

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

In the Matter of the Layoff/Accusation
Against:

20 CERTIFICATED EMPLOYEES,

Respondents.

OAH No. 2010030959

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge, at Needles, California on April 6, 2010.

John W. Dietrich, Esq. of Atkinson, Andelson, Loya, Ruud & Romo represented the Needles Unified School District (the district).

Shirley A. Lee, Esq. of Schwartz, Steinsapir, Dohrmann & Sommers LLP represented all 20 respondents.

Oral and documentary evidence was received and the matter was continued for good cause until April 9, 2010 so that the parties could submit closing briefs. The briefs were received and the matter was deemed submitted on April 9, 2010.

FACTUAL FINDINGS

1. On March 10, 2010, the Board of Education of the district (the board) adopted Amended Resolution number 09-10-15(A), determining that it would be necessary to reduce or discontinue particular kinds of services (PKS) at the end 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>
High School Frosh Seminar/Life Skills	1.0
High School Science	1.0
High School English/Language Arts	1.0
High/Middle/Elementary School Music	.5
Middle School Core Teacher	1.0
Middle School Counselor	1.0
Middle School Physical Education	1.0
Elementary Classroom Teacher	8.0
Elementary Special Education	2.0
Total FTE positions to be reduced or eliminated	<hr/> 16.5

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

2. On March 10, 2010, based on the board's resolution, the Superintendent of the district 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 the certificated employees listed in Finding 6 that their services will not be required for the 2010-2011 school year.

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 1.4 million dollar 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 respondents, 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 following 20 certificated employees affected by the layoffs received written notice/precautionary notice notifying them that, pursuant to Education Code sections 44949 and 44955, their services “will not be required for the upcoming 2010-2011 school year:”

Actual layoff notices

- | | |
|---------------------|-------------------------|
| 1. Amy Avila | 10. Jeff Plank |
| 2. Jim Boring | 11. Ashley Rubalcaba |
| 3. Eric Christensen | 12. Laurie Scully |
| 4. Kelli Cox-Hearn | 13. Wendy Stophus-Stahl |
| 5. Jean Lacey | 14. Theresa Sutton |
| 6. David McMasters | 15. Michelle Totra |
| 7. Alan Newman | 16. Karen Whitley |
| 8. Kenneth Parker | 17. Heather Woods |
| 9. Patricia Phelps | |

Precautionary layoff notices

1. Jennifer Edwards
2. Robert McMahon
3. Shannon Roach

7. On March 10, 2010, the Superintendent of the district made and filed an accusation in his official capacity.

8. Prior to March 15, 2010, all respondents, through their union representatives, were involved in developing the tie-breaking criteria to be used in layoff situations. The tie-breaking criteria were set forth in the Memorandum of Understanding and were adopted by the board as the tie-breaking criteria to be used in this reduction in force matter. Additionally, prior to March 15, 2010, all respondents were served with amended board resolution number 09-10-15(A), a Notice of Recommendation that Services Will Not Be Required, a Notice of Accusation, the Accusation, a Notice of Defense, a Request for Hearing, and copies of Education Code sections 44949 and 44955, and Government Code

sections 11506, 11507.5, 11507.6, 11507.7, and 11520. Additionally, the Notice of Recommendation that Services Will be Terminated advised respondents as follows:

“You are advised that you may request a hearing before the Board of Education of the District to determine if there is cause for not employing you for the 2010-2011 school year. Your request for a hearing must be in writing and delivered on or before March 24, 2010, and in no event later than twelve (12) days from the date of this notice, to: [Omitted]

If you fail to request a hearing on or before this date, your failure to do so shall constitute a waiver of your right to a hearing. For your convenience, a form entitled ‘Request for Hearing and Notice of Defense’ is enclosed. (Exh. 4)”

9. All respondents 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 following concerns were raised during the hearing:

a. Michelle Totra (Totra) was not allowed to bump into a 9th grade English teaching position;

b. Amy Avila, a teacher on special assignment (TOSA) is being improperly dismissed from her position as Academic Coach; and,

c. The district failed to consider three previously eliminated positions (elementary school teacher, alternative education teacher, and a special education teacher) during the instant reduction in force proceedings.

14. In connection with these concerns, the evidence established the following:

a. Totra provided appropriate documentation to the district evidencing the fact that she possessed a supplementary authorization to teach English prior to March 15, 2010; however, pursuant to the board’s resolution, “competency” for purposes of bumping requires, in addition to possession of a valid credential in the relevant subject matter area, “‘highly qualified’ status under the No Child Left Behind Act, and an appropriate EL authorization (if required by the position).” (Exh. 3.) In Totra’s case, there was no evidence

that she has “highly qualified” status under the No Child Left Behind Act; therefore, inadequate evidence was presented to support the finding that Totra can bump into a 9th grade English teaching position.

b. Avila began working as TOSA as Academic Coach based on a competitive examination/interview. As a result of the competitive interview process, Avila was selected over teachers with more seniority to teach on special assignment as Academic Coach. Consequently, it makes no sense to allow a more senior employee, who is less competent to work as Academic Coach, to bump Avila. It is well established that a junior employee possessing special competence can be retained over a senior employee lacking such competence. (*Alexander v. Delano Joint Union High School District* (1983) 139 Cal.App.3d 567).

c. The district did not fail to consider the three previously eliminated positions (elementary school teacher, alternative education teacher, and a special education teacher) during the instant reduction in force proceedings. Based on resignations during the previous school year, three positions were eliminated rather than being filled (an elementary school teaching position, an alternative education position, and a middle school special education position). It was well after these three positions were eliminated that the board adopted Amended Resolution number 09-10-15(A), determining that it would be necessary to reduce or discontinue particular kinds of services (PKS) at the end of the current school year. Consequently, there is no jurisdiction in the present proceedings to “reach back” and address issues that resulted from pre-reduction in force actions, ostensibly in violation of the union’s Memorandum of Understanding with the district. If respondents take issue with the district’s elimination of the three positions, they need to raise their objections in the appropriate forum. The instant proceedings are limited to assuring that the district followed the correct procedural steps in implementing a force reduction, that the services it seeks to reduce are of the permissible type, and that the employees to be terminated have been correctly identified.

15. The services of no permanent employees 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.

16. Subsequent to the action the board took on March 10, 2010, to reduce particular kinds of services by 16.5 FTE positions, the district continued to evaluate its personnel needs. After taking into consideration positively assured attrition, the district has elected to rescind the notice of termination as to respondent Laurie Scully (0.4 FTE) and to revise Kenneth Parker’s termination to reflect a reduction of 0.4 FTE.

17. In addition to rescinding the notice, as set forth in Finding 16, above, the district agreed to modify the seniority list by advancing Alan Newman’s seniority date to October 10, 2000.

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 reduce the number of certificated employees of the District by 15.5 FTE positions (the original 16.5 FTE positions minus the 1 FTE described in Finding 16), due to the budget crisis described in Factual Finding 3.
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.
6. Cause exists to notify 16 of the 20 respondents that their services will not be needed during the 2010-2011 school year due to reduction or discontinuance of PKS.

ADVISORY DETERMINATION

WHEREFORE, THE FOLLOWING ADVISORY DETERMINATION is hereby made:

1. The Accusation is sustained in part. The district shall notify the following 15¹ 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:

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|---------------------|-------------------------|
| 1. Jim Boring | 8. Patricia Phelps |
| 2. Eric Christensen | 9. Jeff Plank |
| 3. Kelli Cox-Hearn | 10. Ashley Rubalcaba |
| 4. Jean Lacey | 11. Wendy Stophus-Stahl |

¹ The 16th respondent will be the next in order from those respondents who received precautionary layoff notices.

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|----|-----------------|-----|----------------|
| 5. | David McMasters | 12. | Theresa Sutton |
| 6. | Alan Newman | 13. | Michelle Totra |
| 7. | Kenneth Parker | 14. | Karen Whitley |
| | | 15. | Heather Woods |

2. The Accusation is dismissed as to Laurie Scully (0.4 FTE), Kenneth Parker (0.6 FTE), Amy Avila and any of the following three respondents who were served with precautionary notices who are not affected by the adjustment in the layoff list due to the findings, conclusions and dismissals: Jennifer Edwards; Robert McMahon; and, Shannon Roach.

DATED: April __, 2010

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings