

BEFORE THE
GOVERNING BOARD OF
THE BLACK OAK MINE UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

CERTAIN CERTIFICATED PERSONNEL
EMPLOYED BY THE BLACK OAK MINE
UNIFIED SCHOOL DISTRICT,

OAH No. 2010030656

Respondents.

PROPOSED DECISION

This matter was heard before Marilyn A. Woollard, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, in Georgetown, California, on April 23, 2010.

Ben Hance, Attorney at Law, represented the Black Oak Mine Unified School District ("District"). Superintendent Dr. Tammy Gabel was also present on the District's behalf.

Andrea Price, Attorney at Law, represented the twelve named respondents listed on Attachment A ("Represented Respondents").

The three named respondents listed on Attachment B ("Self-Represented Respondents") were not represented by Ms. Price.

On April 23, 2010, the District and the Represented Respondents entered into Joint Stipulations, set forth in Attachment C ("Joint Stipulations"), which resulted in a settlement of this matter. The hearing was convened, the Joint Stipulations were read into the record, the record was closed and the matter was submitted for decision on April 23, 2010. Pursuant to Joint Stipulation No. 6, the parties agreed to prepare a stipulated decision which is incorporated in the proposed decision set forth below.

PROCEDURAL BACKGROUND AND FACTUAL FINDINGS

1. At the commencement of the hearing, the District and Represented Respondents notified the undersigned ALJ that they had entered into and agreed with the Joint Stipulations, which are fully incorporated here by reference, and that the Joint

Stipulations would result in a settlement of the matters set forth in the District's Accusation dated April 5, 2010 (Accusation) with respect to Represented Respondents.

2. The District advised the undersigned ALJ that none of the Self-Represented Respondents had filed a notice of defense in response to the Accusation with the District in accordance with California Government Code section 11506.

There was no evidence or argument presented to the contrary. Consequently, pursuant to Education Code section 44949, subdivision (c), and Government Code section 11506, Self-Represented Respondents waived their right to a hearing.

LEGAL CONCLUSIONS

1. As set forth in Finding 1, each of the Represented Respondents has agreed to waive his or her right to a hearing to determine if there is cause for not reemploying him or her for the ensuing year pursuant to California Education Code section 44949 and California Government Code section 11500, et seq. (Joint Stipulation No. 1.)

2. As set forth in Finding 1, the District has agreed to rescind or otherwise not give effect to the reduction of the 1.0 FTE English-Librarian services, 0.4 FTE English services and 0.4 FTE Librarian services set forth in Resolution No. 2010-09 "Reduction/Discontinuance of Certificated Services for the 2010-11 School Year." (Joint Stipulation No. 3.)

3. As set forth in Finding 1, the District has agreed to rescind the preliminary layoff notices served upon respondents Wirth, Arsenith, Schroeder, Tanz and McComb. (Joint Stipulation Nos. 3 and 4.)

4. As set forth in Finding 1, the District has agreed to take any and all appropriate actions to permit respondents Hurst, Shuck, Klemp-Sorber, Ellsworth, Ahrens, Phillips, Brown and McMahon to remain eligible for rehire pursuant to California Education Code sections 44956 or 44957, as the case may be, regardless of whether he or she declines one or more offers of reemployment during his or her applicable rehire period (24 or 39 months from the date of termination, as the case may be). (Joint Stipulation No. 2.)

5. As set forth in Finding 1, the District has agreed to allow respondents Wirth, Arsenith, Schroeder, Tanz and McComb to apply for voluntary transfer into vacancies pursuant to and in accordance with the District's currently effective collective bargaining agreement with the Black Oak Mine Teachers Association, even if the response date for voluntary transfer requests was prior to April 23, 2010. (Joint Stipulation No. 6.)

6. As set forth in Finding 2, each of the Self-Represented Respondents has waived his or her right to a hearing to determine if there is cause for not reemploying him or her for the ensuing year pursuant to California Government Code section 11506, subdivision

(c), and Education Code section 44949, subdivision (c)(1), due to his or her failure to file a notice of defense with the District in response to the Accusation.¹

RECOMMENDATION

1. As set forth in Legal Conclusion 2, the District shall rescind or otherwise not give effect to the reduction of the 1.0 FTE English-Librarian services, 0.4 FTE English services and 0.4 FTE Librarian services set forth in Resolution No. 2010-09 “Reduction/Discontinuance of Certificated Services for the 2010-11 School Year.”

2. As set forth in Legal Conclusion 3, the District shall rescind the preliminary layoff notices served upon respondents Wirth, Arsenith, Schroeder, Tanz and McComb.

3. As set forth in Legal Conclusion 4, the District shall take any and all appropriate actions to permit respondents Hurst, Shuck, Klemp-Sorber, Ellsworth, Ahrens, Phillips, Brown and McMahon to remain eligible for rehire pursuant to California Education Code sections 44956 or 44957, as the case may be, regardless of whether he or she declines one or more offers of reemployment during his or her applicable rehire period (24 or 39 months from the date of termination, as the case may be).

4. As set forth in Legal Conclusion 5, the District shall allow respondents Wirth, Arsenith, Schroeder, Tanz and McComb to apply for voluntary transfer pursuant to and in accordance with the District’s currently effective collective bargaining agreement with the Black Oak Mine Teachers Association even if the response date for voluntary transfer requests was prior to April 23, 2010.

5. Except as set forth in Recommendation 2, notice may be given to respondents that their services will be reduced or will not be required for the 2010-11 school year. Notice shall be given in inverse order of seniority.

DATED: April 29, 2010

MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings

¹ Pursuant to Government Code section 11506, a party on whom an accusation is served must file a notice of defense in order to obtain a hearing. Education Code section 44949, subdivision (c)(1), provides that, in teacher layoff cases, the notice of defense must be filed within five days after service of the accusation.

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ATTACHMENT A
LIST OF REPRESENTED RESPONDENTS

Andrea Hurst

Chantalle Shuck

Bonnie Klemp-Sorber

Tamzin Ellsworth

Mindy Ahrens

Rhonda Phillips

Angie Schroder

Sharon Arsenith

Amy McComb

Zady Wirth

Christine Brown

Tom McMahon

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ATTACHMENT B
LIST OF SELF-REPRESENTED RESPONDENTS

Chris Tillich

Livia Tanz

Brenda Travers

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ATTACHMENT C
JOINT STIPULATIONS