

BEFORE THE
GOVERNING BOARD OF THE
FORESTVILLE UNION SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JAMES ANDERSON, M.J. NELSON and
SUSAN FINAN,

Respondents.

OAH No. N 2007030971

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Windsor, California, on April 23, 2007.

Elizabeth Mori, Attorney at Law, represented complainant.

James D. Allen, Attorney at Law, represented respondents.

The matter was submitted on April 23, 2007.

FACTUAL FINDINGS

1. Robert Borbe, Assistant Superintendent/Principal (Assistant Superintendent) made the accusation in his official capacity.
2. At all times mentioned herein, each respondent has been employed by the Forestville Union School District (District) as a certificated employee.
3. At the beginning of the hearing the accusation was dismissed as to James Anderson.
4. On March 14, 2007, written notice was given to the Governing Board of the District, pursuant to Education Code sections 44949 and 44955, of the Superintendent's recommendation that notice be given respondents that his or her services would not be required for the next school year (2007-2008). That letter stated the reasons for the recommendation.
5. Each respondent, in writing, requested a hearing to determine if there is cause for not reemploying him or her for the next school year.

6. Cause exists within the meaning of Education Code section 44949 and 44955 for not reemploying respondents for the next school year because, by Resolution of the Governing Board adopted on March 8, 2007, the Governing Board determined it was necessary to reduce or eliminate certain particular kinds of services and that as a result to those reductions or eliminations it was necessary to decrease the number of certificated employees of the District to the extent set forth in the Resolution as of the close of the current school year.

The reduction of particular kinds of services is due to fewer classes being needed to serve the students.

The three services specifically relevant to this hearing are:

- 0.2 F.T.E. English teaching position
- 0.2 F.T.E. Biological Science teaching position
- 0.2 F.T.E. Directed Studies – Study Skills teaching position

7. Cause for not reemploying respondents relates solely to the welfare of the District and the pupils thereof within the meaning of Education Code sections 44949 and 44955.

8. No permanent or probationary certificated employee of the District having less seniority than respondents will be retained to render a service which respondents are certificated, competent and legally entitled to render.

Susan Finan teaches three periods of English, one period of directed studies in law, and an elective involving the school newspaper. Her seniority date is August 16, 2004. She has a Preliminary Multiple Subject, with a Supplementary in English – CLAD credential. She did not establish by competent evidence that she is credentialed or qualified to teach math. She presently is a 1.0 F.T.E employee. Ms. Finan can be reduced by 0.2 F.T.E in English.

M.J. Nelson teaches three periods of seventh grade science and one period of directed studies. She holds a Preliminary Multiple Subject – CLAD credential. She is a 0.8 F.T.E. employee. She shares the same first date of service (August 23, 2005) with two other certificated employees: Anne Fox and John Hayden. Anne Fox teaches fourth grade and John Hayden teaches 7/8 grade math, science and physical education. Mr. Hayden is a 1.2 F.T.E. employee and is being reduced 0.2 F.T.E. M.J. Nelson did not identify any 0.8 F.T.E. positions for which she is credentialed and qualified to teach. The district is not required to break-up Ms. Fox or Mr. Hayden's assignment to accommodate Ms. Nelson. Ms. Nelson can be reduced by 0.4 F.T.E. in Biological Sciences and Directed Studies.

9. It must be noted that the District has not adopted or applied tie-breaking criteria to Nelson, Fox and Hayden or other certificated employees who have the same first

date of paid service. This may become important for reemployment rights. It is suggested that the District adopt and apply tie-breaking criteria as soon as possible.

LEGAL CONCLUSIONS

1. By reason of the Factual Findings set forth above, cause exists for the Governing Board of the Forestville Union School District pursuant to Education Code sections 44949 and 44955 to give notice to respondent Susan Finan that her services will be reduced from 1.0 F.T.E. to 0.8 F.T.E. for the 2007-2008 school year.

2. By reason of the Factual Findings set forth above, cause exists for the Governing Board of the Forestville Union School District pursuant to Education Code sections 44949 and 44955 to give notice to M.J. Nelson, that her services will be reduced from 0.8 F.T.E to 0.4 F.T.E. for the 2007-2008 school year.

ORDER

Notice shall be given by the Governing Board to respondents Finan and Nelson that their services will be reduced pursuant to Legal Conclusions 1 and 2, above, by the District for the 2007-2008 school year.

DATED: April 27, 2007

Ruth S. Astle

RUTH S. ASTLE

Administrative Law Judge

Office of Administrative Hearings