

BEFORE THE GOVERNING BOARD
OF THE MANTECA UNIFIED SCHOOL DISTRICT
SAN JOAQUIN COUNTY
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

OAH No. 2010031653

CERTAIN CERTIFICATED PERSONNEL
EMPLOYED BY THE MANTECA
UNIFIED SCHOOL DISTRICT,

Respondents.

PROPOSED DECISION

Marilyn Anne Woollard, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 13, 2010, in Manteca, California.¹

Roberta L. Rowe, Attorney at Law, Lozano Smith, represented the Manteca Unified School District (District). Director of Certificated Personnel Dr. Margaret Barnett and Adult School Principal Diane Medeiros were also present on the District's behalf.

Thomas J. Driscoll, Jr., Attorney at Law, represented the respondents who are members of the Manteca Educators Association (MEA). These respondents are listed on Attachment A and are referred to as represented respondents. MEA President Ken Johnson and respondents Janice Mohler and Pamela Lauder were also present.

There were no appearances by or on behalf of any respondents who requested a hearing and were not represented by Mr. Driscoll. These respondents are listed on Attachment B and are referred to as unrepresented respondents.

A "Comprehensive Stipulation" (Stipulation) between the District and represented respondents, and other documentary evidence were admitted. The record was then closed and the matter was submitted for decision on May 13, 2010.

¹ Pursuant to the March 29, 2010 Order Granting Continuance, the statutory dates specified in Education Code section 44949, subdivision (c), for the proposed decision and in 44955, subdivision (c), for final notice of termination were extended for a period of time equal to the continuance, from the original April 1, 2010 hearing date to the May 13, 2010 hearing date. (Ed. Code, § 44949, subd. (e); see May 13, 2010 Order Regarding Case Status.)

FACTUAL FINDINGS

1. The Stipulation (Attachment C) is incorporated by reference in this Proposed Decision. As set forth in the Stipulation, on March 9, 2010, the District's Governing Board (Board) adopted Resolutions 09/10-59 and 09/10-62 reducing or discontinuing particular kinds of services (PKS) for the 2010-2011 school year. PKS reductions outlined in Resolution 09/10-59 totaled 68.5 full-time equivalent (FTE) certificated positions. PKS reductions outlined in Resolution 09/10-62, for the District's Adult School Services, totaled 15 FTE positions. The Board also adopted resolutions establishing competency standards (Resolution 09/10-60) and tie-breaking criteria (Resolution 09/10-61).

2. *Jurisdiction:* All jurisdictional requirements were satisfied.

Prior to March 15, 2010, the District gave notice to ninety-nine (99) certificated employees that their services would be reduced or eliminated for the 2010-2011 school year. Seventy-five (75) certificated employees timely requested a hearing to determine if there was cause for not reemploying them for the 2010-2011 school year. On March 29, 2010, the District served these respondents with an Accusation, Notice of Defense form and all required supporting documents. A Notice of Defense was timely filed on behalf of all represented respondents.

3. *Status of Unrepresented Respondents:* Mr. Driscoll did not represent four respondents who requested a hearing and whose layoff notices were not rescinded by the District.²

a. Adult School teachers Kelli Huarte, Steven Jesus, and Amber Land-Denoyer requested a hearing and chose to represent themselves. On May 12, 2010, these unrepresented respondents voluntarily withdrew their requests for a hearing in this matter by signing and submitting written forms to this effect with the District.

b. Kindergarten teacher Lucia Aguilar requested a hearing. After being served with the Accusation, Ms. Aguilar did not file a Notice of Defense and she did not appear at the hearing. Pursuant to Education Code section 44949 and Government Code section 11506, subdivision (c), Ms. Aguilar waived her right to a hearing.

4. *The Stipulation Binds All Remaining Respondents:* Based on the actions described in Finding 3, none of the unrepresented individuals retained any right to participate in the layoff hearing at the time the hearing commenced. As a consequence, the Stipulation is dispositive for all respondents remaining in this

² The District rescinded the layoff notices issued to eight unrepresented respondents.

action. No unresolved issues between the District and the represented respondents were raised at the hearing.

5. *Particular Kinds of Services:* There was no dispute that the particular kinds of services the Board resolved to reduce or discontinue are particular kinds of services that may be reduced or discontinued.

6. *Layoff Notices Rescinded:* Pursuant Stipulation paragraph 20, the complete list of certificated employees whose layoff notices were rescinded by the District and who will be reemployed for the 2010-2011 school year is set forth in Exhibit 16 (Attachment D), incorporated by reference.

Pursuant Stipulation paragraph 16, the 2010-2011 school year assignments for respondents Jennifer Young and Lisa Quaresma will be reduced to 80 percent positions respectively. The layoff notices to these two respondents are rescinded to 80 percent of a full-time assignment.

7. *Final Layoff Notices:* Pursuant Stipulation paragraph 21 and Exhibit 17 (Attachment E) incorporated by reference, final layoff notices will be issued to the least senior certificated employees affected by the reduction or discontinuance of particular kinds of services set forth in Resolutions 09/10-59 and 09/10-62.

Final Layoff Notices will be issued to the following kindergarten through twelfth grade teachers: Janice Mohler; Landa Wilson Jones; Erin Williams; Katherine Francis (Machado); Anna Duarte; Bruce Hunter; Lucia Aguilar; Tracey Chelgren; and Tony Whitesel. Final Layoff Notices will be issued to the following adult education teachers: Debbie Brannon (20.5 hours); Pam Lawder (3 hours); Amber Land-Denoyer; Silvia Mendez; Bob Casazza; Steven Jesus; and Kelli Huarte.

8. No more junior employees are being retained to render services that more senior respondents are certificated and competent to perform.

9. The District's reductions and discontinuances of particular kinds of services relate solely to the welfare of its schools and pupils.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. As set forth in Factual Findings 1 and 2 and the Stipulation, all notices and jurisdictional requirements contained in those sections were satisfied.

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

As set forth in Factual Findings 1 and 5, the services identified in the Resolutions are particular kinds of services that may be reduced or discontinued under Education Code sections 44949 and 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuance of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949 and 44955.

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

ORDER

1. Final Layoff Notices shall be given to the following certificated employees that their services will not be required for the 2010-2011 school year because of the reduction and discontinuance of particular kinds of services:

Janice Mohler
Landa Wilson Jones
Erin Williams
Katherine Francis (Machado)
Anna Duarte
Bruce Hunter
Lucia Aguilar
Tracey Chelgren
Tony Whitesel

Debbie Brannon (20.5 hours)
Pam Lawder (3 hours)
Amber Land-Denoyer
Silvia Mendez
Bob Casazza
Steven Jesus
Kelli Huarte

2. Notice shall be given in inverse order of seniority.

DATED: May 26, 2010

MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings

**ATTACHMENT A:
REPRESENTED RESPONDENTS**

Set forth in Exhibit 7 [Copy Attached]

ATTACHMENT B

UNREPRESENTED RESPONDENTS

Lucia Aguilar	No Notice of Defense; Did Not Appear at Hearing
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Kelli Huarte	Request Withdrawn
Steven Jesus	Request Withdrawn
Amber Land-Denoyer	Request Withdrawn

ATTACHMENT C
COMPREHENSIVE STIPULATION

Fully executed copy attached

ATTACHMENT D

EXHIBIT 16: EMPLOYEES RESCINDED FROM LAYOFF

A copy of Exhibit 16 is attached.

ATTACHMENT E

EXHIBIT 17: EMPLOYEES SUBJECT TO FINAL LAYOFF NOTICE

A copy of Exhibit 17 is attached.