

BEFORE THE
GOVERNING BOARD OF THE
GALT JOINT UNION ELEMENTARY SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations against :

PATRICIA BORDEN
JILL DALUZ
MELISSA DERALEAU
PATRICIA FUNK
DONNA GILL
KOREN HASENKAMP
MICHELLE HITE
DANIEL KEARNEY
BRIDGET LYDON
MANUEL MACIAS
JAIME MANGONON
JUAN MEJIA
KATHERINE MIKE
KARI MONTGOMERY
DEBRA NOVAK
MARLENE PACHECO
BETSY QUENGA
NATALIA QUIROGA-MURAOKA
ROBERT SEAGRAVES
KIMBERLEE SILVERIA
ELKA SORIA
KEVIN T. TARRANT
ADAM THOMAS
TRACEY VITALE
ERIC WEBER
COLLEEN WILSON
MICHELLE WOODS,

OAH No. 2011020894

Respondents.

PROPOSED DECISION

Karl S. Engeman, Administrative Law Judge, Office of Administrative Hearings,
State of California, heard this matter in Galt, California, on April 11, 2011.

Diana D. Halpenny, Attorney at Law, Kronick, Moskovitz, Tiedemann & Girard, represented the Galt Joint Union Elementary School District.

Ernest W. Tuttle, IV, Attorney at Law, represented all of the respondents except respondent Betsy Quenga who each represented herself.¹

Evidence was received, the hearing was closed, and the matter was submitted for decision on April 11, 2011.

PRELIMINARY JURISDICTIONAL DETERMINATION

At the outset of the hearing, District moved to dismiss those respondents who had initially requested a hearing but failed to file a Notice of Defense to the Accusation. Two of such respondents appeared and testified. Respondents Daniel Kearney and Eric Weber each acknowledged receipt of the Accusation and related documents served upon them by District. Each conceded his failure to file a Notice of Defense. District expressed its disinclination to waive respondents' failure to file a Notice of Defense. District's motion was therefore granted to the extent that failure to file a Notice of Defense constitutes a default pursuant to Government Code section 11520 barring respondents' participation in the administrative hearing.² Respondents Gill, Hite, Mike, Montgomery, Novak, Vitale, and Wilson also failed to file a Notice of Defense and appear at the administrative hearing. They are also considered to have defaulted.

FACTUAL FINDINGS

1. Karen Schauer, Ed.D., Superintendent of the Galt Joint Union Elementary School District (District), State of California, filed the Accusation in her official capacity as a public officer.

¹ Respondent Quenga participated as a party, but she did not raise any particular issue regarding her lay-off and presented no evidence to support any claim.

² Failure to timely request a hearing in response to the preliminary notice of a school district's intent not to reemploy a teacher constitutes a waiver of the teacher's right to a hearing pursuant to Education Code section 44949, subdivision (b). However, there is no similar waiver based on a teacher's subsequent failure to file a timely Notice of Defense to the Accusation. Education Code section 44949, subdivision (c), incorporates the formal hearing provisions of the California Administrative Procedure Act with specified exceptions including the requirement that the Notice of Defense be filed within 5 days rather than the usual 15 days. Government Code section 11520, subdivision (a), defines a default as the failure to file a notice of defense or to appear at the hearing.

2. On March 3, 2011, the Board of Trustees of the Galt Joint Union Elementary School District (Board) adopted Resolution No. 9, which reduced and/or discontinued particular kinds of certificated services no later than the beginning of the 2010-2011 school year in the amount of 51 full-time equivalent (FTE) certificated employees.

3. The Board further determined that it shall be necessary by reason of the reduction and/or discontinuance of services to decrease the number of permanent and/or probationary certificated employees at the close of the 2010-2011 school year by a corresponding number of FTE positions, and directed the Superintendent or her designee to proceed accordingly by notifying the appropriate employees to implement the Board's determination.

4. On or before March 15, 2010, the District served the affected certificated employees including respondents, with written notice, pursuant to Education Code sections 44949 and 44955, that their services would not be required for the next school year (Notice). Each Notice set forth the reasons for the recommendation. The Notice attached and incorporated by reference Resolution No. 9, which listed the services to be reduced or discontinued, resulting in a proposed reduction in the certificated staff by 51 FTE positions.

5. Requests for Hearing were timely filed by 37 certificated employees to determine if there is cause for not reemploying them for the next school year. Any certificated employee who failed to file a request for hearing has waived his or her right to a hearing, and may be laid off by the District.

6. The Superintendent made and filed Accusations against each of the certificated employees who requested a hearing. The Accusations with required accompanying documents and blank Notices of Defense (Accusation packet) were timely served on the respondents.

7. Each respondent is presently a certificated permanent or probationary employee of the District.

8. Jurisdiction for the subject proceeding exists pursuant to Education Code sections 44949 and 44955.

Services to be Reduced or Eliminated

9. The District provides educational services to approximately 3,900 students from kindergarten through the eighth grade (K-8) in six school sites. The District employs approximately 222 certificated employees. The District has experienced a decline in student enrollment during the 2010-2011 school year of approximately 100 students which has resulted in loss of revenue to the District and expects a similar sized decline in enrollment next school year. The District is facing a budget deficit of \$2.6 million for the 2011-2012 school year, out of a total operating budget of approximately \$30 million. This figure is based on a "worst case scenario" of receiving approximately \$650 less per student in the

ensuing school year from the State of California. Approximately 88 percent of District's expenditures are attributable to personnel costs. To accomplish the necessary budget reduction, the District must reduce services for the next school year.

10. Each of the services described in Resolution 9 is a particular kind of service that can be reduced or discontinued within the meaning of Education Code section 44955.

11. In arriving at the number of certificated employees to be noticed for layoff, the District considered all "positively assured attrition" which had occurred as of the date the Notices were sent to certificated employees, i.e. resignations, retirements, and other permanent vacancies and leaves of absence.

Bumping and Skipping

12. The District maintains a seniority list which contains pertinent information such as employees' date of first paid service, current assignment, and credentials on file. The District used the seniority list to develop a proposed layoff list. The District considered whether senior employees currently assigned in the various services being reduced or eliminated could bump more junior employees. In determining who would be laid off for each kind of service reduced or eliminated, the District first applied known vacancies and then applied in progressive sequence the seniority list in inverse order, from least to most senior. Employees with the same date of hire were laid off according to the needs of the District and its students.³ No certificated employee junior to any respondent was retained to perform any services which any respondent was certificated and competent to render.

Respondent Patricia Funk's Seniority Date

13. District's seniority date for respondent Patricia Funk is August 20, 2003. Respondent Funk asserts that her seniority date should be either January 29, 2003, or August 18, 2003. Respondent Funk was first employed as a probationary teacher by the District in August of 1998. She was a part time third grade teacher. Respondent Funk continued her employment for the District until the end of school year 2001-2002, when she resigned. At the time of her resignation, she was still a probationary teacher by virtue of her part time employment. Respondent Funk was rehired by the District on or about January 29, 2003, as a long-term substitute teacher. She substituted for two teachers on maternity leave until the end the 2002-2003 school year. District hired respondent Funk as a probationary teacher for the 2003-2004 school year. Her employment contract, executed in May of 2003, recited her first day of service as August 20, 2003. Respondent Funk was hired as a .50 FTE to share a second grade teaching assignment.

³ Resolution No. 9 contains a list of criteria to be used to determine the order of termination of certificated employees who first rendered paid service to the District in a probationary position on the same date (tiebreaking criteria). There were no disputes between the parties concerning the application of the tiebreaking criteria to certificated employees in this matter.

14. When respondent Funk met with District personnel technician Kim Floyd to go over the documents relating to her reemployment as a probationary teacher, Ms. Floyd told respondent Funk that she was not required to attend the new teacher orientation scheduled for August 18 and 19, 2003, because of respondent Funk's previous employment as a teacher for District.⁴ The District was not then concerned about the possibility of lay-offs and Ms. Floyd did not appreciate the significance of the first date of paid probationary service in a lay-off context. With the beginning of lay-offs several years ago, Ms. Floyd learned about the the significance of the first date of paid probationary service. Ms. Floyd now tells new hires and rehires about the manner in which attending orientation may affect a teacher's seniority date. When respondent Funk met with a site administrator at her new school, the administrator told respondent Funk not to worry about attending the orientation because she was not a new teacher and suggested that respondent Funk spend the time meeting her teaching partner and setting up their shared classroom. Respondent Funk did not attend the new teacher orientation, and spent the two days preparing her classroom.

15. Respondent Funk attained permanent status as a teacher for the District approximately seven years ago. At the start of school years 2005-2006, 2006-2007, and 2007-2008, respondent Funk was sent a summary of her employment status which included a "HIRE DATE" of January 29, 2003. During school year 2007-2008, Ms. Floyd discovered that the payroll department was using respondent Funk's employment as a long-term substitute teacher as her date of hire and Ms. Floyd corrected the date to reflect respondent Funk's reemployment as a probationary teacher on August 20, 2003. In the spring of 2008, when layoffs were an issue, the District created a seniority list and distributed it to certificated employees for verification. The form sent to respondent Funk included the August 20, 2003 date of hire and respondent Funk checked the "correct" box and returned the form without carefully confirming the date of hire.

16. When a similar form was sent to respondent Funk this school year, she wrote Ms. Floyd contending that her hire date was incorrect and should be January 29, 2003, the time at which District "acted as [her] full time employer" and "instructed me to not report for new-hire meetings on July 19, 2003 [sic] because I was not a newly hired full time employee." Ms. Floyd responded in writing that respondent Funk's employment on January 20, 2003, was as a substitute teacher and her employment in a certificated contract position began on August 20, 2003.

17. At least one other teacher rehired after a break in service did decide to attend the new teacher orientation in 2003. Michelle Lee was hired to teach in a year-round program with classes beginning July 3, 2003. Ms. Lee attended the two day new teacher orientation on July 1 and 2, 2003, and was assigned a seniority date of July 1, 2003, as a result.

⁴ This finding is based on Ms. Floyd's description of the customary manner in which she dealt with teachers who had been rehired after a break in service. Ms. Floyd did not specifically recall her conversation with respondent Funk but her habit was to tell rehires that while they could attend the orientation, they were not required to do so.

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 anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under Education Code section 44955. As stated in *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under that section, and, “in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction.” The District must be solvent to provide educational services, and cost savings are necessary to resolve its financial crisis. The Board’s decisions were a proper exercise of its discretion.

3. The services identified in Resolution No. 9 are particular kinds of services that could be reduced or discontinued under section Education Code section 44955. Cause exists to reduce the number of certificated employees of the District due to the reduction or discontinuance of particular kinds of services. 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.

4. No employee with less seniority than any named respondent is being retained to render a service which any named respondent is certificated and competent to render.

5. Respondent Funk’s seniority date of August 20, 2003, accurately reflects her first day of paid probationary service. Education Code section 44848 addresses respondent Funk’s situation and provides that when any certificated employee resigns and is later reemployed by a school district, her date of employment shall be the date on which she “rendered paid service (if employed after June 30, 1947) after [her] reemployment.”

6. While respondent Funk was “reemployed” as a long term substitute on January 29, 2003, Education Code section 44845 makes clear that such reemployment must have been in a probationary position to be considered a first date of paid service for purposes of seniority. Respondent is not entitled to an earlier seniority based on her original date of hire pursuant to Education Code section 44931, because that section only pertains to permanent certificated employees.

7. Respondent Funk also asserts that District administrators misled her regarding her participation in the new teacher orientation and its effect on her seniority date. Respondent Funk’s assertion is in the nature of the equitable estoppel. Equitable defenses, including equitable estoppel, are viable defenses in administrative proceedings and equitable estoppel may be asserted against a governmental entity. (*Lentz v. McMahon* (1989) 49 Cal.3d 393, 405-407.) Generally speaking, four elements must be present: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted

upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury. (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 488-489.)

8. At the time that Ms. Floyd discussed respondent Funk's reemployment with her, Ms. Floyd did not realize that respondent Funk's participation in the new teacher orientation would likely entitle her to an earlier seniority date. Ms. Floyd told respondent Funk that she was not required to attend the orientation because she was not a new teacher and this was entirely true. There is also no evidence that the site administrator misled Ms. Funk when she provided essentially the same information and suggested that respondent Funk spend her time preparing respondent Funk's shared classroom. Thus, neither District administrator was "apprised of the facts," i.e., that respondent could obtain an earlier seniority date by attending the orientation. Ms. Floyd left it to rehired teachers to decide whether to attend the orientation and the site administrator merely suggested that respondent Funk spend her time in her new classroom. The evidence did not establish that either person attempted to dissuade respondent Funk from attending the orientation. Certainly, respondent Funk was also ignorant of the true state of the facts, at least when viewed in hindsight with a full appreciation for the import of early paid service. The facts established that respondent Funk relied on the District's representations that her participation in the orientation was not required and, again in hindsight, this proved detrimental to her interests. In summary, at least two of the required four elements for the application of equitable estoppel were not established and respondent Funk is not entitled to an August 18, 2003 seniority date.

9. Respondent Funk is also not entitled to a January 29, 2003 seniority date based on the principles of equitable estoppel. Even if one assumes the District misled her by the erroneous date of hire date, they did not intend that she act upon that information in any way and, more importantly, respondent Funk did not rely upon the incorrect date to her injury. The information was corrected on seniority lists posted in previous years and was correct this year. Respondent did not establish any prejudice by reason of the initial error.

ORDER

The Accusations served on respondents are sustained. Notices shall be given to respondents that their services will not be required for the 2011-2012 school year because of the reduction or discontinuation of particular kinds of services. Notice shall be given to respondents in inverse order of seniority.

Dated: May 4, 2011

KARL S. ENGEMAN
Administrative Law Judge
Office of Administrative Hearings

