

BEFORE THE
GOVERNING BOARD OF THE
METROPOLITAN EDUCATION DISTRICT
COUNTY OF SANTA CLARA
STATE OF CALIFORNIA

In the Matter of the Statement of Reduction
in Force of Certificated Employee

OAH No. 2017031425

JOHN BETTS,

Respondent.

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on May 9, 2017, in San Jose, California.

Adam J. Fiss and Maggy Athanasious, Littler Mendelson, P.C., represented the Metropolitan Education District.

Christopher E. Schumb, Attorney at Law, represented respondent John Betts.

The matter was submitted for decision on May 9, 2017.

FACTUAL FINDINGS

1. Alyssa Lynch made and filed the Statement of Reduction in Force in her official capacity as the superintendent of the Metropolitan Education District (District). The District offers a Regional Occupational Program (ROP) that provides career technical education (CTE) classes to high school students from nearby, participating high schools.

2. On March 8, 2017, the governing board of the District adopted Resolution No. 08-03-08-17 (PKS Resolution), reducing or discontinuing particular kinds of services for the 2017-2018 school year, and directing Superintendent Lynch to send appropriate notices to all

employees affected by the reduction or elimination of services.¹

3. The PKS Resolution identified the services to be reduced no later than the beginning of the 2017-2018 school year as:

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|--|----------------------|
| Teacher, Engineering for Manufacturing | 0.5 FTE ² |
| Teacher, Cybersecurity | 0.5 FTE |
| Teacher, Mobile App Design and Computer Coding | 0.5 FTE |
| Teacher, Pharmacy Careers | 0.5 FTE |

The District subsequently rescinded the Cybersecurity, Mobile App Design and Computer Coding and Pharmacy Careers layoff notices. As a result of the reduction in force identified in the PKS Resolution, the District will not offer the Engineering for Manufacturing course next year.

4. The services set forth in the governing board's PKS Resolution are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955. No service is being reduced below a mandated level.

5. Pursuant to Education Code section 44955, subdivision (b), when a governing board reduces particular kinds of services resulting in a decrease in the number of certificated, permanent employees, the services of a permanent employee may not be terminated if another employee with less seniority is retained to render a service that the more senior employee is "certificated and competent to render."

6. Respondent Betts is a part-time teacher at the District (0.50 FTE). He teaches the Engineering for Manufacturing course. Respondent is certificated and competent to teach the Engineering for Manufacturing course; however, he is not certificated to teach any other course offered by the District.

7. On March 13, 2017, Superintendent Lynch served respondent Betts with written notice of her recommendation that his services would not be required for the 2017-2018 school year. The notice set forth the reasons for the recommendation.

8. Respondent Betts timely requested a hearing to determine if there was cause for the reduction of his services for the ensuing year. The District timely served respondent with a packet which included a statement to respondent, the statement of reduction in force, copies of appropriate Education and Government Code sections, a notice of participation and

¹ On March 8, 2017, the governing board adopted tie breaking criteria in Resolution No. 09-03-08-17. The tie breaking criteria were not used because there are no employees who became employed on the same date as respondent Betts.

² Full-Time Equivalent.

a notice of hearing. Respondent Betts filed a timely notice of participation. All prehearing jurisdictional requirements have been met.

Basis for PKS Resolution and Layoff Notice

9. Meagan Azevedo, the District's Human Resources Director, testified at hearing. She was involved in the layoff process. The District ties its classes to the current labor market, and the tools and education students need in order to succeed in that market. The District reviews and evaluates its course offerings based on viability and student interest. The District prepares materials for high school students to consider and assists teachers in recruiting students for their courses. This year, the District determined that reducing the services identified in the PKS Resolution met the needs of the students. The cause for the reduction in particular kinds of services relates to the welfare of the schools and the pupils thereof.

10. In order to effectuate the reduction in force, Azevedo reviewed respondent's credential and history at the District. Respondent Betts has taught Engineering for Manufacturing (formerly known as Precision Machining) since being employed by the District on August 24, 2009. Respondent holds a Designated Subject, Vocational Education credential in the subjects of Machine Tool Operations and Machine Shop. Azevedo determined that respondent was not credentialed to teach any course that the District offers other than Engineering for Manufacturing. As a result of the PKS Resolution, the District will not offer Engineering for Manufacturing or any other course that respondent is credentialed to teach in the 2017-2018 school year.

11. The District's Seniority List identifies respondent's position as a 0.55 FTE. The teaching assignment is a 0.50 FTE. However, pursuant to the Collective Bargaining Agreement, part-time teachers are compensated for attending staff meetings. The Collective Bargaining Agreement states in pertinent part:

Part-time unit members will have their base FTE status increased by 0.05 FTE to compensate them for their attendance at such meetings, e.g., if a part-time unit member's base FTE status is 0.5 FTE, that status will be increased to 0.55 FTE.

If the teacher no longer holds a teaching position with the District, the teacher no longer attends staff meetings and the compensation for attending staff meetings is not owed. In other words, the 0.05 FTE compensation applies only to part-time teachers currently employed by the District.

Respondent's Evidence and Contentions

12. Respondent Betts has taught valuable skills to his students over the years. Respondent frequently receives calls from employers interested in hiring his students. He has been able to find jobs for every student who was interested in pursuing a career in

machining.

13. Respondent has attempted to increase the enrollment size of his class. He developed interesting exercises for students to experience during tours and made presentations at participating high schools. Unfortunately, only a handful of students visited his class during recent tours. The course name was changed from Precision Machining to Engineering for Manufacturing as the result of a collaborative effort with the District to increase interest in his class. In retrospect, it may have been detrimental.

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.

2. The services referenced in the PKS Resolution set forth in Factual Finding 3 are the kind which may be reduced or discontinued in accordance with applicable statutes and case law. (See Ed. Code, § 44955; *Campbell Elem. Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796; *Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167.) The decision to reduce or discontinue the services is neither arbitrary nor capricious but rather a proper exercise of the District's discretion.

3. The evidence established that no certificated employee with less seniority than respondent is being retained to render services which respondent is certificated and competent to perform. (Factual Finding 10.)

4. Respondent argues that because the Seniority List identifies his position as 0.55 FTE and the PKS Resolution reduces only 0.50 FTE, the PKS Resolution is defective, or in the alternative, that he should be entitled to keep a 0.05 FTE position. This argument is rejected. The teaching assignment is 0.50 FTE. The additional 0.05 FTE constitutes compensation paid to part-time teachers to attend staff meetings. If the teacher is no longer employed by the District, the compensation is not earned or paid.

5. In accordance with Education Code sections 44949 and 44955, cause exists for reduction of particular kinds of services of the District, beginning no later than the commencement of the 2017-2018 school year, as follows: Teacher, 0.5 FTE position in Engineering for Manufacturing. The cause relates solely to the welfare of the school and the pupils thereof within the meaning of Education Code section 44949. (Factual Findings 2, 3 and 10.)

6. Notice may be given to respondent Betts that his services will not be required for the 2017-2018 school year.

ORDER

Notice may be given respondent John Betts that his services will not be required for the 2017-2018 school year.

DATED: May 19, 2017

DocuSigned by:
Jill Schlichtmann
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JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings