

BEFORE THE
COUNTY SUPERINTENDENT OF SCHOOLS
SACRAMENTO COUNTY OFFICE OF EDUCATION
COUNTY OF SACRAMENTO, STATE OF CALIFORNIA

In the Matter of the Accusation (Reduction
In Force) Against:

ROBERTO GANTZ and JOHN KETELHUT

Respondents.

OAH No. N2007030680

PROPOSED DECISION

Administrative Law Judge Ann Elizabeth Sarli, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California, on April 10, 2007.

Michelle L. Cannon, Attorney at Law, of Kronick, Moskovitz, Tiedmann & Girard, represented the Sacramento County Office of Education.

Michael N. McCallum, Attorney at Law, represented respondents.

Evidence was received, the hearing was closed and the matter was submitted on April 10, 2007.

FACTUAL FINDINGS

1. On April 3, 2007, David W. Gordon, Superintendent, Sacramento County Office of Education (SCOE), State of California, made and filed the Accusation in his official capacity.

2. On February 27, 2007, the Superintendent adopted Resolution No. 2007-D (Resolution). The Resolution was based on the Superintendent's determination that it was necessary to reduce or discontinue regional occupation programs (ROP) no later than the beginning of the 2007-2008 school year. Accordingly, he determined that the following particular kinds of services and corresponding number of full time equivalent (FTE) positions should be reduced or discontinued.

<u>Services</u>	<u>Number of FTE Positions</u>
ROP Instructor Medical Assistant	1.5 FTE
ROP Instructor Careers with Children	1.0 FTE
ROP Instructor Air Conditioning/Heating	1.0 FTE

3. The Superintendent's decision was based upon the effect of Assembly Bill 2448,¹ effective January 2007, which provides for alignment of state ROP programs with federal programs. The bill provides that a core sequence of classes should be offered and must lead to a certification or articulation to a community college. The most important feature of the bill, to SCOE, is that it provides a gradual reduction in the number of students 18 years and older permitted to enroll in the ROP classes. By the year 2011, only 10% of the students in an ROP class can be adults. In the 2007-2008 school year, no more than 30% of students in an ROP class can be adults. Approximately 73% of current ROP students are adults. Because of this the Superintendent found SCOE was "on a course to be out of compliance."

4. In an effort to become compliant with Assembly Bill 2448, the Superintendent determined not to offer ROP classes in auto body and repair, estimating, and medical terminology in the 2007-2008 school year. It was unnecessary to reduce FTEs to effectuate these class eliminations. The careers with children class was eliminated by Resolution and the teacher occupying that 1.0 did not file a request for hearing.

5. The Superintendent determined that the heating and air conditioning program should be eliminated because it served primarily adults, it struggled with enrollment and it was duplicated by adult programs at community colleges. Accordingly, John Ketelhut, a certificated employee occupying 1.0 FTE position teaching air conditioning/heating, received a notice that his services and position would be eliminated in the 2007-2008 school year.

6. The Superintendent determined that medical assistance programs should be eliminated because these classes served primarily adults and there are many private entities offering this program. Accordingly, Linda Glines, who occupied .5 FTE in medical assistance programming, was reassigned as a school nurse in special education, a position for which she is credentialed. Roberto Gantz, a certificated employee occupying 1.0 FTE in medical assistance programming, received a notice that his services and position would be eliminated in the 2007-2008 school year.

7. By letter dated March 9, 2007, the Superintendent provided written notice to respondents that it had been recommended that notice be given to them, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the

¹ This Bill was passed and became effective January 2007.

ensuing year (March 15 Notice). The Resolution setting forth the reasons for the recommendation was attached to the March 15 Notice.

8. Respondents made timely written requests for a hearing to determine if there is cause for not reemploying them for the ensuing school year. The Accusation was timely served on respondents and respondents timely filed a Notice of Defense. All pre-hearing jurisdictional requirements have been met.

9. Mr. Ketelhut's seniority date is August 22, 1994. He holds a credential in Designated Subject-Vocational F/T Subjects: 1727 Air Conditioning/Refrigeration, 851 Heating and 99 0158 Designated Subjects-Supervisor/Coordinator. Mr. Ketelhut is presently employed as a full-time certificated employee of the District, teaching heating and air conditioning in the Sacramento County ROP program. He teaches the only such program in SCOE. There are no other classes offered by SCOE in 2007-2008 that he is certificated to teach.

10. Mr. Ketelhut argues that his class is being cut in retaliation for his filing seven complaints against SCOE, since he was first employed until a few years ago. He argues that there is a vast array of ROP programs which could be cut, and his was chosen out of retaliatory motivation. However, the Superintendent's rationale for selecting six ROP programs for immediate discontinuance this first year under Assembly Bill 2448 was credible and well reasoned. Mr. Ketelhut does not deny that his course enrollment is declining, but he attributes the decline to poor signage on his building and an absence of staff to sign up students, even though his course has been listed in class schedules. He does acknowledge that of his 20 current students, only one is under 18 years old. Mr. Ketelhut may have been a "thorn in the side" of SCOE for years, as his attorney contends. However, that fact does not insulate him from layoff proceedings prompted by legitimate business reasons.

11. Mr. Gantz's seniority date is March 10, 1997. He holds a credential in Designated Subject-Vocational F/T Subjects: 2664 Medical Office Occupations. Mr. Gantz is presently employed as a .50 FTE certificated employee of the District, teaching instruction medical assistants in the Sacramento County ROP program.

12. Mr. Gantz argues that he too has been retaliated against because he filed a complaint in 2006 alleging harassment and discrimination by persons in the ROP program. The evidence is that the Director of Human Services substantiated his complaint in several respects. However, the analysis of the evidence set forth above in Factual Finding 10 applies to Mr. Gantz as well. Six ROP programs were discontinued, several ROP teachers were laid off and the only other teacher teaching medical assistants, Ms. Glines, lost her assignment as well. She, however, holds additional credentialing and was reassigned. Additionally, the medical office occupations class was discontinued because it serves primarily adults and there are 30 to 40 medical assistant training programs in the community. The Superintendent testified persuasively that additional ROP programs were being considered for discontinuation next year and that SCOE is actively seeking to move ROP programs to other

venues. He acknowledged that there were several ROP programs still offered which had primarily adult students, such as construction, chiropractic office careers, and large office occupational programs. However, these have large enrollments and long waiting lists. These classes are not being immediately discontinued. Under these circumstances, it can hardly be maintained that Mr. Gantz was targeted for layoff because of his successful complaint.

13. Mr. Gantz argues that he can "bump" into .5 FTE of another course currently begin taught by a teacher with less seniority than he. Patricia Smith holds a Designated Subject-Vocational F/T Subjects: 2655 Nursing Services. Ms. Smith has a seniority date of January 18, 2005, and thus is junior to Mr. Gantz. Ms. Smith is currently assigned to teach 1 FTE of the ROP hospital/community health class. SCOE intends to have her teach this class in the 2007-2008 school year. Mr. Gantz argues that the components of the hospital/community health class are similar to those he has taught in medical assisting. He argues that he has the knowledge and experience to teach this class. He maintains that his vocational credential permits him to teach this class.

14. Mr. Gantz may be correct in his assertion that he is competent and certificated to teach the ROP hospital/community health class. However, there is no need to reach this issue. The law is settled that a teacher with a part-time position may not bump into a full time position, and may not compel the school district to subdivide a single FTE position. (*Murray v. Sonoma County Office of Education* (1989) 208 Cal.App.3d 456, 460.) Mr. Gantz is a .50 FTE employee and the position he wishes to bump into is a 1 FTE. While SCOE may choose to divide the 1 FTE hospital/community health class into two .5 FTE sections, it cannot be compelled to do so. "The District is not required to create a part-time position for respondent, and respondent may not "bump" a full-time employee out of his or her position; nor is respondent entitled to a full-time position with the District. (*Murray v. Sonoma County Office of Education*, supra at 460.)

15. The services identified in the Resolution are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955. The decision to reduce the services is neither arbitrary nor capricious, but rather a proper exercise of the District's discretion.

16. No certificated employee junior to Mr. Ketelhut is being retained to provide services that he is certificated and competent to render.

17. A permanent certificated employee junior to Mr. Gantz is being retained to perform services that he may be certificated and competent to render. However, Mr. Gantz is a .5FTE employee and said junior employee is being retained to perform 1 FTE services. Mr. Gantz may not bump this junior employee out of a portion of her position and he is not entitled to employment rights in excess of his .5 FTE.

18. It has become necessary to decrease SCOE's ROP services by 3.5 FTE with reduction in a corresponding number of certificated employees of SCOE, as determined by the

Superintendent. The reduction or discontinuation of services is related to the welfare of the District and its pupils.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.


2. Cause exists because of the reduction or discontinuation of particular kinds of services pursuant to Education Code section 44955 to give notice to respondent John Ketelhut, occupying 1 full-time equivalent position, that his services will not be required for the 2007-2008 school year, as set forth in the Factual Findings. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

3. Cause exists because of the reduction or discontinuation of particular kinds of services pursuant to Education Code section 44955, to give notice to respondent Roberto Gantz, occupying .5 full time equivalent position, that his services will not be required for the 2007-2008 school year, as set forth in the Factual Findings. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

Notice shall be given to respondents Roberto Gantz and John Ketelhut that their services will not be required for the 2007-2008 school year because of the reduction or discontinuation of particular kinds of services.

Dated: April 27, 2007



ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings