

BEFORE THE GOVERNING BOARD
OF THE MODESTO CITY SCHOOLS
STANISLAUS COUNTY
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

OAH No. 2010030948

CERTAIN CERTIFICATED PERSONNEL
EMPLOYED BY THE MODESTO CITY
SCHOOLS,

Respondents.

PROPOSED DECISION

Marilyn Anne Woollard, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 27, 2010, in Modesto, California.¹

Roman Munoz and Ryan Davis, Attorneys at Law, Lozano Smith, represented the Modesto City Schools (District). Deputy Superintendent Chris G. Flesuras, Jr. was also present on behalf of the District.

Thomas J. Driscoll, Jr., Attorney at Law, represented respondents who are members of the Modesto Teachers Association (Represented Respondents). These respondents are listed on Exhibit A to the “Stipulation Between the Parties” (Stipulation).

Barney A. Hale, Executive Director, Modesto Teachers Association, appeared on behalf of Individual Respondents Seth Bledsoe, Mandy Carranza, Billie Chhan, Melinda Cogburn, Marla Conteh (formerly known as Marlene Garcia), Ricardo Gonzalez, Madelyn Kerlee, Judith Ludlow, Christina Rojas, and Wesley Taylor who were not present.

¹ Pursuant to the March 24, 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 27, 2010 hearing date. (Ed. Code, § 44949, subd. (e); see May 28, 2010 Order Regarding Case Status.)

The Stipulation between the District and Represented Respondents and the District's bumping analysis were admitted in evidence. The record was then closed and the matter was submitted for decision on May 27, 2010.

FACTUAL FINDINGS

1. The Stipulation (Attachment A) is incorporated by reference. Pursuant to the Stipulation, Represented Respondents "agree not to challenge the remainder of the District's layoff and all Parties agree that there no longer exists any need for a hearing" in this matter. The Stipulation fully resolves all issues between the District and the Represented Respondents.

2. No evidence or argument was submitted on behalf of the Individual Respondents. There was no challenge to the Governing Board's resolutions reducing or discontinuing particular kinds of services for the 2010-2011 school year. There was no challenge to the District's compliance with the procedural notice requirements of Education Code sections 44949 and 44955. 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.

3. There was no evidence that employees junior to respondents are being retained to perform the services which respondents are certificated and competent to render.

LEGAL CONCLUSIONS

1. 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.)

2. As set forth in the Factual Findings, 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 sections 44949 and 44955.

3. No employees junior to respondents are being retained to perform the services which respondents are certificated and competent to render.

ORDER

1. Consistent with the terms of the Stipulation, notice may be given to Represented Respondents that their services will be reduced or will not be required for the 2010-2011 school year. Notice shall be given in inverse order of seniority.

2. Notice may be given to Individual Respondents that their services will be reduced or will not be required for the 2010-2011 school year. Notice shall be given in inverse order of seniority.

DATED: May 30, 2010

MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings