

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

In the Matter of the Layoff/Accusation
Against:

95 CERTIFICATED EMPLOYEES,

Respondents.

OAH No. 2010020593

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge, at Jurupa, California on April 13, 2010.

Kerrie E. Taylor, Esq. of Fagen, Friedman & Fulfroest LLP represented the Jurupa Unified School District (the district).

Marianne Reinhold, Esq. of Reich, Adell & Cvitan represented all of the respondents who appeared at the hearing.

Oral and documentary evidence was received and the matter was submitted on April 13, 2010.

FACTUAL FINDINGS

1. On February 16, 2010, the Governing Board of the district (the board) adopted Resolution number 2010/26, determining that it would be necessary to reduce or discontinue particular kinds of services (PKS) at the close of the current school year. The board determined that the PKS that must be reduced for the 2010-2011 school year were the following full time equivalent (FTE) positions:

<u>PKS</u>	<u>FTE</u>
Elementary Teaching	90.0
Secondary English	6.0

Secondary Social Science	4.0
Secondary Math	4.0
Secondary General/Biological Science	2.0
Secondary Spanish	2.0
Secondary Art	0.6
Secondary Agriculture	2.6
ROTC	2.0
Total FTE positions to be reduced or eliminated	<hr/> 113.2

The services listed above are PKS, which may be reduced or discontinued within the meaning of Education Code section 44955.

2. On February 25, 2010, based on the board's resolution, the Superintendent recommended, with regard to the ensuing school year, that the board reduce or eliminate the specified PKS provided by the district for the 2010-2011 school year by notifying 118 certificated employees that their services will not be required for the 2010-2011 school year. (See Hearing Exh. 1D.)

3. The district's recommendation and the board's decision to reduce or discontinue the services listed in Finding 1, above, were neither arbitrary nor capricious; rather, the recommendation and decision were based on the projected budget deficit. Thus, the board's decision represents a proper exercise of its discretion.

4. The reduction and discontinuation of services 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 board.

5. The Superintendent designated the certificated employees, permanent or probationary teachers employed by the district, by creating a seniority list, first selecting teachers to be laid off in the inverse of the order in which they were employed, then assigning and reassigning employment in such a manner that all employees to be retained will be retained so as to render services which their seniority and qualifications entitle them to render.

6. Prior to March 15, 2010, the certificated employees affected by the layoffs received written notice notifying them that pursuant to Education Code sections 44949 and 44955, their services would "be terminated at the close of the current school year."

7. The Superintendent of the district timely made and filed an accusation against the 95 certificated employees (respondents) listed in Hearing Exhibit 1A. The Accusation was made and filed by the Superintendent while acting in his official capacity.

8. The district timely served respondents with board resolution number 2010/26, a Notice of Recommendation that Services Will Be Terminated, board resolution number 2010/27 establishing tie-breaking criteria, the Accusation, a Notice of Defense, a Notice of Hearing, and copies of Education Code sections 44949 and 44955, and Government Code sections 11506, 11507.5, and 11507.6. Additionally, the Notice of Recommendation that Services Will be Terminated advised respondents as follows:

“You are advised that you may request a hearing to determine if there is cause for not reemploying you for the 2010-2011 school year.

Your request for hearing must be in writing and delivered to Tamara Elzig, Assistant Superintendent, Personnel Services on or before March 23, 2010. If you fail to request the hearing on or before this date, your failure to do so shall constitute a waiver of your right to a hearing. (Hearing Exh. 1C.)”

9. The 95 respondents listed in Hearing Exhibit 1A, which is incorporated herein by reference, timely submitted their notices of defense requesting a hearing to determine if cause exists for not re-employing them for the ensuing year.

10. Each respondent who requested a hearing and filed a Notice of Defense was properly noticed of the date, time and place of the instant hearing.

11. All prehearing jurisdictional requirements were met.

12. Respondents are certificated permanent or probationary employees of the district.

13. The parties resolved all disputed issues prior to the hearing and stipulated, on the record, that respondent Sylvia Pizana’s seniority date should be changed to 9/18/2006.

14. The services of no permanent employee are being terminated while any probationary employee, or any permanent employee with less seniority, is being retained to render services which such permanent employee is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the instant proceedings exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections have been provided/met, as required.

2. The services listed in Factual Finding 1 are PKS that can be reduced or discontinued pursuant to Education Code section 44955. The board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

3. Based on the Factual Findings, considered in their entirety, cause exists to notify all of the respondents that their services will not be needed during the 2010-2011 school year due to reduction or discontinuance of PKS necessitated by the current budget crisis.

4. Cause to reduce or discontinue services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

5. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render

ADVISORY DETERMINATION

WHEREFORE, THE FOLLOWING ADVISORY DETERMINATION is hereby made:

The Accusation is sustained. The district shall notify all of the respondents that their services will not be needed during the 2010-2011 school year due to lack of funds and the resulting need to reduce or discontinue PKS.

DATED: April __, 2010

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings