

BEFORE THE GOVERNING BOARD
GUADALUPE UNION SCHOOL DISTRICT
COUNTY OF SANTA BARBARA
STATE OF CALIFORNIA

In the Matter of the Layoffs Of:

Florentino Aleman; Rosario Aronie;
Amanda King; Vanessa Plakias;
and Frances Reinosa,

Respondents.

OAH Case No. 2010031395

PROPOSED DECISION

Nancy Beezy Micon, Administrative Law Judge, Office of Administrative Hearings, heard this matter on May 3, 2010¹, in Guadalupe, California.

Liebert Cassidy Whitmore, by Frances E. Rogers, represented Hugo E. Lara (Lara), Superintendent of the Guadalupe Union School District (District).

Hathaway, Perrett, Webster, Powers, Chrisman & Gutierrez, by Adam A. Acevedo, represented Florentino Aleman, Rosario Aronie, Amanda King, Vanessa Plakias, and Frances Reinosa, collectively referred to as Respondents.

At the start of the hearing, the District and Respondents, by and through their respective counsel, stipulated as follows: (1) the hearing on the case was continued from April 7, 2010 to May 3, 2010; (2) a Decision in this matter is therefore due no later than June 2, 2010; and (3) the District must send its final notices by June 10, 2010.

Oral and documentary evidence, and evidence by oral stipulation on the record, was received at the hearing. The matter was submitted for decision on May 3, 2010.

FACTUAL FINDINGS

1. Superintendent Lara filed the Accusation in his official capacity.

¹ The hearing in this matter was continued from its previously-scheduled date, April 7, 2010, to the date of hearing, and the deadlines set forth in Education Code sections 44949, subdivision (c), and 44955, subdivision (c), have been extended in accordance with Education Code section 44949, subdivision (e).

2. Respondents are certificated employees of the District.
3. On March 11, 2010, the Governing Board of the District (Governing Board) adopted Resolution number 2009/2010-11, reducing 3.4 full-time-equivalent (FTE) positions in Kindergarten through Sixth Grade classroom services for the 2010-2011 school year.
4. Superintendent Lara thereafter provided written notice to the Governing Board that he recommended the termination of Respondents' services for the 2010-2011 school year due to the reduction of particular kinds of services.
5. On March 12, 2010, the District provided notice to Respondents that their services will not be required for the 2010-2011 school year due to the reduction of particular kinds of services. Respondents filed timely requests for hearing.
6. Respondents thereafter timely requested a hearing to determine if there is cause for not reemploying them for the 2009-2010 school year.
7. On March 29, 2010, the District filed and served the Accusation and other required documents on Respondents. Respondents thereafter timely filed a Notice of Defense, seeking a determination of whether cause exists for not reemploying them for the 2010-2011 school year.
8. Respondents thereafter, through counsel, timely filed notices of defense.
9. All prehearing jurisdictional requirements have been met.
10. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.
11. The Governing Board took action to reduce the services set forth in factual finding number 3 primarily because of the State budget crisis and the District's need to reduce or discontinue services in order to maintain a balanced budget and provide essential services. The decision to reduce or discontinue the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.
12. The reduction of services set forth in factual finding number 3, in the context of reductions necessitated by the anticipated cuts in State funding, is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.
13. After the adoption of Resolution number 2009/2010-11, the District received notice that two elementary school teachers would not be returning to the District for the 2010-

2011 school year due to their resignation or retirement. As a result, the number of positions to be reduced was decreased by two full-time equivalent positions. The District therefore rescinded its reduction in force notifications as to Respondents Florentino Aleman and Frances Reinoso (Reinoso). It was determined that Reinoso could, pursuant to her request, job share 0.6 of a position for the 2010-2011 school year. As a result, on April 30, 2010, the District rescinded its reduction in force notification to Respondent Vanessa Plakias as to 0.4 FTE.

14. The District properly considered all known attrition, resignations, and retirements in determining the actual number of necessary layoff notices to be delivered to its employees. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 636.)

15. The District maintains a seniority list which contains employees' first day of paid service, current assignments, and credential and certificate information. The District properly created its seniority list by determining the first day of paid service of each certificated employee and properly utilized reasonable skipping criteria when necessary. The skipping criteria were properly developed based on the needs of the District and its students.

16. No certificated employee junior to any Respondent was retained to render a service which any Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1-9.

2. The District must be solvent to provide educational services, and cost savings are necessary to resolve its budget shortfall. The Governing Board's decision was a proper exercise of its discretion. Financial considerations are an appropriate basis for a reduction in services under section 44955. As stated in *San Jose Teachers Association, supra*, 144 Cal.App.3d at 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."

3. The services set forth in Factual Finding 3 are particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 10. Specifically, elementary school classroom teaching is a particular kind of service under section 44955. (*Calif. Teachers Assn. v. Board of Trustees of Goleta Union School Dist.* (1982) 132 Cal.App.3d 32, 36; *San Jose Teachers Assn., supra*, 144 Cal.App.3d at 637.)

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4. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and students, by reason of factual finding numbers 1-16.

5. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services, by reason of factual finding numbers 1-16 and legal conclusion numbers 1-4. The District may give notice to Respondents Rosario Aronie, Amanda King, and Vanessa Plakias (as to 0.6 FTE only) that their services will not be required for the 2010-2011 school year. The Accusation shall be dismissed as to Respondents Florentino Aleman and Frances Reinoso.

RECOMMENDATION

1. It is recommended that the Accusation be sustained, and the District may notify Respondents Rosario Aronie and Amanda King that their services will not be needed during the 2010-2011 school year, and that Vanessa Plakias's services may be reduced to a 0.4 FTE position during the 2010-2011 school year, due to the reduction of particular kinds of services.

2. It is recommended that the Accusation be dismissed as to Respondents Florentino Aleman and Frances Reinoso.

DATED: June 1, 2010

Nancy Beezy Micon
Administrative Law Judge
Office of Administrative Hearings