BEFORE THE
GOVERNING BOARD OF THE
GOLD OAK UNION SCHOOL DISTRICT
STATE OF CALIFORNIA

In The Matter of the Accusation
(Reduction In Force) Against:

SUSAN LANDON,
THERESA ROBINSON,

Respondents.

OAH No. N2006040075

PROPOSED DECISION

Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 5, 2006, in Placerville/Pleasant Valley, California.

Heather Edwards, Attorney at Law of Girard, Vinson & Trujillo LLP, represented the Gold Oak Union School District (District).

A. Eugene Huguenin, Jr., Attorney at Law of Huguenin Law Office, represented respondents Susan Landon and Theresa Robinson.¹

The matter was submitted and the record closed on May 5, 2006.²

¹ Carol Rowberg was named in the Accusation as a respondent. She did not file a Notice of Defense to the Accusation and did not appear at the hearing. Due to her failure to file a Notice of Defense, Carol Rowberg is not considered a respondent in this hearing.

² The hearing of this matter was continued from April 17, 2006 to May 5, 2006, a period of eighteen days. The parties executed written waivers waiving the requirement of Education Code section 44949, subdivision (e)(c), that the Administrative Law Judge submit the proposed decision to the governing board by May 7, 2006, and Education Code section 44955, subdivision (c), requiring that the governing board provide notice of termination of services before May 15, 2006.

The waivers acknowledged that the dates for submission of the proposed decision to the governing board and the date by which the board shall provide written notice of termination of services are extended for eighteen days pursuant to Education Code section 44949, subdivision (e).

FACTUAL FINDINGS

1. Richard Williams is the Superintendent of the District. His actions and the actions of the Governing Board of the District (Governing Board) were taken in their official capacities. The District is comprised of three schools; Gold Oak School (grades K-5), Pleasant Valley School (grades 6-8) and a Charter School (grades 4-8).

2. On March 14, 2006, the District served on each respondent a written notice that it had been recommended that notice be given to respondents, pursuant to Education Code sections 44949 and 44955, that their services would not be required for the next school year. Each written notice set forth the reasons for the recommendation and noted that the Board had passed a Resolution reducing certificated staff by 2.5 full-time equivalent (FTE) certificated positions.

Respondents timely requested in writing a hearing to determine if there is cause for not re-employing them for the ensuing school year.

3. The Superintendent made and filed Accusations against each of the employees who requested a hearing. The Accusations, with required accompanying documents and blank Notices of Defense, were timely served on those employees.

4. Respondents timely filed Notices of Defense to the Accusation.

5. Respondents in this proceeding are certificated employees of the District.

6. On March 13, 2006, at a regular meeting of the Governing Board, the Governing Board was given notice of the Superintendent's recommendations that certificated employees holding 2.5 FTE positions be given notice that their services would not be required for the next school year and stating the reasons for that recommendation.

7. On March 13, 2006, the Governing Board adopted Resolution No. 06-03-01 providing for the reduction or elimination of particular kinds of services totaling 2.5 FTE (2 FTE in elementary classroom instruction at Gold Oak School, and .5 FTE counseling).

8. The Governing Board determined that the average daily attendance (ADA) in all schools of the District for the first six months in which school was in session for the 2005-2006 school year declined below that of the corresponding period of the previous school years. The Governing Board determined that the ADA had declined as follows:

03/04 school year - ADA = 695.64

04/05 school year - ADA = 716.28

05/06 school year - ADA = 681.51

Accordingly, the Governing Board resolved to reduce and eliminate teaching services and counseling services affecting employment of 2.5 FTE certificated positions. The 2 FTE elementary classroom instruction positions are at issue in this hearing.

9. The District maintains a Certificated Seniority List which contains employees' seniority dates (first date of paid service), status (tenured, probationary or temporary) and classroom assignments. The District also maintains records of credentials and authorizations of all certificated employees.

10. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. Denise Lambert is the least senior certificated employee in the District, with a first date of paid service of 11/7/05. She holds a multiple subject credential for elementary school and taught 4th grade in the 2005-2006 school year. She tendered her resignation to the District before the Governing Board adopted Resolution No. 06-03-01.

11. Susan Landon, Teresa Robinson and Christie Clary are the remaining least senior certificated employees in the District. Each has 8/15/05 as her first date of paid service. Each holds a professional clear multiple subject credential for elementary school and a CLAD certificate. Robinson currently teaches grades K and 1 in Gold Oak Elementary School. Landon currently teaches grade K in Gold Oak Elementary School. Clary currently teaches elementary classes in the Charter School.

12. The District determined to "skip" Clary because her services were required in the Charter School. Although Clary holds the same credential as Landon and Robinson, she has college coursework in algebra and math and currently teaches pre-algebra and algebra in grades 4 through 8 in the Charter School. Education Code section 44955, subdivision (d) (1) provides in pertinent part that a school district may deviate from terminating a certificated employee in order of seniority if the district demonstrates a specific need for personnel to teach a specific course or course of study. Landon and Robinson did not present evidence that either was competent to teach these mathematics classes. The District's determination to retain Clary because of her competence in mathematics was appropriate and was in the best interests of the students in the District.

13. Landon and Robinson, as the least senior certificated employees in the District, would ordinarily be subject to a lay off, properly instituted under Education Code section 44955. However, the District's Resolution is flawed in two respects, and the flaws are fatal to the District's efforts to lay off Landon and Robinson.

Education Code section 44955, provides in pertinent 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 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 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 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.... (emphasis added)

14. In keeping with the mandates of Education Code section 44955, subdivision (b), the District did calculate the ADA of all schools in the District for the current school year and the previous two school years. However, the District's calculations were based on ADA figures gleaned from the first of two State reporting periods (P1). The P1 reporting period contains ADA reporting from the first date of school until October or December.³ The statute mandates that the District calculate the ADA data for the first six months in which school is in session. The P1 reporting period the District relied upon in calculating ADA did not comply with the statute's mandate.

15. Moreover, once a District properly determines that its ADA has declined, it may only terminate the services of not more than a corresponding percentage of the certificated employees of the district. There is no evidence that the District calculated the percentage of ADA decline and the corresponding percentage of certificated FTEs. Even had the District's ADA calculations been accurate, there would be no cause to terminate 2.5 FTEs. From the District's data, the decline in ADA between 04/05 and 05/06 is 34.77 (716.28 minus 681.51). This is a percentage decline of .0485. A corresponding percentage of the 38 FTE certificated employees in the District would be 1.843 FTE (.0485 percentage decline x 38 FTEs= 1.83 FTE), less than the 2.5 FTE reduction the District proposed.

16. The District's Resolution to reduce certificated employees, due to decline in ADA, did not comply with Education Code section 44955, subdivision (b). However, the District also resolved to eliminate or reduce particular kinds of services; specifically 2 FTE in elementary classroom instruction at Gold Oak School and .5 FTE counseling. Under Education Code section 44955, subdivision (b), a reduction or elimination of PKS is not contingent upon a reduction in ADA. Here, the District properly resolved to eliminate PKS for the ensuing school year.

³ Superintendent Williams testified that he was unsure whether the ADA data on the P2 was filed in October or December of the year.

Nevertheless, the District's efforts to lay off Landon and Robinson in conformance with this Resolution must also fail. This is because the District does not intend to eliminate 2 PKS of elementary classroom instruction in the school year 2006-2007. The evidence revealed that the reduction in services is actually taking place at the middle school, resulting in the displacement of two senior teachers. As evidenced by the testimony of Superintendent Williams and three "Job Opening Announcements" for elementary school teachers at Gold Oak School, it is clear that the District intends to fill the positions now held by Landon and Robinson, with senior teachers from Pleasant Valley Middle School. According to Superintendent Williams, the District is reorganizing the middle school and as a result will have to involuntarily transfer some of the middle school teachers. The District is currently advertising three elementary teaching positions internally in the hopes that some interested middle school teachers will voluntarily transfer to elementary school positions. This strategy would avoid involuntary reassignments of middle school teachers.

17. The District's PKS reduction does not comply with Education Code section 44955, subdivision (b). The PKS that is actually being reduced is an unknown FTE of middle school instruction, not 2 FTE in elementary classroom instruction at Gold Oak School.⁴

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955. All notices and other jurisdictional requirements of sections 44949 and 44955 were met.

2. Legal cause does not exist under Education Code section 44955, subdivisions (a) and (b), to deprive Landon and Robinson of their positions. As set forth in Factual Findings 1 through 15, the District did not establish a decline in ADA between the first six months of the 2005-2006 school year and a corresponding period of either of the two preceding school years. As set forth in Factual Findings 1 through 17, the District did not establish that 2 FTEs of elementary teaching at Gold Oak School were to be reduced or discontinued no later than the beginning of the 2006-2007 school year. A District may reduce services within the meaning of section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved."⁵ The burden is on the District to demonstrate that the reduction or elimination of the particular kinds of

⁴ The Board could have complied with Education Code section 44955, subdivision (b), and properly laid off Landon and Robinson, by specifying in the Resolution the PKS in middle school it intended to eliminate in the 2006-2007 school year. Landon and Robinson, as the most junior District employees could then be "bumped" by the senior teachers holding the eliminated middle school assignments.

⁵ *Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.

services is reasonable and that the District carefully considered its needs before laying off any certificated employee.⁶ The District has not met this burden.

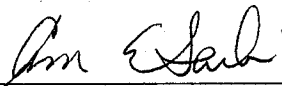
3. As set forth in the Factual Findings 1 through 17, and in the Legal Conclusions, cause does not exist to issue a final notice of layoff to Landon and Robinson.

ORDER

The Accusations against respondents Landon and Robinson are DISMISSED and preliminary notices of layoff served on these respondents are RESCINDED.

All other contentions and claims not specifically mentioned were considered and are DENIED.

DATED: May 11, 2006



ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings

⁶ *Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App. 3d 796, 807-808