

**BEFORE THE
GOVERNING BOARD OF THE
FONTANA UNIFIED SCHOOL DISTRICT**

In the Matter of the Reduction in Force Concerning:

ANTONIO C. ALVARADO, Respondent

OAH No. 2020021106

PROPOSED DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on April 21, 2020.¹

Margaret A. Chidester, Attorney at Law, Law Offices of Margaret A. Chidester & Associates, represented the Fontana Unified School District (FUSD).

¹ In light of the President's declaration of a national emergency over the COVID-19 pandemic; the Governor's proclamation of a State of Emergency and Executive Orders N-25-20 and N-33-20 pertaining to the pandemic; the declarations of county and city public health emergencies throughout the State; the directives from state and local officials to ensure social distancing and sheltering-in place; and in order to protect the health and safety of all public and OAH personnel, this matter was conducted telephonically.

Jean Shin, Attorney at Law, California Teachers' Association, represented respondent who was present.

The parties exchanged exhibits prior to the hearing and ensured all witnesses were provided a copy thereof. Respondent did not offer any exhibits. The FUSD provided an electronic copy of its exhibits to OAH, which were marked electronically and admitted at hearing.

The matter was submitted on April 21, 2020.

FACTUAL FINDINGS

Background

1. Tracey Vackar is the Executive Director for College Careers and Economic Development for the district, and has been employed in that capacity for approximately six and a half years. Her duties include acquisition and maintenance of equipment, instructional development, professional development, accountability support, funding oversight, and local and state reporting. Ms. Vackar testified at the hearing. Her testimony, and documents she referred to during her testimony, are summarized as follows:

There are three high schools in the district where automotive technology classes are offered – Kaiser, Summit, and AB Miller. There are three teachers who teach the automotive technology classes: Ray Brinkle, George Mendoza, and respondent. Several years ago, a decision was made to ensure that all automotive technology classes were certified by the National Automotive Technicians Education Association (NATEA). In order to become certified, all teachers who teach automotive technology classes must

be Automotive Service Excellence (ASE) certified in at least four areas. An instructional program certified by the NATEA and taught by teachers who are ASE certified would deliver a higher quality of education and would permit district students who complete an automotive technology course to test for and receive ASE certifications upon graduation. This opportunity, in turn, would allow students to find work immediately upon graduation and also expand the employment opportunities available to them, as many positions and internships will only accept applicants that hold ASE certifications.

E-mail communications provided by the district showed that all three teachers have been working for the past several years to obtain and/or maintain ASE certifications. Over the past four years, the district set aside a large sum of money in order to assist in not only getting its automotive technology programs into compliance such that they could become certified, but also providing respondent and the other two automotive technology teachers the resources necessary to obtain and/or maintain ASE certifications. Other resources provided included:

- College, Career and Economic Department paid for course materials for respondent to use for the ASE certification. Study guides were also purchased for him to assist with obtaining a passing grade for ASE certification.
- Additional hours were paid to respondent to study for the exam at the teacher hourly rate.
- The principal at AB Miller High School paid for some release days for respondent to study and prepare himself for the ASE exams.

- A teacher colleague was paid additional teacher hourly funds to assist respondent in preparing for the exam and to assist him in getting his automobile shop ready for the ASE certification.
- The College, Career and Economic Development Department paid for the ASE certifications team to come to the school site to inspect the automobile shop. The ASE certifications team was going to certify the shop until they discovered respondent had not passed the ASE certification test. A time extension from the ASE Team was given to the site while respondent retook the certification exam.
- Paid externship opportunities were offered to respondent to take when classes were not in session to enable him to stay current with industry knowledge.

To date, Mr. Brinkle and Mr. Gomez have the required four ASE certifications necessary for the high schools to obtain their certification.² Respondent is still missing one ASE certification.

² Summit High School has already become certified; the other two high schools are currently awaiting certifications but their final certifications were delayed, in part, due to respondent not having the required ASE certifications and, in part, because the COVID-19 pandemic has slowed and/or stopped the certification process. The district also had to shut down all campuses on March 21, 2020, due to the ongoing pandemic.

Board Resolution and Related Testimony

1. On February 9, 2020, the board adopted Resolution No. 20-07, determining that it would be necessary to reduce or discontinue particular kinds of services at the end of the current school year. The board determined that the particular kinds of services that must be reduced for the 2020-2021 school year were the following full time equivalent (FTE) positions:

1 Auto CTE Teacher (For Classes Not Certified by the National Automotive Technicians Education Association)

2. The proposed reduction totaled one FTE position.

3. Exhibit A to the Resolution stated:

The Governing Board will seek to exempt from the order of certificated layoff, pursuant to Education Code section 44955 because of special training, experience, or credentials that others with more seniority do not possess:

1. Certificated personnel who possess CTE Auto/Transportation credentials and are certified by the National Automotive Technicians Education Foundation, who are currently assigned to CTE/auto positions, and who will be assigned to CTE/auto positions requiring NATEA certification for the 2020-2021 school year.

4. The official job description for automotive technology teachers was revised following the adoption of Resolution No. 20-07, consistent with the need for teachers in those positions to have the required ASE certifications.

5. Linda Young is the Director of Certificated Human Resources for the district. Ms. Young testified at the hearing. Her testimony corroborated the testimony of Ms. Vackar. Ms. Young also testified that, following the adoption of Resolution No. 20-07, the district identified all certificated persons in the district whose authorizations included automotive technology positions. They obtained a seniority list, which identified Mr. Brinkle, Mr. Gomez, and respondent. Neither of the other two teachers have submitted letters of resignation and the district does not have any indication of positively assured attrition. There was no need to engage in any skipping process because respondent is the most junior of all three teachers and also does not have the required certifications.

6. On or before March 15, 2020, the district timely served on respondent notice that his services would not be required for the upcoming school year, and included all pertinent legal documents (*i.e.* the March 2, 2020, Statement of Reduction in Force; a copy of Resolution No. 20-07; Statement of Respondent; Notice of Participation; Notice of Hearing; Request for Discovery; and applicable law). Respondent timely filed a Notice of Defense. All pre-hearing jurisdictional requirements were met.

Respondent's Testimony

7. Respondent's testimony is summarized as follows: respondent did not receive a deadline by which he had to obtain his ASE certifications and does not believe it is fair that he is being terminated. It was unethical to work with him all this time and not provide a deadline to obtain a certification, and then simply terminate his employment. Respondent has obtained three out of the four required ASE certifications, but all further testing has been suspended due to the COVID-19

pandemic. Respondent has also had personal family difficulties over the past nine months that have made obtaining his last ASE certification difficult.

Other Findings

8. The services addressed in Resolution No. 20-07 were “particular kinds of services” that can be reduced or discontinued within the meaning of Education Code section 44955. The board’s decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious, but constituted a proper exercise of discretion.

9. The recommendation that respondent be terminated from employment was not related to his competency or performance as a teacher.

10. The reduction or discontinuation of particular kinds of services related to the welfare of the district and its pupils.

11. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the district as determined by the board.

12. No particular kinds of services were lowered to levels less than those levels mandated by state or federal law.

13. No certificated employee junior to respondent was retained to perform any services that respondent was certificated and competent to render.

LEGAL CONCLUSIONS

Applicable Law

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notice and jurisdictional requirements contained in those sections were satisfied.

2. Education Code section 44955, subd. (b), provides, in part:

[W]henever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year . . . the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, 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.

3. The decision to reduce or discontinue a particular kind of service is a matter reserved to the discretion of the Superintendent and is not subject to second-guessing in this proceeding. (*Rutherford v. Bd. of Trustees* (1976) 64 Cal.App.3d 167, 167.) The decision to reduce a particular kind of service must not be fraudulent,

arbitrary or capricious. (*San Jose Teachers Association v. Allen* (1983) 144 Cal. App. 3d 627, 637.)

4. School districts have broad discretion in defining positions within the district and establishing requirements for employment. (*Hildebrandt v. St. Helena Unified School Dist.* (2009) 172 Cal.App.4th 334, 343.) This discretion encompasses determining the training and experience necessary for particular positions. (*Ibid.*) Similarly, school districts have the discretion to determine particular kinds of services that will be eliminated, even though a service continues to be performed or provided in a different manner by the district. (*Ibid.*)

Conclusion

5. Cause exists under Education Code sections 44949 and 44955 for the FUSD to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof. No employee with less seniority than any respondent is being retained to perform a service that any respondent is certificated and competent to render.

6. It is recommended that the board give respondent notice before May 15, 2020, that his services are no longer required by the district.

ORDER

The Statement of Reduction in Force is affirmed. The Fontana Unified School District may notify respondent that his services will not be needed or will be reduced

during the 2020-2021 school year due to reduction or discontinuance of particular kinds of services consistent with Board Resolution No. 20-07.

DATE: May 1, 2020

DocuSigned by:
Kimberly J. Belvedere
D566BE70E0E24D3...

KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings