

BEFORE THE
GOVERNING BOARD
CAMINO UNION SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

TARA BLANTON AND AMY SILAN

Respondents.

OAH No. N2004030500

PROPOSED DECISION

On April 12, 2004, in Camino, California, Leonard L. Scott, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Ann M. Murray, Attorney at Law, represented the Camino Union School District (School District).

Eugene Huguenin, Attorney at Law, represented respondents Tara Blanton and Amy Silan.

Evidence was received, the record was closed and the matter was submitted.

FACTUAL FINDINGS

1. On or before March 15, 2004, Carroll W. (Wally) Newberry, Superintendent of the School District, sent a written recommendation to the Governing Board for the reduction, discontinuation or elimination of particular kinds of services and also for a reduction in certificated employees due to a decline in average daily attendance. The Superintendent recommended the reduction of full-time equivalent (FTE) positions at the end of the 2003/2004 school year because of the reduction or elimination of particular kinds of services and the decline in average daily attendance during the 2003/2004 school year.

2. On or before March 15, 2004, the Superintendent had served on respondents written notice that he had recommended to the Governing Board that respondents' services would not be required for the ensuing school year due to a reduction or elimination of particular kinds of services and due to a decline in average daily attendance. The notice set forth the reasons for the recommendation, as required by Education Code sections 44949 and 44955.

Attached to the notice were copies of Resolution No. 03/04-6, authorizing the layoffs due to a reduction or elimination of particular kinds of services and the decline in average daily attendance, as authorized by Education Code sections 44949 and 44955. Also attached was a blank Request for Hearing form.

3. On March 10, 2004, the Governing Board determined that (1) the decline in average daily attendance necessitated the reduction of 2.0 FTE certificated teacher positions, and (2) it was necessary to reduce or eliminate certain particular kinds of services with 1.2 FTE certificated teacher positions. The Resolution provided for the reduction or elimination of the following particular kinds of services:

a.	Reduce the Title I Program (math)	0.2 FTE
b.	Eliminate Science Resource Preparation Period Program	0.5 FTE
c.	Reduce the Computer Preparation Period Program	0.5 FTE

Total of particular kinds of services reduced or eliminated		1.2 FTE
Total reductions due to decline in average daily attendance		2.0 FTE

Overall Total		3.2 FTE

In Resolution No. 03/04-6, the Governing Board established criteria to break ties among certificated staff (teachers) with the same first date of paid service. The Governing Board based the criteria upon the needs of the School District and of its students, and acted within its discretion in creating the tie breaking criteria.

4. Respondents timely filed Requests for Hearing to determine whether there is cause for not re-employing them for the ensuing school year pursuant to Education Code section 44949(b).

5. Pursuant to Resolution No. 03/04-6, the Superintendent made, signed and had timely served upon respondents an Accusation. The Superintendent acted in his official capacity.

6. Respondents timely signed and served their Notices of Defense pursuant to Education Code section 44949(c)(1) and Government Code section 11506.

7. Respondents are certificated employees of the School District.

8. A continued decline in average daily attendance during the two preceding school years, the 2001-2002 and 2002-2003 school years, necessitated the reduction of 2.0 full-time equivalent certificated positions at the end of the 2003-2004 school year. The reduction in average daily attendance over the last three school years was 13.5 percent. If the School District had reduced its 32.05 FTE certificated positions by 13.5 percent, it could have eliminated 4.3 FTE certificated positions due to the decline in average daily attendance. Instead it chose to eliminate 2.0 FTE certificated positions.

9. The reduction or elimination of 1.2 full-time equivalent certificated positions in particular kinds of services is for the welfare of the School District and the pupils.

10. The reduction or elimination of particular kinds of services and the reduction in average daily attendance are the sole causes for not re-employing respondents.

11. The reduction in particular kinds of services will not cause those services to fall below the level necessary to provide such services to the students nor will the reduction violate any mandate regarding the provision of such services.

12. The School District considered all positively assured attrition before determining which teachers would be laid off due to the reduction or elimination of particular kinds of services and the decline in average daily attendance.

13. The tie breaking system established by the Governing Board in Resolution No. 03/04-6 was used to break ties among certificated staff (teachers) with the same first date of paid service. The application of the tie breaking criteria was fair and appropriate.

To determine which teachers would be affected by the lay off, the School District first bumped those teachers in temporary or provisional positions, then used the Seniority List to develop a proposed layoff and "bumping" list of the least senior employees currently assigned in the various services being reduced. The District then determined whether the least senior employees held credentials in another area and were entitled to "bump" other employees. Teachers were laid off in inverse order of seniority.

The least senior certificated teacher employed by the School District has resigned and will not return for the ensuing school year. The next three least senior certificated teachers were noticed for this layoff. Together, those three occupy 2.7 FTE certificated positions. One of those three did not return a Request for Hearing and so is not a party (respondent) to this hearing. The other two are respondents in this matter.

Respondent Tara Blanton has a first date of paid service of September 8, 2000. She has a Prof. Clear Multiple Subjects credential plus a CLAD and an M.A in Crosscultural

Teaching Specialties: Education Technology. She is employed in a full time position, but is noticed for a 0.7 FTE layoff, so she will continue to have a 0.3 FTE certificated position.

Respondent Amy Silan has a first date of paid service of August 7, 2001. She has a Preliminary Clear Multiple Subjects credential plus a CLAD. She is employed in a full time position and is noticed for a 1.0 FTE layoff.

14. Elizabeth Easterling (Easterling) has a first date of paid service of August 31, 1989. She has a PC SS-LifeScience credential with supplemental authorization in Chemistry, plus a Temporary Prof. Clear Multiple Subjects Credential and a CLAD.

Easterling was laid off 0.5 FTE in the spring of 2003 and has continued to work 0.5 FTE in the Science Resource Preparation Period Program, which is being abolished. Pursuant to Education Code section 44956, she has a preferred right to reappointment for 39 months from the date of her layoff (termination) for the 0.5 FTE in 2003.

In order not to be laid off the other 0.5 FTE this year due to the elimination of the Science Resource Preparation Period Program, Easterling revived her expired Preliminary Clear Multiple Subjects credential as a temporary credential and the School District has bumped her into another position for next fall. As a result she was not noticed for layoff this year and the 0.5 FTE she was employed this year is safe from bumping by either respondent because of Easterling's much earlier seniority date (also called first date of paid service).

If the respondents in this matter are laid off, they will also be placed on the preferred right to reappointment list (often referred to as a rehire list), and at that point, Easterling will have first right to rehire over respondents for the 0.5 FTE she was laid off in 2003 because of her earlier seniority date, pursuant to Education Code section 44956(a)(1).

15. Two full time certificated teachers, each of whom now teaches a class in the elementary school, have indicated that they each want to take a 0.5 FTE leave of absence next year and each continue to teach 0.5 FTE by sharing one full time equivalent teaching position. While they are on approved leaves of absence, the School District must hold their full time positions for them by back filling with a temporary certificated employee because they have a right to return to those positions at the end of the leaves of absence, see Education Code sections 449962, 44963 and 44973. Therefore the position created by the leaves of absence is not available for any of those subject to this reduction.

16. No permanent or probationary certificated employee junior to respondents is being retained to perform a service which respondents are certificated and competent to render.

17. The services identified in the Governing Board Resolution are particular kinds of services that can be reduced under Education Code section 44955. The Governing

Board's decision to reduce the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

LEGAL CONCLUSIONS

1. Education Code section 44949 provides:

(a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

Until the employee has requested a hearing as provided in subdivision (b) or has waived his or her right to a hearing, the notice and the reasons therefor shall be confidential and shall not be divulged by any person, except as may be necessary in the performance of duties. However, the violation of this requirement of confidentiality, in and of itself, shall not in any manner be construed as affecting the validity of any hearing conducted pursuant to this section.

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute his or her waiver of his or her right to a hearing. The notice provided for in subdivision (a) shall advise the employee of the provisions of this subdivision.

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency therein, except that all of the following shall apply:

(1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing in the accusation.

(2) The discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate.

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board. Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds.

The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section as may be necessary to effectuate this section.

(d) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.

(e) If after request for hearing pursuant to subdivision (b) any continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in subdivision (c) which occur on or after the date of granting the continuance and the date prescribed in subdivision (c) of Section 44955 which occurs after the date of granting the continuance shall be extended for a period of time equal to the continuance.

2. Education Code section 44955 provides in relevant 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.

(b) Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, whenever the governing board determines that attendance in a district will decline in the following year as a result of the termination of an interdistrict tuition agreement as defined in Section 46304, whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent

employees in the district, 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. In computing a decline in average daily attendance for purposes of this section for a newly formed or reorganized school district, each school of the district shall be deemed to have been a school of the newly formed or reorganized district for both of the two previous school years.

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

(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. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year. The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. However, prior to assigning or reassigning any certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

3. Education Code section 44956(a)(1) provides:

(a) Any permanent employee whose services have been terminated as provided in Section 44955 shall have the following rights:

(1) For the period of 39 months from the date of such termination, any employee who in the meantime has not attained the age of 65 years shall have the preferred right to reappointment, in the order of original employment as determined by the board in accordance with the provisions of Sections 44831 to 44855, inclusive, if the number of employees is increased or the discontinued service is reestablished, with no requirements that were not imposed upon other employees who continued in service; provided, that no probationary or other employee with less seniority shall be employed to render a service which said employee is certificated and competent to render. However, prior to reappointing any employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

4. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. Lacy v. Richmond Unified School District (1975) 13 Cal.3d 469. Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. Poppers v. Tamalpais Union High School District (1986) 184 Cal.App.3d 399; Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District (1981) 116 Cal.App.3d 831.

5 Jurisdiction for the subject proceeding exists pursuant to Education Code sections 44949 and 44955. All notices and other jurisdictional requirements of those sections have been met.

6 Cause exists for the reduction, discontinuation or elimination of particular kinds of services and of those 1.2 full-time equivalent certificated positions at the end of the 2003-2004 school year, pursuant to Education Code sections 44949 and 44955. In addition, cause exists for the reduction of 2.0 full-time equivalent certificated positions at the end of the 2003-2004 school year due to a decline in average daily attendance, pursuant to Education Code sections 44949 and 44955. Therefore, cause exists pursuant to Education Code sections 44949 and 44955 to give notice to respondents in a total of 3.2 full time equivalent certificated positions that their services will not be required for the ensuing school year, 2004-2005. However, since the three certificated teachers noticed for layoff occupied only 2.7 full time equivalent positions, only those three occupying that 2.7 full time equivalent positions are subject to the layoff.

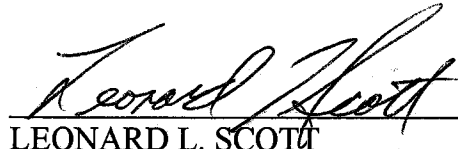
ORDER

Notice shall be given to respondents (and the third noticed teacher) occupying 2.7 full time equivalent certificated positions that their services will not be required for the ensuing school year, 2003-2004, because of the reduction or elimination of particular kinds of services and because of the decline in average daily attendance.

Notice shall be given in inverse order of seniority, as it has been.

Dated:

April 16, 2004

A handwritten signature in cursive script, appearing to read "Leonard L. Scott", is written over a horizontal line.

LEONARD L. SCOTT
Administrative Law Judge
Office of Administrative Hearings