

BEFORE THE
GOVERNING BOARD OF THE
FORT BRAGG UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In The Matter of the Reduction of 8.80 FTE
in Particular Kinds of Services affecting:

OAH No. N2004030815

Bea Austin, E. Anne Barham, Joseph Bell,
John Gilmore and Kirsten Maurer,

Respondents.

PROPOSED DECISION

Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 30, 2004, in Fort Bragg, California.

Robert J. Henry, Attorney at Law, represented the Fort Bragg Unified School District.

Phoebe Graubard, Attorney at Law, represented respondents Bea Austin, E. Anne Barham, Joseph Bell, John Gilmore and Kirsten Maurer.¹

The matter was submitted and the record closed on April 30, 2004.

FACTUAL FINDINGS

1. The Fort Bragg Unified School District ("District") operates seven schools; two elementary schools, one middle school, one high school, a necessary small school and two community day schools. The District serves approximately 2,075 students.

2. Steven Lund is the Superintendent of the District. His actions and the actions of the Governing Board were taken in their official capacities.

3. Before March 15, 2004, the District personally 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

¹ These five employees are the only noticed employees who filed Requests for Hearing followed by Notices of Defense to the Accusations. Thus, these five employees are the only respondents in this action.

that the Board had passed a Resolution reducing or discontinuing particular kinds of services (PKS) which reduced the certificated staff by 8.80 full-time equivalent ("FTE") certificated positions.

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

4. 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.

5. Respondents timely filed Notices of Defense.

6. Respondents in this proceeding are permanent certificated employees of the District.

7. On March 11, 2004, at a regular meeting of the District's Board of Trustees (the Governing Board), the Governing Board of the District was given notice of the Superintendent's recommendations that certificated employees holding 8.80 FTE positions be given notice that their services would not be required for the next school year and stating the reasons for that recommendation.

8. On March 11, 2004, the Board adopted Resolution No. 04-13, providing for the reduction or elimination of the following particular kinds of services:

1. Eliminate the equivalent of one (.40) FTE Middle School Reading Teaching position.
2. Eliminate the equivalent of one (1.0) FTE Middle School Title 1 Teaching position.
3. Eliminate the equivalent of two (2.0) FTE Elementary Teaching positions.
4. Eliminate the equivalent of one (1.0) FTE Success For All Facilitator Teaching position.
5. Eliminate the equivalent of one (.70) FTE Elementary 3-5 Music Teaching position.
6. Eliminate the equivalent of one (.70) FTE Elementary grades 3-5 Art Teaching position.
7. Eliminate the equivalent of one (1.0) FTE Elementary grades 3-5 CARE Teaching position.
8. Eliminate the equivalent of two (2.0) FTE School Counselor positions.

9. The District is experiencing financial difficulties. The Governing Board determined that it needs to reduce its 2004-2005 operating budget by at least \$600,000 in order to remain solvent. Thus, the Governing Board resolved to reduce and eliminate teaching and counseling services affecting employment of 8.80 FTE certificated positions. The Governing Board's resolution to eliminate and reduce teaching services was made in order to balance its budget for the welfare of students.

10. Supervisor Lund and other District employees were responsible for implementation of the technical aspects of the layoff. The District maintains a Certificated Seniority List which contains employees' seniority dates (first date of paid service), status (tenured, probationary or temporary) and credentials and authorizations. Status, credential and authorization data are obtained from the District's records.

11. 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. The District then determined whether the least senior employees held credentials in another area and were entitled to "bump" other employees. In determining who would be laid off for each kind of affected service, the District counted the number of reductions not covered by known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and whether they could "bump" other employees. The District then looked at employee competence for certain positions as opposed to other positions.

12. The Governing Board adopted tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. It did not become necessary to employ the tie breaking criteria.

13. The District considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

14. Joseph Bell holds a Single Subject Credential in Social Science and a CLAD certification. His seniority date is 10/6/03. He is currently assigned to teach elementary education classes at a Community Day School (Shelter Cove). Although the Board did not resolve to reduce or eliminate positions at the Shelter Cove Community Day School, Mr. Bell is the District's most junior employee and may be "bumped" from his position by any of the teachers who have been laid off.

The District intends to fill Mr. Bell's position with Shelley De Angelis. She has a seniority date of 9/14/81 and holds a Multiple Subject-self contained Credential, SDAIE and Reading Certifications. Ms. De Angelis currently teaches the 1.0 FTE Middle School Title 1 Teaching Position the Governing Board resolved to eliminate. Alternatively, Lenore Naal may bump Mr. Bell from his position. She has a seniority date of 8/18/99 and holds a Multiple Subject-self contained Credential and a CLAD Certificate. Ms. Naal currently teaches 1.0 FTE Elementary Teaching Positions the Governing Board resolved to eliminate. Ms. Naal has consented to teach at the Continuation School.

There is no assignment the District can make for Mr. Bell in which he is credentialed and has the seniority to serve.

15. Kirsten Maurer has a seniority date of 9/14/02. She holds a Multi-Subject self contained Credential and CLAD certificate. She teaches .80 FTE at the elementary school.

Ms. Maurer's position was eliminated by the .40 FTE elimination of the Middle School Reading position and by .40 FTE of the 1.0 FTE elimination of Middle School Title 1 Teaching position. Only Joseph Bell is junior to Ms. Maurer.

There is no assignment the District can make for Ms. Maurer in which she is credentialed and has the seniority to serve. There are no employees junior to Ms. Maurer who are being retained to render services Ms. Maurer is competent and qualified to render.

16. Bea Austin has a seniority date of 8/15/01. She holds a Single subject Art K-Credential and a CLAD certificate. She teaches Art at the High School and Elementary School. She holds a 1 FTE position teaching elementary and high school classes. Her position was reduced by .60 of the 1.0 FTE elimination of Middle School Title 1 Teaching position. She was noticed at 1FTE, even though she retains .40 FTE of instruction in Art at the High School. However, E. Anne Barham, whose qualifications and seniority date appear in Factual Finding 18, may bump Ms. Austin from the .40 FTE of instruction in Art at the High School. There are no employees junior to Ms. Austin who are being retained to render services Ms. Austin is competent and qualified to render.

17. John Gilmore has a seniority date of 12/15/97. He holds a Multisubject: Self-Contained; Music K-9 and Single Subject English K-12. He holds a .70 FTE position teaching Music in elementary classes. His position was eliminated by the Board's resolution to eliminate .70 Elementary School Music Teacher.

Mr. Gilmore contends that he should be retained to teach the .80 High School English class taught by Malcolm McDonald. Mr. McDonald has resigned from his position as a High School English Teacher effective 6/30/2004.

Superintendent Lund did not offer evidence as to the District's intentions with respect to Mr. McDonald's position. Although the District offered evidence that it took known attrition into consideration, the District did not provide evidence that it took into account Mr. McDonald's resignation when determining the number and type of positions to be included in the PKS. No High School positions were reduced or eliminated in the Board's resolution. Thus, the position vacated by Mr. McDonald is vacant. However, that position is a 1 FTE position and Mr. Gilmore has a .70 FTE. An employee may not use the bumping process to move into a position which affords him greater employment rights than he has with the District. Nor can a District be required to fractionalize the 1FTE English position to allow Mr. Gilmore to assume part of that position. Although the District may always consent to transferring Mr. Gilmore into the vacant High School English position, the District is not required to do so.

No employee junior to Mr. Gilmore is being retained to render services Mr. Gilmore is competent and qualified to render.

18. E. Anne Barham has a seniority date of 8/30/88. She holds a Standard Secondary Credential in Art K-12 and History 7-12. She teaches Art at the elementary

school. Her position was eliminated by the Board's resolution to eliminate .70 Elementary School Grades 3-5 of Art. However, Ms. Barham is senior to Ms. Austin and is qualified and competent to teach Art in High School. Therefore, she may bump Ms. Austin from the .40 FTE of instruction in Art at the High School which Ms. Austin now teaches. No employee junior to Ms. Barham is being retained to render services Ms. Barham is competent and qualified to render.

19. Mr. Gilmore, Ms. Barham and Ms. Austin contend that the PKS resolution, coupled with the non renewal of temporary Art, Band and Music teachers, would cause the District to fall below State Mandated levels of Music and Art programming in the 2004-2005 school year. They maintain that the District cannot possibly offer the number and quality of Music and Art programs students need to meet admission requirements to State colleges.

The District is confident that it can meet State mandates and the needs of college bound students in the ensuing school year. Superintendent Lund testified persuasively that the needs of the students and State mandates will be met by the teachers currently providing art and music classes.

20. The District employees receiving notices that their services would not be required next year, whether temporary or certificated employees, have all rendered valuable services to the District.

LEGAL CONCLUSIONS AND DISCUSSION

1. All notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 were met.

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 section 44955. As stated in *San Jose Teachers Assn 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 Governing Board's decision to reduce particular kinds of services was a proper exercise of its discretion.

3. The services identified in Board Resolution No. 04-13 are particular kinds of services that could be reduced or discontinued under Education Code section 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 exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

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

5. The notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831. The description of services to be reduced, both in the Board Resolution and in the notices, adequately describe particular kinds of services. *Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.

Respondent Joseph Bell argued that he was not given adequate notice that he would be terminated because his lay off notice did not state that the particular service he rendered (Community Day School) would be reduced. Mr. Bell relies on *Campbell Elementary Teacher's Association Inc. v. Abbott* 76 Cal. App. 3d 796 and *Karbach v. Board of Education* 39 Cal. App. 3d 355 as support for this position.

The District notified Mr. Bell of layoff because of the fact that he could be bumped by one of the teachers occupying a PKS which was reduced by Board resolution. Mr. Bell was notified that he was laid off due to elimination or reduction of particular kinds of services identified in the Board's resolution. Education Code section 44955 and the cases cited by Mr. Bell provide only that the noticed employee be informed whether the basis for layoff is an ADA reduction or elimination or reduction of particular kinds of services. The District is not required, in the preliminary notice stages of the section 44955 lay off proceedings, to specify the bumping, skipping, attrition and other rights of all employees which determine the ultimate order of layoff.

6. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. *Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.

Pursuant to *Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469 and Education Code section 44945 Ms. Barham may bump into .40 FTE of the position held by junior employee Bea Austin.

7. Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. *Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.

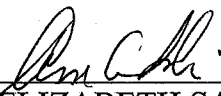
Mr. Bell argues that he has special skills, training, and experience that exempt him from lay off. Mr. Bell has performed well in his position. However, the *District* bears the burden under Education Code section 44955 (d) (1) to make certain showings when the *District* wishes to retain a junior employee while terminating a senior employee(s). Education Code section 44955 9d) (1) does not grant the junior employee a right to make said showing, over objection by the District. Even had the legislature afforded the junior employee this right, Mr. Bell did not demonstrate that the District has a specific need for his services and that no more senior employee possesses the training and experience needed to teach Community Day School.

8. Cause exists under Education Code sections 44949 and 44955 to provide notice to respondents Bea Austin, E. Anne Barham (.60 FTE), Joseph Bell, John Gilmore and Kristen Mourer that their services will not be required in the ensuing school year. Such cause relates solely to the welfare of the District and the pupils thereof.

ORDER

Notice shall be given to employees occupying 8.80 full-time equivalent certificated positions that their services will not be required for the 2004-2005 school year because of the reduction and discontinuance of particular kinds of services. Said notice shall include notices to respondents Bea Austin, E. Anne Barham (.60 FTE), Joseph Bell, John Gilmore and Kristen Mourer.

DATED: May 7, 2004



ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings