

BEFORE THE
GOVERNING BOARD OF THE
ORLAND UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Non-
Reemployment/Reduction in Force of:

GUILLERMINA ALFARO
SUSAN ANDERSON
RYAN BATEMAN
KATIE BOLES
ALLISON BORGES
TERESA DAVIS
AMY FISH
ALFONZO GONZALES
STACEY LASAGNA
ZANDI-LIN LAWRENCE
TIBERIU MARINESCU
JAN MATHEWS
EMILY MULLINS
MELISSA RABURN
LORENA RAYGOZA
MATTHEW SCHUMANN
CHERYL TUATO'O
JAYMEE VUE

OAH No. 2010031649

Respondents.

PROPOSED DECISION

This matter was heard before Rebecca M. Westmore, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 27, 2010, in Orland, California.

Paul Boylan, Attorney at Law, appeared on behalf of the Orland Unified School District.

Lesley Beth Curtis, Attorney at Law, appeared on behalf of all respondents, who were present throughout the hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on April 27, 2010.

FACTUAL FINDINGS

1. Christian von Kleist is the Superintendent of Orland Unified School District (District). Armand G. Brett, M.Ed., is the Assistant Superintendent of the District. Their actions and the actions of the District's Governing Board (Board) were taken in their official capacities.

2. Respondents are permanent or probationary certificated employees of the District.

3. On February 25, 2010, the Board adopted Resolution No. 7-09/10 (Resolution), entitled "Resolution to Decrease the Number of Certificated Employees Due To a Reduction in Particular Kinds of Services." Pursuant to the Resolution, the Board determined that it was necessary and in the best interest of the District to reduce or eliminate particular kinds of services (PKS) and to decrease a corresponding number of certificated District employees not later than the beginning of the 2010-2011 school year. The Board also adopted "tie-breaking" criteria to be used in determining the order of termination of certificated employees who first rendered paid service to the District on the same date.

4. The Board directed Superintendent von Kleist to send appropriate notices to all employees whose services will be terminated by virtue of the PKS reductions and eliminations. The PKS reductions and eliminations are based solely upon economic reasons, and are not related to the skills, abilities or work performance of the affected teachers.

5. Pursuant to the Resolution, the Board resolved to reduce 20.5 full-time equivalent (FTE) positions.

6. On or before March 15, 2010, in accordance with the Resolution, and pursuant to Education Code sections 44949 and 44955, the District served notice on respondents advising that their services would not be reduced or would not be required for the 2010-2011 school year. Respondents timely filed Requests for Hearing to determine if there is cause for not reemploying them for the ensuing school year.

7. On March 29, 2010, Superintendent von Kleist made and filed Accusations against respondents. Respondents timely filed Notices of Defense to the Accusations.

District's Layoff Procedures

8. The District maintains a Certificated Seniority List (Seniority List) which contains data obtained from the District's records and its employees, including, but not limited to, employees' names, hire dates, status, school sites, assignments, credentials, and authorizations.

9. Laura Holderfield has been the District's Business Manager for eight years. She is responsible for all state reporting; budget preparation and analysis; attendance; management roles for accounts receivable and payable; and payroll. At hearing, Ms. Holderfield asserted that the decision to reduce or eliminate particular kinds of services was based on a projected \$2.6 million revenue deficit for the 2010-2011 school year. Ms. Holderfield stated that all positively-assured attrition, including four retirements, were "factored in" to the Board's decision to reduce or eliminate 20.5 FTE positions in the District.

Discussion

10. The District has opted to use reserve funds, which may include medical funds, to rehire teachers and to effectuate this layoff procedure. To that end, the District entered into the following stipulations with respondents. The District agreed to rescind the preliminary layoff notices served on the following respondents:

Katie Boles
Allison Borges
Amy Fish
Jan Mathews
Lorena Raygoza
Jaymee Vue

11. The following respondents agreed to accept their preliminary layoff notices:¹

Guillermina Alfaro
Susan Anderson
Ryan Bateman
Teresa Davis
Alfonzo Gonzales
Stacey Lasagna
Zandi-Lin Lawrence
Tiberiu Marinescu
Emily Mullins
Melissa Raburn
Matthew Schumann
Cheryl Tuato'o

¹ All preliminary layoff notices were for 1.00 FTE positions, except Susan Anderson who accepted her preliminary layoff notice for 0.50 FTE of her District Nurse position.

12. The District agreed to identify and prepare a list of all certificated employees, including those identified in Factual Finding 11, who are entitled to be rehired for up to 39 months beginning in June 2010 (Rehire List). The District will prepare and email to the certificated employees on the Rehire List, a list of all positions available in the District. All certificated employees on the Rehire List who receive the email listing the available positions may, within two weeks of the email, express their interest in the position. Failure to do so does not preclude the certificated employee from responding to subsequent email listings of available positions in the District for up to 39 months beginning in June 2010.

13. The PKS reduction included a 0.50 FTE District Library Media position. No respondent was notified for that reduction, and the librarian will be given a 1.00 FTE teaching position for the 2010-2011 school year. Respondents do not raise any issues as to how the District chooses to provide library services for the 2010-2011 school year.

LEGAL CONCLUSIONS

1. The District employees who received notices that their services would not be required in the 2010-2011 school year are not being laid off for reasons related to their ability or performance.

2. Jurisdiction in this matter exists pursuant to Education Code sections 44949 and 44955. The District has the burden of proving by a preponderance of the evidence that the proposed reduction or elimination of particular kinds of services and the preliminary notice of layoff served on respondents are factually and legally appropriate. The District has met its burden. 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 Association 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 Board’s decision to reduce particular kinds of services was a proper exercise of its discretion. In addition, all notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 were met. The notices sent to respondents indicate the statutory basis for the reduction of services and adequately describe the particular kinds of services to be reduced, and, therefore, were sufficiently detailed to provide them due process. (*Ibid.*, at p. 627; see also, *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831; *Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838; and *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

3. The Governing Board may reduce, discontinue or eliminate a particular kind of service and then provide the needed services to the students in another manner. (*Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571; *California Teachers Association v. Board of Trustees of Goleta Union School Dist.* (1982) 132 Cal.App.3d 32.) A school board may reduce services within the meaning of the statute either by determining that a certain type of service shall not be performed at all or by reducing the number of district employees who perform such services. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.) 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 for the reduction or discontinuance of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code sections 44949 and 44955.

4. The parties' stipulations, by their terms, resolve all outstanding issues in this matter.

RECOMMENDATION

Final Notices may be given to the respondents identified in Factual Finding 11 that their services will not be required for the 2010-2011 school year because of the reduction and discontinuance of particular kinds of services.

DATED: May 5, 2010

REBECCA M. WESTMORE
Administrative Law Judge
Office of Administrative Hearings