

BEFORE THE
GOVERNING BOARD
WILMAR UNION SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

KATHLEEN KAHL

and

SHIRLEY O'CONNOR,

Respondents.

OAH No. N2004030813

PROPOSED DECISION

Mary-Margaret Anderson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Windsor, California on April 28, 2004.

Robert J. Henry, Attorney at Law, represented Superintendent Robert Raines.

James D. Allen, Attorney at Law, represented Respondents, who were present.

The record closed on April 28, 2004.

FACTUAL FINDINGS

1. Superintendent Robert Raines of the Wilmar Union School District (District) filed the Accusation in his official capacity.
2. Kathleen Kahl and Shirley O'Connor (Respondents) are permanent certificated District employees.
3. By letter dated March 9, 2004, the Superintendent notified the District's Board of Trustees (Board) that he recommended that certain services need to be reduced or discontinued in the 2004/2005 school year.
4. On March 9, 2004, the Board adopted Resolution Number 03-04-07. The resolution sets forth the Board's adoption of the Superintendent's recommendation. Specifically, the Board resolved to reduce or eliminate 3.0 full time equivalent (FTE) Elementary Classroom Teachers.

5. By letter dated and hand delivered March 12, 2004, the Superintendent notified each Respondent of the Board's resolution and that her services would be reduced or discontinued in 2004/2005.

Each Respondent made a timely request for a hearing.

Accordingly, an Accusation and a Notice of Hearing were prepared and timely served on each Respondent.

Each Respondent filed a timely Notice of Defense and this hearing followed.

6. The District consists of one K-6 grade elementary school serving 211 students. Approximately 23% are considered English language learners to some degree. The reason for the proposed reduction in services is financial. The District is facing a projected budget shortfall of \$45,000.00 to \$50,000.00 in the next three years. Its current budget is approximately \$1.4 million.

7. The Resolution also authorized the Superintendent to deviate from terminating teachers "in order of seniority for those reasons set forth in Education Code section 44955(d)." In essence, the section provides that junior teachers can be retained over senior teachers following a determination that a district has a specific need that the senior teachers cannot fill.

8. In the 2002/2003 school year the California Department of Education's English Learner Accountability Unit conducted a compliance review in the District. The review identified non-compliance issues that required resolution. The District was instructed to increase the number of properly certificated teachers for English learners.

In addition to the need for teachers qualified to instruct English learners, the District has a specific need for personnel certificated to teach special education students. Accordingly, the Superintendent decided that teachers with such qualifications should be skipped, or passed over for termination. In choosing the teachers to be notified of termination, the District therefore passed over junior teachers who possess the qualifications it seeks.

9. The Superintendent shared the findings of the reviewer with staff on several occasions in 2003. Teachers were also informed of the requirements of the No Child Left Behind Act, a federal program. Efforts were made to support all teachers who chose to be trained to receive the desired qualifications, whether via a Cross-cultural, Language and Academic Development Certificate (CLADD) or by taking a training available to more senior teachers known as SEDAI.

Although staff were not advised that they would be subject to lay-off in the next school year if they did not become so trained, there was significant discussion about the

legality of skipping on that basis. A neighboring district was applying that criterion at the time. The discussion revolved around the legality of that action and whether it was appropriate.

Staff was not given a timeline that needed to be met; however, the importance of obtaining additional training was stressed. And as a result, several teachers did enroll in programs and have obtained CLADD certificates.

12. Respondent Shirley O'Connor teaches second grade. She was hired on September 6, 1963 and is number two on the Seniority List. Respondent O'Connor was present at staff meetings where the desirability of further training was discussed. She understood that the District considered it to be very important, and initially planned to take a CLADD class in the summer, when she could give it her full attention. Subsequently, she became aware of an earlier class and has been watching the instructional videos on Monday nights.

13. Respondent Kathleen Kahl teaches kindergarten. She was hired August 31, 1990, but actually started as an aide in the District in 1974. Respondent Kahl is number six on the Seniority List. She was present at the staff meetings, but was also aware of the issues by virtue of her position with the teacher's association. In November of 2003, she learned that there would be a possibility that teachers with CLADDs would be skipped if there were a lay-off.

Respondent Kahl enrolled in a CLADD program through the Santa Rosa County Office of Education and began in March of 2003. Unfortunately, she did not pass one of the three modules. She will be taking the test again on May 8, 2004, and, if she passes, will hold a CLADD certificate.

LEGAL CONCLUSIONS

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

2. Cause exists to reduce the number of certificated employees of the Wilmar Union School District. The reduction or discontinuation of services is related solely to the welfare of the District and its pupils within the meaning of Education Code sections 44949 and 44955. The services are "particular kinds of services" that may be reduced or discontinued within the meaning of Education Code section 44955.

3. Respondents argue that the District's decision is arbitrary and capricious in that it was not made clear to them that they would be laid off if they did not obtain certifications by a specific time. In other words, they were not provided with notice that they must proceed immediately. The cases cited by Respondents do not support this theory, nor do the facts fit the common meaning of arbitrary or capricious.

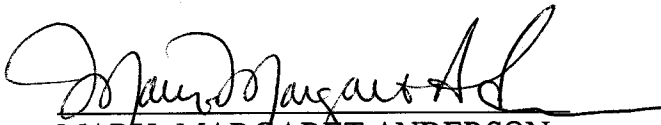
Some districts have made the importance of the certification very clear to their teachers, by, for example, giving them a deadline. Some have found enrollment in a class or partial completion to be sufficient. Not doing so does not mean that a district has acted in an illegally arbitrary or capricious manner. The law does not require specific notice that lack of certification will result in lay-off regardless of seniority. Districts possess enormous discretion in this regard.

It is therefore concluded that no employee with less seniority than either Respondent is being retained to render a service which either Respondent is certificated and competent to render.

ORDER

Notices may be given to Respondents Kathleen Kahl and Shirley O'Connor that their services will not be required for the 2004-2005 school year.

DATED: May 4, 2004


MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings