

BEFORE THE
GOVERNING BOARD OF THE
PLAINSBURG UNION ELEMENTARY SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Employment Status of
Certificated Employee:

MARITA DIETZ,

Respondent.

OAH No. N2004030680

PROPOSED DECISION

Stephen J. Smith, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter at the Merced County Office of Education, Merced, California on April 29, 2004.

Todd A. Goluba, Attorney at Law, represented the Plainsburg Union Elementary School District.

Wesley T. Green, Attorney at Law, represented respondent Marita Dietz, who appeared.

The matter was submitted on April 29, 2004.

FACTUAL FINDINGS

1. Respondent Marita Dietz is and was at all times relevant to this Decision a certificated employee of the Plainsburg Union Elementary School District (hereafter "the District"). Ms. Dietz' first day of paid service to the District was August 20, 1997. Ms. Dietz currently serves the District as the teacher of the combined 1st and 2nd grade class.

2. The District consists of one elementary K-8 school. The District has 104 students enrolled in the current school year. The District's Average Daily Attendance ("ADA") was 98 at its second interim report for school year 2003-2004. The District employs 5 certificated personnel. The Superintendent "wears three hats". He teaches a 1.00 Full Time Equivalent ("FTE") of junior high school self contained classroom (grades 6, 7 and 8). He is also principal of the single District school and Superintendent of the District.

The Superintendent performs his administrative duties after class, on breaks, evenings, weekends, and during times school is not in session.

3. The Superintendent recommended to the Governing Board in writing on March 13, 2004 that the Governing Board reduce particular kinds of services currently being offered in the District for the upcoming school year 2004-2005.

4. The Governing Board adopted Resolution 031304/4 on March 13, 2004. The Resolution recited that the Governing Board determined that it is necessary for the District to reduce particular kinds of services not later than the beginning of the upcoming school year 2003-2004. The Resolution authorized the Superintendent to decrease a corresponding number of certificated employees of the District due to the reduction in particular kinds of services. The Resolution set forth the following particular kind of service of the District that will be reduced or discontinued no later than the beginning of the 2004-2005 school year:

Reduction of K-5 Elementary Teaching Services, resulting in the loss of 1 Full Time Equivalent (FTE) position.

5. The Resolution resolved that it is necessary to terminate at the end of the 2003/2004 school year the employment of one FTE certificated employee of the District as a result of the reduction of services. The Resolution authorized the Superintendent to send a notice of non-reemployment to any employees whose services will be terminated or affected by the Resolution.

6. The Superintendent personally served Ms. Dietz a notice of non-reemployment (hereafter "preliminary notice") on March 15, 2004. The written preliminary notice of non-reemployment advised Ms. Dietz that her services would not be required for the upcoming school year. Each notice set forth the reasons for the recommendation; that the District had determined to eliminate 1.0 FTE of K-5 Elementary teaching services, resulting in the loss of one full time equivalent teaching position.

7. Ms. Dietz timely filed a written request for a hearing to determine if there was cause for not reemploying her for the upcoming school year.

8. Vernon Snodderly, Superintendent of the Plainsburg Union Elementary School District, made and filed the Accusation in his official capacity only, as the Superintendent of the District. The Accusation was timely served on respondent Ms. Dietz on March 29, 2003. Ms. Dietz filed a timely Notice of Defense in response to the Accusation, requesting an evidentiary hearing on the propriety of the District's proposed action. All prehearing jurisdictional requirements were met by the District. There are no jurisdictional issues pending or remaining. The allegations of the Accusation have nothing whatsoever to do with Ms. Dietz's skills and competence as a teacher.

9. The District served 17 students in school year 2003-2004 in a combined first and second grade classroom taught by respondent Ms. Dietz. The District had 15 kindergarteners in the current school year. The District's proposed reduction in particular kinds of services targets the elimination of Ms. Dietz's combined first-second grade classroom and the distribution of the students expected to occupy that classroom in the upcoming school year to other classrooms. Presently Ms. Maloney teaches kindergarten. In the upcoming school year, the District proposes that Ms. Maloney will teach a combined K-1st grade classroom, taking the fifteen present kindergarteners as first graders, along with the five confirmed enrolled for kindergarten for the upcoming school year, for a total class size of 20. Mr. Tesone is teaching thirteen 3rd graders and ten 4th graders in the current school year. In the upcoming school year, the District proposes that he will teach a combined 2nd and 3rd grade class and take lower ability 4th graders in a combined classroom. He is slated to take the ten first graders becoming second graders Ms. Dietz would have taught, plus the six 3rd graders and four lower ability 4th graders in the upcoming school year. Ms. Fishman would take the remaining eight higher ability 4th graders, along with her expected sixteen total expected 5th and 6th graders.

10. The District's certificated employee seniority list has five entries. Ms. Dietz's first day of paid service to the District was August 20, 1999. She has a multiple subject credential and is certificated and competent to teach in a self contained classroom from preschool to adult. There was no dispute that Ms. Dietz is certificated and competent to teach the combined 6th, 7th and 8th grade class in the upcoming school year. Ms. Dietz does not have an administrative services credential. She did not contend she was certificated and competent to perform any administrative duties.

11. Mr. Snodderly, the Superintendent, principal and 6th, 7th and 8th grade combined classroom teacher, has the least seniority of any certificated employee in the District. His first day of paid service to the District was July 1, 2003. Mr. Snodderly has a multiple subjects credential, an administrative services credential, and a single subject authorization in social science.

12. Before Mr. Snodderly was hired, Mr. Tesone, the 3rd and 4th grade combined class teacher, was also the Superintendent and principal, as well as teaching a full 1.0 FTE. Mr. Tesone has an administrative services credential, as well as a standard elementary subjects credential and an authorization in social sciences. Mr. Tesone is slated to continue teaching the 3rd and 4th grade classes in the upcoming school year. He provided assistance, support and back up to Mr. Snodderly, and served as the vice principal in the present school year. It is anticipated he will serve in the same capacities in the upcoming school year.

13. The District is in sound shape financially, in large part due to the fiscal care taken by the Governing Board of the District's finances, Mr. Tesone's past management of the District's finances and Mr. Snodderly's effective continuation of prudent fiscal management. The District recently received a three year positive certification from the State of California Department of Education following an audit of the District's financial

condition. The District has significant general cash reserves, as well as some targeted reserves. The District is spending more than its revenue receipts in the current school year, and is expected to do so again in the upcoming school year. The District balanced its budget by taking approximately \$30,000 from its approximately \$300,000 in cash reserves, and is expected to do the same in the upcoming school year, if the proposed reduction in services is not made. The proposed reduction, if enrollment is as expected, will approximately balance the budget without resort to reserves.

14. The Superintendent's revenue projections for the upcoming school year are conservative, reflective of the fiscal prudence with which the District has been managed. Current enrollment is 104 students. Eleven 8th graders will leave via graduation, and there are presently 9 seventh graders to replace them. Two seventh graders and one 5th grader have confirmed they will not reenroll in the upcoming school year. Ten less kindergarteners are slated to enroll in the upcoming school year. The Superintendent aggressively advertised for new kindergarten enrollees, and was discouraged that only five have confirmed enrollment for the upcoming school year. The total confirmed loss of enrollment for the upcoming school year is 13, as of the date of the March 15 notice. More than one-third of the District's current year enrollment is composed of interdistrict transfer students, who can return to their home districts at will. The Superintendent's projections for the upcoming school year enrollment have accounted for the loss of the students known that are not returning, but a lingering concern remains that more such students will decide not to return in the fall. Two of the five incoming kindergarteners are interdistrict transfer students. There are no other interdistrict students who have confirmed as of the March 15 notice deadline that they will not return in the upcoming school year. There is no other student known to the Superintendent currently enrolled in another District who seeks to enroll in the District for the upcoming school year. The District has four or five students with learning disabilities and there is an outstanding issue about the adequacy of the District's ability to meet these students' educational needs. The Superintendent's action to recommend the reduction is powerfully influenced by these significant uncertainties.

15. The Governing Board's decision to reduce by discontinuance the combined 1st and 2nd grade classroom currently taught by Ms. Dietz was not arbitrary or capricious, but constituted a proper exercise of the Governing Board's discretion. Elimination of the combined classroom was related to the welfare of the schools and the pupils of the District. The Governing Board's decision to manage the District conservatively and not overspend its budget and raid its reserves to balance its budget in the upcoming school year is prudent. There was no evidence the Superintendent's enrollment and staffing projections were unreasonable or not based upon the best and most sound information available. The District is not reducing any service below State or federally mandated minimums. The District is not required to overspend its budget to retain a service, when that service can be offered in a different manner in the upcoming school year while protecting the integrity of the District's budget.

16. The District proposes to retain a certificated employee, Mr. Snodderly, the Superintendent, principal and the combined 6th, 7th and 8th grade teacher, to perform a service that a more senior certificated employee of the District, Ms. Dietz is both certificated and competent to teach. Mr. Snodderly performs a full 1.0 FTE of classroom teaching, a service Ms. Dietz is certificated and competent to teach. The District contends it is entitled to "skip" Mr. Snodderly and retain him to both teach the class and perform his administrative duties in a combined position, and that Ms. Dietz is not entitled to "bump" Mr. Snodderly because she lacks the administrative credentials to perform the duties of Superintendent and principal. The District's contentions have merit only if it is assumed that the Superintendent's position is indivisible due to the combination of administrative and classroom teaching duties in the single position. There was no legal authority advanced in support of the contention that the District can skip Mr. Snodderly and shield the teaching portion of Mr. Snodderly's position from a more senior teacher's right to bump into it by combining it with administrative responsibilities. Ms. Dietz does not seek to bump into the administrative portion of Mr. Snodderly's position, and acknowledges she does not have the credentials to do so.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All required notices were given and jurisdictional requirements contained in those sections were met.

2. Legal cause exists pursuant to Education Code sections 44949 and 44955 for the Plainsburg Union Elementary School District to reduce or discontinue 1.0 FTE K-5 Elementary Teaching Services. The District determined that the combination of students that would have been taught in the combined 1st and 2nd grade combined classroom can be taught and accommodated by dividing them between the existing teachers who will return for the upcoming school year. The District expects a slight decline in enrollment and is overspending its revenues, requiring dips into its reserves to meet its financial obligations. It has been held that a District may reduce or discontinue services and lay off certificated personnel when the reductions are caused by being required to spend its reserves to balance its budget.¹ "Reserves are a necessary component of school district budgeting, enabling it to pay expenses pending receipt of tax money, and the provision for the same is within the powers of the Board. . . ."² A District is not required to spend its reserves to preserve certificated positions and absent an abuse of discretion, shown by retaining an unreasonably large reserve under the circumstances, the District may elect to reduce or discontinue services rather than spend down its reserves.³ The evidence does not support a conclusion that the District's reserves are unusually large, and are presently subject to modest reduction

¹ *California School Employees Association v. Pasadena Unified School District* (1977) 71 Cal. App. 3d 318, 322.

² *Id.*, note 3.

³ *Id.*

to meet current budget needs. The cause for the reduction or discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof.

3. (b) Whenever in any school year... a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year,... and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, *the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render...*"

"..."

"The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. However, prior to assigning or reassigning any certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess."⁴

4. The District proposes to skip its less senior Superintendent/principal/6th, 7th and 8th grade teacher and terminate the more senior Ms. Dietz. Section 44955(b) requires the District to retain the more senior teacher where the more senior teacher is certificated and competent to teach the proposed class. Ms. Dietz is undisputedly competent and credentialed to teach the 6th, 7th and 8th grade class. "Once the school district has determined a need to effect a reduction in the number of permanent employees, it must then comply with the procedures set forth in section 44955, which requires among other things that the school district must effect such termination in order of seniority. . . . Section 44955 applies to reassignments only after the school board has determined to terminate the services of a

⁴ Education Code section 44955, in pertinent parts (italics added).

permanent employee pursuant to section 44955 and then only to assure that that employee, if entitled so by seniority and qualifications, be reassigned rather than terminated.”⁵

5. The legal standard set forth in section 44955(b) requires that Ms. Dietz be retained, regardless of the reduction in services, unless the District demonstrates a special need or requirement that permits skipping Mr. Snodderly. The District has the burden of proving those special circumstances, as required by section 44955(d). The District failed in that burden, and failed to prove any specific need to have Mr. Snodderly teach the combined 6th, 7th and 8th grade combined class in the upcoming school year. The only evidence offered on why the teaching position occupied by Mr. Snodderly must be combined with his administrative duties was Mr. Snodderly’s comment in his testimony that he “did not think” the District could afford a full time administrator. There was no showing that keeping the position combined was essential to the health and welfare of the District or the welfare of the pupils. It is wise, responsible managerially and fiscally prudent to operate as the Superintendent proposes. But that proposal hits head first into the seniority principle, and no authority was presented that would demonstrate a legal basis to override this strong and oft reaffirmed legal requirement that the most senior teacher be retained if there is a service being offered in the upcoming school year that the teacher being slated for layoff is certificated and competent to perform. There is no doubt this is the case for the District in the upcoming school year. The District may not shield the 1.0 FTE classroom teaching portion of Mr. Snodderly’s position from the statutory rights of Ms. Dietz to bump into the position by combining the classroom teaching with his administrative duties.

6. Mr. Snodderly did not receive a notice, so he is retained for the upcoming school year. Ms. Dietz must be retained. The District is entitled to make the reduction it proposed in the Governing Board’s Resolution, but if it effectuates the reduction, Ms. Dietz must be permitted to bump into Mr. Snodderly’s combined 6th-7th-8th grade classroom teaching assignment. Mr. Snodderly would become a part or full time administrator, or could take on some additional teaching assignment as he and the Governing Board decide. Or the District could operate as it did in the current year. Nothing in this Decision requires the District to make the reduction in services that was found permissible by this Decision. The Decision is limited to concluding that there is a legal and factual basis for the District’s proposed reduction or elimination of the particular kinds of services specified in the Resolution, and that the District may not lay off or give Ms. Dietz a Final Notice that her services will not be required for the upcoming school year.

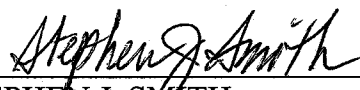
ORDER

The Plainsburg Union Elementary School District may reduce or eliminate 1.0 FTE of particular kinds of services, as specified in Resolution No. 031304/4 of the Governing Board of the Plainsburg Union Elementary School District. The District may not lay off certificated employee Marita Dietz, and the District’s Notice of Recommendation that her services will

⁵ *Black v. Board of Trustees* (1996) 46 Cal. App. 4th 493, 500.

not be required for the upcoming school year is set aside and dismissed. Final notice may not be given to Ms. Dietz that her services will not be required for the upcoming school year, for the reasons set forth in the Legal Conclusions. The Accusation against Ms. Deitz is DISMISSED.

Dated: May 26, 2009



STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings