

BEFORE THE
GOVERNING BOARD OF THE
STOCKTON UNIFIED SCHOOL DISTRICT

In the Matter of the Reduction in Force of:

94.0 FTE CERTIFICATED POSITIONS IN
THE STOCKTON UNIFIED SCHOOL
DISTRICT,

Respondents.

OAH No. 2008030630

PROPOSED DECISION

Catherine B. Frink, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter on April 16, 2008, in Stockton, California.

The Stockton Unified School District (District) was represented by Ann M. Murray, Attorney at Law, Kronick Moskovitz Tiedemann & Girard, 400 Capitol Mall, 27th Floor, Sacramento, California 95814.

Antonios Angelo and Tomas Hurtado (respondents) were represented by Thomas J. Driscoll, Jr., Attorney at Law, Driscoll & Associates, 801 South Ham Lane, Suite H, Lodi, California 95242.

Evidence was received, and the parties entered into stipulations as set forth in the Factual Findings. The record was closed and the matter was submitted for decision on April 16, 2008.

FACTUAL FINDINGS

1. The parties stipulated to the truth of the matters set forth in Paragraphs I through IV, and V.A. through V.C., and V.E. through V.F. of the Accusations, as set forth below:

A. Jack McLaughlin is the Superintendent of the District. He made and filed the Accusations against respondents in his official capacity.

B. Antonios Angelo (respondent Angelo) is employed by the District as a certificated employee and rendered his first paid service to the District as a probationary employee on January 17, 2008.

C. Tomas Hurtado (respondent Hurtado) is employed by the District as a certificated employee and rendered his first paid service to the District as a probationary employee on September 18, 2007.

D. On March 13, 2008, Mr. McLaughlin directed that notice be given to respondents, pursuant to Education Code section 44949 and 44955, that 2.0 FTE (full-time equivalent) of respondents' services will not be required for the ensuing school year, and stating the reasons therefor.

E. Pursuant to Education Code section 44949, respondents, in writing, requested a hearing to determine if there is cause for not reemploying them for the ensuing school year.

F. Cause exists within the meaning of Education Code sections 44949 and 44955 for not reemploying respondents for the ensuing school year in that on March 11, 2008, the Governing Board of the District adopted Resolution 07-44. Pursuant to that Resolution, the District reduced or eliminated the following particular kinds of service: Elementary School Administration Program (12.0 FTE); Secondary School Administration Program (1.0 FTE); District Athletic Program (1.0 FTE); District Math and Science Partnership Grant (1.0 FTE); Elementary Counseling Program (20.0 FTE); Secondary Counseling Program (5.0 FTE); Automotive Teaching Program (1.0 FTE); Art Teaching Program ((3.0 FTE); Biology Teaching Program (2.0 FTE); Business Teaching Program (1.0 FTE); Chemistry Teaching Program (1.0 FTE); Drama Teaching Program (1.0 FTE); Earth Science Teaching Program (1.0 FTE); English Teaching Program (13.0 FTE); Mathematics Teaching Program (8.0 FTE); High School Work Experience Independent Study and Careers Teaching Program (1.0 FTE); Opportunity Class Program (1.0 FTE); K-12 Physical Education Program (5.0 FTE); Middle School Departmentalized Science Program (2.0 FTE); Social Studies Teaching Program (11.0 FTE); Spanish Teaching Program (1.0 FTE); Virtual Academy Program (2.0 FTE); and Self-Contained K-8 Teaching Program (40.0 FTE).

G. Respondents are, and have been, employed as certificated employees of the District in one or more of the particular kinds of services which are to be reduced or eliminated or will be displaced by a more senior certificated employee who is in one or more of the particular kinds of services which are to be reduced or eliminated. Respondents' positions will be terminated as a result of the foregoing decisions.

H. The District will not retain any probationary employee, or any other certificated employee with less seniority than respondents, during the 2008-2009

school year to render a service which respondents are certificated and competent to perform.

I. As a result of the foregoing, 2.0 FTE of respondents' services as certificated employees will be terminated.

J. Cause for termination of 2.0 FTE employment of respondents relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code sections 44949 and 44955.

2. The parties further stipulated as follows:

A. With respect to Resolution 07-44, the following employees have seniority dates as set forth below:

Richard Rocero – November 8, 1988;
Michael Yonan – November 1, 1996;
Robert Sanguino – August 24, 1998.

B. As a consequence of the above-stipulated seniority dates, the District no longer proposes to eliminate 1.0 FTE Automotive Teaching Program (Item a. on Resolution 07-44), thereby reducing the particular kinds of services to be decreased to 93.0 FTE, and resulting in the termination of 2.0 FTE certificated employees (respondents herein).

C. Respondent Angelo and Respondent Hurtado are the two least senior certificated employees of the District in services being reduced pursuant to Resolution 07-44 (Spanish – respondent Hurtado; Physical Education – respondent Angelo).

3. Counsel for the District represented that, with respect to the 20.0 FTE Elementary Counseling Program and 5.0 FTE Secondary Counseling Program, as set forth in Board Resolutions 07-44 and 07-43, the District has withdrawn all March 13, 2008 counselor notification letters related to these resolutions, and the counselors so notified are being retained by the District.

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 to reduce the number of certificated employees of the Stockton Unified School District due to the reduction or discontinuation of particular kinds of services.

The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

Notices shall be given to respondents that their services will not be required for the 2008-2009 school year because of reduction or discontinuation of particular kinds of services.

DATED: 4/28/08

Catherine B. Frink

CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings