

BEFORE THE
GOVERNING BOARD
OF THE SANTEE SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Employment Status of:

OAH No. L2004030480

Sandra Mehlop, Ph.D., a Certificated Employee

and

Santee School District, a Public Entity.

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Santee, California, on June 7, 2004.

Anthony P. De Marco, Attorney at Law, represented the Santee School District.

Jon Y. Vanderpool, Attorney at Law, represented Sandra Mehlop, Ph.D., a certificated employee of the Santee School District. Dr. Mehlop was present throughout the entire proceeding.

The matter was submitted on June 7, 2004.

FACTUAL FINDINGS

The Santee School District

1. The Santee School District (the District) is located in eastern San Diego County. It was established in 1981. The District capably serves the educational needs of approximately 6,900 students in the 10 schools and at the special program within the District, from Kindergarten through 8th Grade. The District employs about 400 certificated persons.

2. The District is governed by a five member, elected Board of Education (the Board).

Lisbeth A. Johnson, Ed.D. (Dr. Johnson) is the Superintendent of Schools and the District's Chief Executive Officer.

The Economic Layoff

3. Proposition 13 limited the imposition of local property taxes and reduced a major source of assured revenue for funding public education. Following the passage of Proposition 13, public school districts have looked primarily to the State of California and to other governmental entities for necessary funding.

A school district cannot determine the level of state funding it will receive until the state budget is chaptered, an event usually occurring in late June. Before then, a school district's governing board must take steps to make certain that ends meet if the worst-case financial scenario develops.

A school board's obligation to balance its budget often requires that some teachers, administrators and/or other certificated employees be given preliminary layoff notices, warning that professional services will not be required in the next school year. These preliminary layoff notices must be given no later than March 15.

The economic layoff statutes found in the Education Code generally require the retention of senior employees over more junior employees and the retention of permanent employees over probationary employees and others with less seniority.

4. The District carefully reviewed its income and expenses and determined there was an approximate \$4.1 million shortfall for the 2004-2005 school year.

Dr. Johnson, Carolyn Harness (who served as the District's Assistant Superintendent, Business Services) and others determined that to meet its budget, the District would have to give notice to approximately 45 certificated employees that their services would not be needed in the 2004-2005 school year.

Under the supervision of John Tofflemire (Tofflemire), the District's Director of Human Resources, a seniority list was prepared which identified each credentialed employee, his or her date of hire, his or her date of probationary service, his or her seniority date, the individual's current assignment, the site at which services were being provided and the individual's credential(s).

5. On March 9, 2004, it was recommended to the Board in writing that preliminary layoff notices be served on approximately 45 certificated employees, advising them that their services would not be necessary in the 2004-2005 school year.

Resolution No. 0304-24

6. On March 9, 2004, Resolution No. 0304-24 was adopted by the Board. It provided:

"WHEREAS, Sections 44949 and 44955 of the Education Code require action by the Governing Board in order to reduce or eliminate services and permit the layoff of certificated employees and;

WHEREAS, the Superintendent of Santee School District has recommended to the Governing Board that particular kinds of services be reduced or eliminated no later than the beginning of the 2003-2004 school year; and

WHEREAS, the Governing Board has determined that a reduction or elimination of particular kinds of services is needed no later than the beginning of the 2003-2004 school year; and

WHEREAS, the Governing Board has considered all positively assured attrition which has occurred to date, that is, all deaths, resignations, retirements and other permanent vacancies in reducing these services and, but for the attrition already assured, would have found it necessary to reduce additional particular kinds of services.

NOW, THEREFORE, BE IT RESOLVED by the Governing Board of Santee School District:

1. That all of the foregoing recitals are true and correct.
2. That because of the financial constraints resulting from revenue being insufficient to maintain the current levels of programs, and necessary program changes resulting therefrom, the Governing Board hereby determines to reduce or eliminate those positions set forth in Exhibit A, attached hereto and incorporated by reference herein, listing by level, subject field or classification, and full-time equivalent, those positions which shall be reduced or eliminated no later than the beginning of the 2003-2004 school year.
3. That because of the elimination and reduction of particular kinds of services listed in Exhibit A it is necessary to terminate at the end of the 2002-2003 school year certificated employees equal in number to the positions affected in the reduction or elimination of the above-described service.
4. That the seniority and qualifications of some of the employees in the services being reduced or eliminated are such that they have displacement rights by virtue of seniority, and that no employee will be terminated while a less senior employee is retained to render a service which the more senior employee is both certificated and competent to render.
5. That in selecting those probationary and permanent certificated employees who shall receive notice of termination pursuant to this Resolution, Education Code section 44955 requires the Governing Board to state specific criteria to be used in

determining the order of termination of certificated employees who first rendered paid service to the Governing Board in a probationary position on the same date.

6. That the criteria to be used in determining the order of termination of certificated employees who first rendered paid service to the Governing Board in a probationary position on the same date are listed and described in Exhibit B, which is attached hereto and incorporated by reference herein.

7. That the criteria to be used in determining the order of termination of certificated employees who first rendered paid service to the Governing Board in a probationary position on the same date, listed and described in Exhibit B, are based solely on the needs of the Santee School District and the students thereof.

8. That in selecting those probationary and permanent certificated employees who shall receive notice of termination pursuant to this Resolution, Education Code section 44955 allows the Governing Board to deviate from terminating a certificated employee in order of seniority by virtue of their competence, credential(s), assignment, and the specific needs of the District and its students.

9. That the criteria that will be applied to deviate from terminating certificated employees who may otherwise be terminated by order of seniority will be based on the needs of the students of the District, and will ensure that no employee will be terminated while a less senior employee is retained to render service which the more senior employee is both certificated and competent to render.

10. That the Superintendent or her designated representative will send appropriate notices to all employees possibly affected by virtue of the reduction and elimination of particular kinds of service.

11. That the action of this Governing Board will not, in any way, be considered to prejudice the rights of certificated employees to whom notice will be given as to the Superintendent's consideration of any proposed decision by an administrative law judge in the event a hearing is requested by any employee."¹

Jurisdictional Matters

7. On March 12, 2004, a Notice of Recommendation Not to Reemploy Certificated Employee was served on the persons providing particular kinds of services that were subject to reduction or elimination under Board Resolution No. 0304-24. Dr. Johnson signed that notice.

¹ Attached to the Resolution No. 0304-24 was Exhibit B, which was a document identifying each particular kind of service or program subject to the economic layoff resolution, the number of full time equivalent positions, the identity of the Board members making the motions and seconding the motions for each area, and the Board's final vote.

Attached to the notice was a memo Tofflemire prepared which had been provided to the Board. The memo explained the reason why preliminary layoff notices needed to be served. The Board's resolution and other documents were attached.

Dr. Mehlhop timely filed a request for a hearing.

On and before March 22, 2004, persons requesting a hearing were served with an Accusation, a notice of hearing and other related materials.

Dr. Mehlhop timely filed a Notice of Defense after being served with the Accusation.

The administrative hearing was originally set for April 19 and 23, 2004. The hearing date was continued by stipulation to June 7, 2004, to permit settlement negotiations between the teachers union and the District.

Through the use of an early retirement incentive program, the reduction of 45 certificated employees became unnecessary. In accordance with the stipulation of the parties, all of the Accusations filed against those employees were withdrawn and dismissed except for the Accusation that had been filed against Dr. Mehlhop.

On June 7, 2004, the record in the administrative hearing was opened. Counsel for the District gave an opening statement. Counsel for Dr. Mehlhop gave an opening statement. The caption was amended sua sponte. A written stipulation was recited. Sworn testimony and documentary evidence was received. Closing arguments were given, the record was closed and the matter was submitted.

The District's Seniority List

8. The District's administrative staff created a 13 page seniority list based upon a close review of the District's personnel records. Each certificated employee, including Dr. Mehlhop, was advised in writing of his or her seniority date (the date on which the employee first rendered service in a probationary status) and his or her credential(s) on file with the District. The notice invited the employee to promptly advise the District of any errors or additions.

The seniority list was reasonably prepared and accurate.

Reduction of School Psychologist Services

9. Dr. Mehlhop was and is employed as a school psychologist. She holds a Pupil Personnel Services credential, which authorizes Dr. Mehlhop to perform all the duties of a school psychologist.

Dr. Mehlhop's seniority date with the District is September 15, 2000.

10. The District employed 5.5 full-time school psychologists in the 2003-2004 school year, including Dr. Mehlhop. The position of a school psychologist was and is very demanding assignment according to Raydene Wolf (Wolf), the District's Coordinator of Special Education and the supervisor of the school psychologists, Dr. Mehlhop and Dianna Danley, who serves as a school psychologist.

School psychologists are required to work 6.5 hours/day for the same number of days during the school year as school teachers. Most school psychologists work far more than that. There are ten "extra days" available to compensate a school psychologist for the time required complete necessary assignments.

A school psychologist performs mandated assessments (primarily Special Education assessments and behavior intervention assessments), serves on child assistance teams, meets with parents and students, meets with teachers, provides counseling services, participates in "Manifest Determinations," serves in crisis intervention triages and accomplishes a host of other wide ranging duties.

11. Wolf was asked by the Superintendent's office to review her program and to determine if any cuts could be made and still meet state and federal mandates.

In response to that request, Wolf calculated the school psychologists/student ratio within the District and compared it to the school psychologists/student ratio in neighboring elementary school districts. Wolf reviewed the number of assessments currently being performed within the Santee School District. Wolf looked at special education pupil counts from April 1990 through the date of the request.

Based on her review of all the data, Wolf reluctantly concluded the District's projected needs for school psychologists could barely be met if there were 4.5 school psychologists on staff rather than the 5.5 school psychologists that were presently on staff.

12. The results of Wolf's study and her conclusions were forwarded to the Board.

Dianna Danley testified at the Board hearing to the effect that school psychologists' services could not reasonably be reduced by eliminating one position and the cost of any necessary psychological services on a contract basis would be far more expensive than continuing Dr. Mehlhop's employment.

The Board considered several options with regard to the reduction of services being provided by school psychologists. The Board ultimately determined to provide the least senior school psychologist, Dr. Mehlhop, with a preliminary layoff notice.

Dr. Sondra Mehlhop

13. Dr. Sondra Mehlhop was born in Dayton, Ohio. She moved with her mother to San Diego County in the late 1940s. She graduated from Helix High School in 1958.

Dr. Mehlhop began her undergraduate studies at San Diego State University, and then transferred to the University of Dayton. She began teaching in Russia, Ohio, without a degree or teaching credential, in the 1960s.

Dr. Mehlhop had two children, a daughter who is now a MSW with the San Diego Regional Center and a son who is self-employed.

Dr. Mehlhop returned to college and graduated from California State University, Fullerton with a Bachelor of Arts degree in Psychology in 1968. She received a Master of Arts in Psychology from the University of California, Riverside in 1972. Dr. Mehlhop was awarded a Ph.D. in Psychology from the University of Northern Colorado in 1986.

In 1996, Dr. Mehlhop returned to San Diego County. She was employed as a school psychologist for three years with the Lakeside Union School District. Dr. Mehlhop became tenured while working at the Lakeside Union School District.

Dr. Mehlhop heard great things about the Santee School District. She was asked to interview with the District and she did so in August 2000. It was a good match. The District hired Dr. Mehlhop in September 2000.

14. There is no issue concerning Dr. Mehlhop's competency. Wolf and Danley have the utmost respect for Dr. Mehlhop's personal and professional skills. Dr. Mehlhop more than carries her weight with the District in meeting its mandated needs.

Dr. Mehlhop understands clinical reports and the diagnoses provided by private psychologists and psychiatrists. She has vast experience with crisis intervention and in dealing with situations involving threatened violence. Dr. Mehlhop has good rapport with parents and students, and she exerts a calming influence during Individualized Education Program meetings. She communicates clearly and easily with students and parents. She is technically proficient. On the personal side, she has a good sense of humor, is a team member and knows her boundaries. School children like her.

Dr. Mehlhop has completed approximately 95 assessments within the past year, eight of which were quite comprehensive because of the students' emotional and behavioral problems. She completed six Manifest Determinations and four AB 22762 reports. Twenty attention scales were given to parents and teachers and she prepared 15 typewritten reports. Dr. Mehlhop evaluated and cared for four seriously suicidal middle school students who needed immediate attention.

The District will rehire Dr. Mehlhop if it determines it cannot meet state and federal mandates with a staff of 4.5 full time equivalent school psychologists and if Dr. Mehlhop remains available for reemployment.

15. Dr. Mehlhop is the least senior school psychologist on the District's staff of school psychologists. Before serving Dr. Mehlhop with a preliminary layoff notice, the

considered all known attrition. Since then, the District has considered all known attrition before bringing this matter to hearing.

Dr. Mehlhop does not possess any credential which would permit her to "bump" any employee whose services are being retained.

16. It was not established that any particular kinds of services, including school psychologist services, will necessarily be lowered to levels less than those levels mandated by state and federal law by terminating Dr. Mehlhop's professional services.

It was not established that any certificated employee junior to any more senior employee was retained to perform any service which a more senior employee was certificated and competent to perform.

LEGAL CONCLUSIONS

1. *Jurisdiction:* Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied as to those certificated employees identified in the seniority lists. Education Code section 44955 provides:

2. Education Code section 44955 provides in part:

"(a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

...

(c) Notice of such termination of services shall be given before the 15th of May in the manner prescribed in Section 44949, and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845. . . "

3. *Financial Circumstances:* A school district may consider its financial circumstances in deciding whether to reduce or discontinue a particular kind of service. *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 631.

4. *Reduction of Particular Kinds of Services:* A school board's decision to reduce or discontinue particular kinds of services need not be tied to any statistical computation, such a reduction in the number of students. It is within a board's discretion, subject to the minimum level required by law, to determine the extent to which a reduction of services is necessary and proper under the circumstances. The board's decision is made at the time of the final notice. *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636.

5. The position of "school psychologist" is a particular kind of service which can be reduced or eliminated. The particular kind of service provision set forth in California Education Code section 44955 can apply to mandated services. See, *Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571.

6. A reduction in services may not be based on fraudulent, arbitrary or capricious action of the District. *Brough v. Governing Board* (1981) 118 Cal.App.3d 702, 738.

7. *Conclusion:* Within the context of this economic layoff proceeding it is reluctantly concluded that cause exists to recommend that the District give Dr. Mehlhop final notice that her services will not be necessary in the 2004-2005 school year.

The Board reasonably determined for financial reasons it could eliminate one full time equivalent school psychologist position and continue to meet state and federal mandates. Dr. Mehlhop was the most junior school psychologist on the District's staff.

It was not established the Board unreasonably decided to reduce its staff by one full-time school psychologist equivalent position, that the services provided by a school psychologist constituted a particular kind of service not subject to reduction, or that the Board's determination was fraudulent, arbitrary or capricious.

This conclusion is based on Factual Findings 1-16 and on Legal Conclusions 1-4.

RECOMMENDATION

The Santee School District shall give notice to Sondra J. Mehlhop, Ph.D. that her services will not be required for the 2004-2005 school year.

DATED: _____

JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings