

BEFORE THE
BOARD OF EDUCATION OF THE
RIM OF THE WORLD UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of
Certain Employees of the Rim of the World
Unified School District Identified in
Appendix A.

OAH No. 2015030874

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Blue Jay, California, on April 22, 2015.

Todd Robbins, Atkinson, Andelson, Loya, Rudd & Romo, Attorneys at Law, represented Rim of the World Unified School District.

Carlos Perez, Reich, Adell & Cvitan, represented 11 of the respondents¹ listed in Appendix A, which is attached hereto and incorporated by this reference.

Respondent Steven Hartranft failed to timely file a Request for Hearing and did not appear.

The matter was submitted on April 22, 2015.

FACTUAL FINDINGS

1. On March 5, 2015, the Board of Education adopted Resolution Number 14/15-15, reducing particular kinds of certificated services and directing the Superintendent to give appropriate notices to certificated employees whose positions would be affected by the action. The resolution stated that “competency” as described in Education Code section 44955, subdivision (b), for the purposes of bumping “shall necessarily include: (1) possession of a valid credential in the relevant subject matter area; (2) for bumping a holder of a Single Subject credential in a departmentalized course in grades 7-12, an equivalent Single Subject credential authorizing service in all grades 7-12; (3) ‘highly qualified’ status

¹ Respondent Lauren Tovar was represented by Mr. Perez but did not appear at the hearing.

under the No Child Left Behind Act in the area to be assigned (if required by the position); and (4) an appropriate EL authorization (if required by the position).”

2. The decision to reduce or discontinue a particular kind of service is a matter reserved to the district’s discretion and is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.) A school district’s decision to reduce a particular kind of service must not be fraudulent, arbitrary or capricious. (*San Jose Teachers Association v. Allen* (1983) 144 Cal. App. 3d 627, 637.)

3. Consistent with the board’s resolution, on March 11, 2015, Donna Kellogg, Superintendent, Rim of the World Unified School District, in her official capacity, recommended to the board in the Notice of Recommendation that Services Will Not be Required that the respondents identified in Appendix A be given notice that their services would not be required for the 2015-2016 school year. The reasons for the recommendation were set forth in the notice.

4. On March 11, 2015, Edward Dardenne-Ankinga, Assistant Superintendent Personnel/Pupil Services, made and filed the District Statement of Reduction in Force in his official capacity. Mr. Dardenne-Ankinga testified in this proceeding. He explained that financial considerations were the primary rationale behind the district’s layoff decision including a decline in average daily attendance, a consolidation of programs, and the impending closure of an elementary school. Mr. Dardenne-Ankinga also explained the process that was used to identify those teachers subject to layoff.

5. Mr. Dardenne-Ankinga testified that the district implemented a bump analysis to determine which employees identified for layoff could bump into a position being held by a junior employee. A senior teacher whose position was discontinued had the right to transfer to a continuing position which he or she was certificated and competent to fill. In doing so, the senior employee was entitled to displace or “bump” a junior employee who was filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469, 473-474.) No evidence was introduced that established the district improperly “bumped” any employees.

6. Respondents are identified in Appendix A. Each respondent is a certificated employee of the district.

7. All prehearing jurisdictional requirements were met.

8. The services identified in Resolution 14/15-15 are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955. The board’s decision to reduce or discontinue those services was neither arbitrary nor capricious; rather, it was for the fiscal reasons outlined in Finding No. 4, above. It was a proper exercise of the board’s discretion. The reduction and discontinuation of services was related to the welfare of the district and its pupils, and it became necessary to decrease the

number of certificated employees as determined by the board. No particular kinds of services were lowered to levels less than those levels mandated by state or federal law.

9. Mr. Dardenne-Ankinga testified that he had not yet received a directive about how he was to proceed as a result of the district employees who recently notified the district that they intend to retire at the end of the current school year. As such, the district has not yet determined whether attrition will affect the layoffs, but Mr. Dardenne-Ankinga anticipates that he will be given instructions regarding attrition and the district “most certainly” will rehire teachers as permitted by attrition.

Tie-Breaking Issue

10. Resolution Number 14/15-14 established criteria for resolving ties in seniority pursuant to Education Code section 44955, subdivision (b), for those employees who share the same seniority dates. The resolution identified eight criteria to be used to break ties.

11. Mr. Dardenne-Ankinga testified that the district’s tie-breaking criteria did not affect the layoff decisions.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections were provided as required.

2. A district may reduce services within the meaning of section 44955, subdivision (b), “either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may ‘reduce services’ by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved.” (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. A preponderance of the evidence sustained the statements set forth in the notice of recommendation concerning the services that will not be required.

4. The district identified the certificated employees who are providing the particular kinds of services that the board directed be reduced or discontinued. Because of the reduction of particular kinds of services, cause exists pursuant to Education Code section 44955 to give notice to respondents that their services will not be required for the 2015-2016 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

RECOMMENDATION

It is recommended that before May 15, 2015, the Board of Education give notice to the respondents whose names are set forth below in Appendix A, that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2015-2016 school year.

DATED: April 29, 2015

_____/s/_____
MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

Appendix A

1. ANN BARANY
2. JOHN BERESFORD JR.
3. STEVEN HARTRANFT (0.2 FTE)
4. SARAH HOUCK
5. KIRSTEN KARN
6. KIMBERLY LAVERS
7. JESSICA MAZAKAS
8. ERIC NEWCOMBE
9. RYAN REISBORD (0.8 PTE)
10. CONSTANCE REYNOLDS
11. LAUREN TOVAR
12. SUSAN WILLIAMS