

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

In the Matter of the Accusation (Reduction of
Particular Kinds of Services) Against:

OAH No. N2008031033

ANDREA FRISBIE AND NANETTE
REEVES,

Respondents

PROPOSED DECISION

Gary A. Geren, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 25, 2008, in Redding, California.

Thomas E. Gauthier, Attorney at Law, of Lozano and Smith, represented the Superintendent of the Pacheco Union School District (District).

Don Selke, Attorney at Law, appeared on behalf of respondents, Andrea Frisbie and Nanette Reeves (respondents).

This matter was submitted and the record was closed on April 25, 2008.

FACTUAL FINDINGS

1. Respondents are permanent certificated employees (teachers) of the District; they received notices that their services would not be required for the 2008-2009 school year and each requested a hearing to challenge their intended layoffs. At hearing, respondents stipulated that the District properly followed the procedural and substantive requirements set forth in Government Code sections 44949 and 44955 when it issued layoff notices requiring the reduction in particular kinds of services for 6.5 Full Time Equivalent (FTE) positions, later reduced to 2.0 FTE, except in the following instances:

Issues

2. Nanette Reeves contends that she holds a credential to teach a course presently being taught by an "assistant teacher," Laurel Besecker. Ms. Reeves contends that Ms. Besecker lacks the required "full" credential to teach the course. Therefore, Ms. Reeves contends that she should be assigned to teach that position.

3. Andrea Frisbie contends that she has more seniority than Ms. Reeves, such that if only one of the respondents is eventually rehired by the District, it should be her.

4. The District and Ms. Reeves contend that respondents have the same hiring date, and that under the "tie-breaking" criteria developed by the District, Ms. Reeves should be rehired before Ms. Frisbie.

Initially, the District rejected respondents' request to have the "tie-breaking" issue resolved as part of this matter. The District asserted that since both respondents are subjected to layoffs, there is simply, "no tie to break;" and, the application of the "tie-breaking" criteria would become an issue only upon the rehiring of one, but not both of the respondents. Since no rehiring decisions have been made by the District, the District asserted that the issue is not properly before OAH, but rather would be a matter to be determined by a Writ of Mandate in the event the "tie-breaking" scenario plays out and the development or application of the criteria is challenged. By the conclusion of the hearing, the District accepted respondents' requests to have the "tie-breaking" issue resolved by this Decision, so as to provide respondents' with some greater indication of their chances of being rehired, and to provide the parties a measure of judicial economy by not having to litigate the issue later. By the agreement of the parties, the "tie-breaking" issue will be addressed herein.

Ms. Reeve's Contention

5. Ms. Reeves holds a supplemental credential in Art. Ms. Reeves did not investigate the credentials Ms. Besecker holds, what classes she is qualified and competent to teach, whether she is slated to teach at an elementary or junior high school, whether she is teaching under the supervision of a fully credentialed teacher or what assignments the District intends for her in the 2008-2009 school year. Ms. Reeve's assumptions regarding Ms. Besecker's credentials, status, and assignments were based on speculation, and therefore, did not show that the District improperly developed its proposed layoff list that resulted in Ms. Reeve's receiving a layoff notice rather than Ms. Besecker.

Ms. Frisbie's Contention

6. Richard Rhodes is the Superintendent of the District and he testified in this matter. He was responsible for the technical aspects implementing the layoff. In determining the order of the layoffs, the District prepared a Certified Seniority List which chronicles its employees' seniority dates (first date of paid service), status (tenured,

probationary or temporary), and credentials and authorizations. The seniority list was compiled by using data from the District's official personnel records.

The seniority list called for the employees with less seniority (junior employees) to be laid-off before employees with more seniority (senior employees). The District analyzed whether a senior employee could "bump" a junior employee, because the senior employee had the qualifications and competency to teach a different position presently taught by a junior employee. The District also analyzed whether a senior employee could be "skipped" and a junior employee retained, because a junior employee possessed unique qualifications and competencies that a senior employee lacked.

The Certified Seniority List developed by the District is accurate, despite Ms. Frisbie's contention to the contrary. The District's determination that she and Ms. Reeves share the same date of hire is correct. Both respondents first date of paid service as probationary employees occurred on August 18, 2005.

Prior to August 18, 2005, Ms. Frisbie signed an employment contract with the District. Ms. Reeves did not receive an offer from the District until August 17, 2005, at 11 p.m. (following a Board meeting where her position was created). Ms. Reeves accepted the offer that night and reported for work at 8:00 a.m. the following morning. While Ms. Frisbie received an offer of employment before Ms. Reeves, the date of the offer is irrelevant to determining seniority. The first date of paid service as a probationary employee determines an employee's "hire date," not the date on which a District offers employment.

While it is true that Ms. Reeves was paid for her first six days of service by submitting a form titled, "Substitute Claim Form/Additional Hours," that fact is irrelevant in determining her "hire date." The form was merely used to pay Ms. Reeves because the "paperwork" needed to process her payment through the District's payroll program had not been completed because of her eleventh hour hiring. The fact that Ms. Reeves used a form that contained the word "substitute" does not alter the fact that she was retained by the District as a probationary employee to teach in a year-long assignment and her assignment commenced on August 18, 2005. Ms. Reeves did not work the first six days of her employment as a "substitute" teacher, substituting for her own teaching assignment.

The "Tie-Breaker" Issue

7. To determine the relative seniority between certificated teachers with the same dates of hire, the District developed "tie breaking" criteria. The criteria included the consideration of the employee's education, experience, specialized training, and other factors, such as their participation in committees, coaching and clubs. A "point system" was assigned to nineteen different criterions, and a point total derived. Under the criteria, teachers with the fewer number of points are subject to being laid-off before employees with a greater number. The District solely relied on its needs, as well as the needs of the students in developing the "tie-breaking" criteria. The criteria are rational and objective.

There is no dispute that under the "tie-breaking" criteria, Ms. Reeves obtained 14 total points, while Ms. Frisbie received 8.5. Accordingly, in the event the District rehires but one of the respondents, Ms. Reeves shall be rehired.

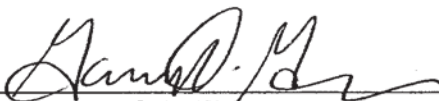
LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.
2. The Superintendent's decision to reduce particular kinds of services was a proper exercise of his discretion.
3. The Certified Seniority List prepared by the District was accurately prepared and appropriately applied in developing the proposed layoff list.
4. The District's "tie-breaking" criteria was appropriately determined and accurately applied to respondents and it comports to the requirements set forth in Education Code section 44955, subdivision (b).
5. Cause exists under Education Code sections 44949 and 44955 to provide notice to respondents that their services will not be required by the District for the 2008-2009 school year.

RECOMMENDATION

Notice shall be given to respondents occupying 2.0 FTE of instruction that their services will not be required for the 2008-2009 school year, because of the reduction and discontinuance of particular kinds of services.

DATED: May 1, 2008


GARY A. GEREN
Administrative Law Judge
Office of Administrative Hearings