

BEFORE THE  
GOVERNING BOARD OF THE  
JOHN SWETT UNIFIED SCHOOL DISTRICT

In the Matter of the Non-Reemployment of  
6.0 Full Time Equivalent (FTE) Certificated  
Employees

OAH No. 2008030270

**PROPOSED DECISION**

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Rodeo, California, on April 14, 2008.

Jonathan A. Pearl, Attorney at Law, Miller Brown & Dannis, 750 B Street, Suite 2310, San Diego, California, represented the John Swett Unified School District.

Dale Brodsky, Attorney at Law, Beeson, Taylor & Bodine, 1404 Franklin Street, Fifth Floor, Oakland, California 94612, represented respondents.

The matter was deemed submitted for decision on April 14, 2008.

**FACTUAL FINDINGS**

1. On February 28, 2008, the governing board of the John Swett Unified School District adopted Resolution No. (07-08)15, in which the board resolved to reduce or eliminate the following particular kinds of services no later than the beginning of the 2008-2009 school year and directed the superintendent or his designee to send appropriate notice to employees whose positions might be lost by virtue of this action:

<u>PARTICULAR KINDS OF SERVICES</u>	<u>FULL TIME EQUIVALENT POSITIONS</u>
Kindergarten Teacher	1.0 FTE
6 <sup>TH</sup> grade teacher (5 instructional sections)	1.0 FTE
1 section 6th grade – PE	.2 FTE
1 section 7 <sup>th</sup> grade – PE	.2 FTE
1 section Art – Middle School	.2 FTE
1 section 8 <sup>th</sup> grade History	.2 FTE
1 section 8 <sup>th</sup> grade PE	.2 FTE
1 section 7 <sup>th</sup> grade Pre-Algebra	.2 FTE
1 section 8 <sup>th</sup> grade Math	.2 FTE
2 sections High School English	.4 FTE

1 section High School English Language Development	.2 FTE
1 section World History	.2 FTE
1 section Chemistry	.2 FTE
1 section High School Algebra	.2 FTE
2 sections of High School PE	.4 FTE
2 sections High School Art	.4 FTE
Independent Study	.6 FTE

2. Prior to March 15, 2008, the superintendent gave written notice to respondents that, pursuant to Education Code sections 44949 and 44955, it was being recommended that their services would be reduced or eliminated at the close of the 2007-2008 school year. Each of the respondents – Deborah Burdette, Megan De La Mater, Kelly Hanson, Cherie Horton, Addi Murray, Steve Trotter, and Deborah Ynda – filed a timely request for a hearing.

3. At the conclusion of the hearing, the district rescinded the layoff notice that had been sent to Megan De La Mater. As a result, she is no longer a respondent in this proceeding.

4. The service reductions were recommended because of concerns about the state budget and an expected reduction in revenue. Most of the reductions are fractional cuts in programs, i.e., the elimination of one or two sections of a particular subject. None of the reductions will prevent the district from providing mandated services. Nor will the reductions cause the district to fall below class size mandates. Students will still be able to meet graduation requirements. The reductions are in the interest of the schools and their students.

5. Kelly Hanson is the most junior PE teacher in the district. She is one of two PE teachers at the high school and the only female PE teacher there. There are three PE teachers at the middle school, which is across the street from the high school. Hanson's position is being eliminated because of the reduction of two sections of PE at the high school and three sections at the middle school. (Each section represents 0.2 FTE.) The district intends to cover the remaining three sections of Hanson's high school PE assignment by sharing a teacher with the middle school. Although the schools are on different bell schedules, this shared teaching arrangement is currently being utilized in Spanish classes at the two schools.

Hanson's office is adjacent to the girls' locker room and her duties include managing the locker room and maintaining good behavior during the seven-minute changing periods at the beginning and end of each class session. Hanson asserts that because of the differing bell schedules at the middle and high schools and the time it will take a PE teacher to get from one school to another, the girls' locker room will invariably not be under a teacher's supervision at all times as it is now. Thus, it is argued, the district should retain their only female high school PE teacher.



Hanson's argument is unavailing. While not having a full-time female PE teacher at the high school may well cause some supervision problems, the district is not mandated to have both male and female PE teachers at all schools. Hanson's gender does not require the district to skip her in the layoff process.

6. Hanson also asserts that the district is equitably estopped from terminating her services. Hanson was employed as a temporary teacher in the Benicia Unified School District for the 2006-2007 school year. In August 2007 Hanson began working under a probationary contract as a first grade teacher with the Vallejo Unified School District. At about the same time, a female PE teacher at John Swett High School suddenly resigned. A friend gave Hanson's name to Robert Bass, the high school principal, suggesting Hanson might be interested in the position. In late August 2007 Bass invited Hanson for an interview with him and vice principal Jeff Brauning. Hanson maintains that Bass and Brauning told her they were looking for someone to fill the position long-term and sought assurances from her that she would remain in the position. Bass and Brauning referred Hanson to Superintendent Michael Roth, who met with her the next day. Roth told Hanson that the district could not hire her until Vallejo released her from her probationary contract. Hanson signed a salary placement form accepting the position, contingent upon Vallejo's releasing her. Roth does not specifically recall telling Hanson the job might only last for one year, but it is his practice to tell all new probationary teachers that they can be released without cause during their first two years of service.

The Vallejo Unified School District would not release Hanson until they found a replacement for her position. She was not released from her position in that district until the beginning of December 2007. During the intervening time, Roth made several calls to Vallejo's human relations department trying to find out when Hanson would be released. At one point, he placed a call to Vallejo's superintendent. Hanson was in frequent contact with Roth or Bass and was repeatedly assured the district was working to get her released from Vallejo. Hanson concedes that no one in the district made any specific promises that she could remain long-term (although she says Bass did tell her, "You owe me five years.") But she asserts that the circumstances of the situation – the district's solicitation of her, the district's efforts to get her released from Vallejo, and the fact she would be the only female PE teacher at the high school, which she thought insured job security – all induced her to give up her job at Vallejo. Had she known she would be laid off two and a half months after starting, she would not have switched jobs.

Hanson began working at John Swett High School on December 3, 2007. On December 11, 2007, she signed a probationary contract that showed the period of the contract to be "December 3, 2007 – June 30, 2008." Hanson maintains she signed this contract because she believed it was a standard probationary contract and that the terms were non-negotiable. She nevertheless believed that as the only female PE teacher at the high school she would be immune from layoff and would have the position for the long term.

Hanson has failed to demonstrate sufficient facts to estop the district from laying her off. As respondents point out, a party seeking to apply the doctrine of equitable



estoppel must prove the following four elements: "(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 488-489, quoting *Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305. The salient point in this case is that Hanson was not ignorant of the true state of facts. She knew generally that teachers are subject to layoff, especially newer ones. She knew that she could be dismissed from her position, albeit she believed only for cause. And she knew that the contract she signed ran only through the 2007-2008 school year. Under those circumstances, her contention that she was led to believe she would have a permanent home in the district cannot estop the district from terminating her based upon her lack of seniority.

7. Steve Trotter holds a Social Science credential that entitles him to teach history, geography and social studies. He is currently assigned to teach social studies and is subject to a reduction of 0.4 of his full-time position due to the reductions in high school and eighth grade history. Crystal Lopez, who is junior to respondent, also holds a Social Science credential. However, Lopez also has a supplemental credential in Literature and her assignment is as an English teacher. Trotter has in the past taught journalism and PE classes for the district. Although these are outside the scope of his credential, it appears the governing board granted waivers permitting him to teach these subjects. Trotter, who has been in the district since he was a student, told the administration he was willing to teach "anything" to remain. Discussions were held in early April in which the possibility of granting Trotter a waiver to permit him to teach English was put forth. However, no such waiver has yet been issued. Trotter asserts that the district has routinely granted waivers to permit teachers to teach outside their credential (or has allowed teachers to do so without waivers) and maintains he should be retained to teach English under a waiver.

As of the date of the hearing, Trotter has no authorization to teach English. While it appears quite likely that the board will grant him a waiver at some time in the future, perhaps the very near future, there is no legal basis for requiring the district to consider Trotter authorized to teach English and therefore exempt from the layoff process.

8. Deborah Ynda is the least senior teacher in the district, with a seniority date of January 22, 2008. Ynda teaches first grade. She is subject to layoff due to the reduction of 1.0 FTE of kindergarten as she is being bumped by a senior teacher. Ynda believes she has special skills that should cause the district to retain her. In particular, Ynda has a BCLAD and in June 2007 received a master's degree in education. In addition, she has been very involved in church and civic affairs since moving to the community. While all this is to Ynda's credit, the district has not adopted any skipping criteria and the evidence does not establish that the district must retain Ynda despite her lack of seniority.

9. Respondents assert that the district is seeking to terminate the services of more employees than is rendered necessary by the PKS reduction. The superintendent testified that several of the service reductions were being effectuated through attrition. In particular,



the 0.6 reductions in middle and high school math and algebra are being accounted for by the pre-March 15 resignation of a math teacher, the 0.6 high school English reductions are being accounted for by the non-reelection of a probationary English teacher, and the 0.2 chemistry reduction is being accounted for by the non-reelection of a probationary science teacher. Respondents maintain that this 1.4 FTE "over noticing" requires the retention of Kelly Hanson for a 1.0 position and of Cherie Horton for a 0.4 position. However, this overstates the situation.

The board resolved to reduce particular kinds of services by a total of 6.0 FTE. As set forth above, of that amount, a 1.4 FTE reduction has been effectuated through attrition, leaving 4.6 FTE to be accounted for through the layoff of respondents. Deborah Ynda and Deborah Burdette are the two most junior Multiple Subject teachers in the district and are subject to layoff due to the 1.0 FTE reductions in kindergarten and sixth grade. Kelly Hanson, the next most junior teacher is subject to layoff due to the total of 1.0 FTE reductions in PE. Addi Murray, a 0.4 FTE employee is entitled only to teach art. She is subject to layoff because of the 0.4 reduction in high school art. Steve Trotter is subject to layoff of 0.4 of his position due to the two history reductions. These reductions equal 3.8 FTE, leaving only an additional 0.8 position to be eliminated, which results from a 0.6 FTE reduction in independent study and a 0.2 FTE reduction in middle school art. The seniority list shows that both of these subjects are being taught by senior teachers holding Multiple Subject credentials who would be entitled to bump the only remaining respondent, Cherie Horton, when their positions are reduced. But this still leaves Horton with a 0.2 FTE position. It is unclear how the district would utilize a Multiple Subject credentialed teacher in such a fractionalized position, but there was no showing it could not be accomplished. Horton is entitled to be retained for 0.2 FTE.

10. Any other assertions put forth by respondents at the hearing and not addressed above are found to be without merit and are rejected.

11. No junior employee is being retained to render a service that any of the respondents are certificated and competent to provide.

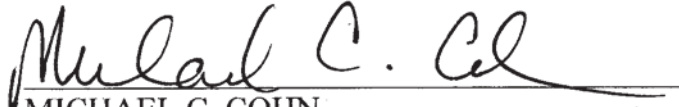
### LEGAL CONCLUSIONS

Cause for the elimination of 6.0 FTE positions exists in accordance with Education Code sections 44949 and 44955. Cause further exists to give respondents Deborah Burdette, Kelly Hanson, Addi Murray, and Deborah Ynda notice that their services will not be required for the 2008-2009 school year. Cause also exists to give respondents Cherie Horton and Steve Trotter notice that their positions will be reduced by 0.8 FTE and 0.4 FTE, respectively, for the 2008-2009 school year. This cause relates to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

Notice may be given respondents that their services will be reduced or eliminated for the 2008-2009 school year to the extent shown above.

DATED: April 25, 2008

  
MICHAEL C. COHN  
Administrative Law Judge  
Office of Administrative Hearings