

BEFORE THE BOARD OF TRUSTEES OF
RIALTO UNIFIED SCHOOL DISTRICT
SAN BERNARDINO COUNTY, CALIFORNIA

In the Matter of the
Reduction in Force Involving Two
Certificated Employees,

Respondents.

OAH No. 2018040295

PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Rialto, California, on April 26, 2018.

Melanie Petersen, Fagen, Friedman & Fulfroost, LLP, represented the Rialto Unified School District (“District”).

Alberto Torres and Carla Sittniewski, Respondents, represented themselves.

The matter was submitted on April 26, 2018.

FACTUAL FINDINGS

1. On March 7, 2018, the Board of Education of the Rialto Unified School District adopted Resolution Number 17-18-42. In this resolution the Board stated it determined that “due to financial conditions it is in the best interests of the District and the welfare of the schools and pupils” that particular kinds of services “must be reduced or discontinued; . . .” The resolution directed the District to initiate layoff procedures “due to the reduction and elimination of particular kinds of services” by the following Full Time Equivalents (FTE) for the 2018-2019 school year:

Counselor-Special Education 1 FTE
High School APEX Teacher .2 FTE
High School AVID Teacher .4 FTE
High School CTE Intro to Business Teacher 1 FTE
High School CTE Business Technology Teacher 1 FTE
High School CTE Digital Media/Web Design Teacher I FTE

High School CTE Life Management Teacher 1 FTE
High School Earth Science Teacher 1 FTE
High School Health Teacher 2.6 FTE
High School on Campus Intervention Teacher 1.6 FTE
High School Physical Education Teacher 2.2 FTE
High School Social Science Teacher 3 FTE
Total Certificated Positions: 16 FTE

2. Pursuant to the Board's Resolution, on behalf of Cuauhtémoc Avila, Ed.D., District Superintendent, Rhonda Kramer, Senior Director of Personnel Services at the District, determined that Respondents' services will not be required for the 2018-2019 school year based on the seniority and qualifications of each certificated District employee, including Respondents' seniority and qualifications. Respondents are certificated employees of the District and hold preliminary single subject credentials in physical education.

At the hearing Ms. Kramer testified that in reviewing the 2018-2019 school year staffing she determined that the District may be overstaffed due in part to program modifications related to changes to graduation requirements. From the 16 FTE certificated positions designated for reduction or elimination, the District gave layoff notices to five certificated employees of its intention to lay them off. After considering attrition and retirements, the list of teachers subject to the planned layoff was reduced to the two Respondents.¹

3. To determine which employees were subject to the planned layoff, Ms. Kramer relied on a Seniority List of certificated employees the District prepared, which was marked and received into evidence. No junior employee was retained in place of a more senior employee.

4. In letters dated March 15, 2018, the District gave notice to Respondents that their services will not be required for the upcoming 2018/2019 school year. On April 9, 2018, the District filed and served upon Respondents a Statement of Reduction in Force signed by Superintendent Avila with the reasons for the proposed reduction in force. Prehearing jurisdictional requirements have been met.

5. There was no evidence presented that the layoffs will reduce any of the District's offerings in Education Code mandated courses.

6. A school board may determine whether a particular kind of service should be reduced or discontinued, and it cannot be concluded that the governing board acted unfairly

¹ It was not clearly explained at the hearing how the District reduced the particular kinds of services to the two positions from the 16 FTE positions originally identified for reduction or elimination.

or improperly simply because it made a decision it was empowered to make. (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 174.) It is within the discretion of a school district to determine the extent to which it deems a reduction of services necessary and proper under the circumstances as long as it does not reduce a service below the level required by law, or its decision is fraudulent, arbitrary or capricious. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-637 (Citations omitted).)

The Board's decision to reduce or discontinue particular kinds of services was neither arbitrary nor capricious and 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.

7. Respondents did not dispute that their positions are subject to the District's layoff decision. Ms. Sittniewski seeks to challenge the date of her placement on the District's seniority list for rehire purposes, which would place her ahead of Mr. Torres. She believes that the District should count her time working as a substitute physical education teacher in August 2017 and base her seniority date on the date she began working as a substitute teacher at the District. Mr. Torres disagreed with Ms. Sittniewski's claim relating to her seniority date. Respondents testified and submitted into evidence documents on their behalf.

Ms. Sittniewski was hired as a substitute teacher on August 3, 2017, to fill a "PE Vacancy," according to one document received into evidence and Ms. Kramer's testimony. According to another document received into evidence, the District's online schedule that teachers could access, Ms. Sittniewski was scheduled as a "Roving Sub 9-12" starting August 3, 2017, and reported as a substitute teacher from August 3 to August 25, 2017. During this time, she was paid as a substitute teacher at a per diem substitute teacher rate. On August 28, 2017, which is her identified seniority date on the District's seniority list, the District hired her as a probationary employee and her pay status changed to reflect that she was receiving pay under the contract between the District and the Rialto Education Association (contract) as a "(b)eginning teacher" under probationary status. The contract defines "beginning teacher" to include "(p)reliminary credentialed 1st and 2nd year teachers." Both Ms. Sittniewski and Mr. Torres fall under this classification category.

8. On August 3, 2017, the District conducted interviews for these physical education positions and interviewed 13 applicants, including Respondents. Both Respondents were offered positions as physical education teachers on August 7, 2017. Mr. Torres signed his contract on August 10, 2017, with August 11, 2017, identified as his seniority date. Mr. Torres was medically cleared to teach sooner than Ms. Sittniewski, who was not cleared until August 14, 2017.² For these medical clearances, the District utilized a

² Although she was medically cleared on August 14, 2017, she was not given the contract to sign until August 28, 2017. It was not clear from the record whether this was due to additional orientation requirements, like reference checks, that needed to be completed. In

consultant, Dr. Fox. According to Ms. Kramer, applicants for credentialed employment with the District are required to complete this clearance process before they are given probationary contracts with the District and the District does not control when Dr. Fox medically clears individuals. There was no evidence that the District acted improperly because Dr. Fox cleared Mr. Torres before he cleared Ms. Sittniewski and, as a result, he was given a probationary contract to sign before her.

9. Both Respondents credibly described their commitment to teaching at the District and their desire to continue in their positions. Ms. Sittniewski stated that she has a particular commitment to Rialto, where she attended school, and her position is her “dream job.” She wondered why it took so long for her to be cleared, she thought her seniority date should be sooner than it was, and she felt she was not a “regular substitute teacher.” Her testimony was heartfelt and sincere. The evidence, however, does not support her testimony that she was more than a regular substitute teacher. As discussed later in this decision, the District appropriately classified her as substitute teacher with a seniority date of August 28, 2018 as a probationary employee.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists under Education Code sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

2. The services identified in the Resolution are particular kinds of services that may be reduced or eliminated under section 44955.

3. Section 44955, subdivision (b), provides, in pertinent part, that, “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.”

4. Section 44955, subdivision (c), provides that:

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

any event, it is undisputed that Respondent Sittniewski was medically cleared by Dr. Fox after Dr. Fox cleared Respondent Torres.

governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

5. A preponderance of the evidence established that Respondents' services will not be required due to the reduction and elimination of particular kinds of services for which they are certificated to perform.

Evaluation Regarding Ms. Sittniewski's Classification and Seniority Date

6. Education Code section 44917 requires that governing boards classify "as substitute employees those persons employed in positions requiring certification qualifications, to fill positions of regularly employed persons absent from service." Traditionally, a substitute teacher has been defined as being "employed from day to day to serve at the option of the school district in the absence of the regular teacher." (*Vasquez v. Happy Valley Union School Dist.* (2008) 159 Cal.App.4th 969, 975, citing *Wood v. Los Angeles City School Dist.* (1935) 6 Cal.App.2d 400 at 402.)

By this definition of substitute teacher, there is no basis to change Ms. Sittniewski's August 28, 2017, seniority date to August 3, 2017. The District properly classified Ms. Sittniewski as a substitute teacher from August 3, 2017, to August 25, 2017. On August 3, 2017, the District hired her to fill a vacant physical education position, and she continued to work as a substitute teacher until August 25, 2017. On August 28, 2017, she was given a probationary contract as a beginning teacher with August 28, 2017, as her seniority date and the District reclassified her as a probationary teacher.

Cause Exists to Give Notice to Respondents

7. The District has identified Respondents as 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 2018-2019 school year. The cause relates solely to the welfare of the schools and the students in the District within the meaning of Education Code section 44949.

//

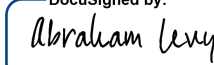
//

//

RECOMMENDATION

It is recommended that before May 15, 2018, the Board of Trustees of the Rialto Unified School District give notice to Respondents Alberto Torres and Carla Sittniewski that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2018-2019 school year.

DATED: May 3, 2018

DocuSigned by:

C84194237D2243C...
ABRAHAM M. LEVY
Administrative Law Judge
Office of Administrative Hearings