

BEFORE THE GOVERNING BOARD
SOUTHERN KERN UNIFIED SCHOOL DISTRICT
COUNTY OF KERN
STATE OF CALIFORNIA

In the Matter of the Accusation Against:)	
)	
CHARLES WILLIAM GORDON)	Case No. L2004030514
)	
Respondent.)	
_____)	

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 30, 2004, in Lancaster, California.

Peter Carton, Attorney at Law, represented Rodney James Van Norman, Superintendent ("Superintendent"), Board of Trustees, Southern Kern Unified School District ("District").

Richard J. Schwab, Attorney at Law, represented Respondent.

District seeks to lay off Respondent, following its decision to reduce particular kinds of services. Respondent asserts that cause to terminate his services does not exist because he is the only teacher in the District competent to teach auto mechanics.

Oral and documentary evidence was presented at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. Superintendent Van Norman filed the Accusation in his official capacity.
2. Respondent is a certificated employee of the District. He was hired on December 13, 1991. Respondent holds a clear vocational educational credential that allows him to teach auto mechanics and welding at the high school level.
3. The Superintendent has recommended to the Governing Board of the District ("Board") that respondent be notified that his services will not be required for the 2004-05 school year due to the reduction or elimination of particular kinds of services.
4. The Board approved the recommendation on March 3, 2004, by adopting Resolution Number 03-04-09.

5. On March 8, 2004, the District gave Respondent written notice of the Superintendent's recommendation that Respondent's services will not be required for the 2004-05 school year due to the reduction or elimination of particular kinds of services.

6. Respondent filed a timely request for hearing to determine if there is cause for not reemploying him for the 2004-05 school year.

7. The Accusation was thereafter filed and served on Respondent.

8. Respondent filed a timely Notice of Defense.

9. All prehearing jurisdictional requirements have been met.

10. In adopting Resolution Number 03-04-09 the Board took action to reduce or discontinue 1 full time equivalent ("FTE") position in Industrial Arts for the 2004-05 school year.

11. Industrial Arts teaching services is a particular kind of service that may be reduced or discontinued within the meaning of Education Code section 44955¹.

12. The District has experienced a reduction in the funds presently used to fund photography, work coordination, and internet research. It has decided to reduce the number of certificated employees by 1 FTE to compensate for the loss of funds. It decided that the reduction in services would be achieved in industrial arts teaching services. It was not established that the District's decision to reduce or discontinue industrial arts services was arbitrary or capricious.

13. Respondent is the most junior employee certificated to teach industrial arts. The other two are Keith Wyrstek ("Wyrstek"), who has a seniority date of August 30, 1976, and Terry Allred ("Allred"), who has a seniority date of September 8, 1986.

14. The District plans to offer auto mechanics classes in the 2004-05 school year. It expects either Wyrstek or Allred, who are both certificated to teach the subject, to teach the classes.

15. Respondent teaches three periods of auto mechanics, including an advanced course, and one period of work experience. Allred teaches welding, computer design, and internet research. Wyrstek teaches other industrial arts subjects.

¹ All further references are to the Education Code.

16. Wyrostek or Allred both testified at the hearing that they would not be competent to teach a modern auto mechanic class. Allred, whose education in auto mechanics dates to 1976, last taught auto mechanics in 1991. Wyrostek has never taught auto mechanics in the District; his last course in the subject was also in 1976.

17. Respondent, on the other hand, is very competent to teach the auto mechanics classes. He has been teaching the classes for 13 years. He takes yearly courses in auto mechanics to stay current on new developments.

18. A significant advance occurred in automotive technology after Wyrostek and Allred left school: the advent of fuel-injection. But a greater revolution occurred with the introduction of the on-board computer in 1980, the platform for continuing advance and complexity in auto mechanics.

19. Termination of respondent's services will for all practical purposes deprive students in the District of auto mechanics courses. The knowledge and experience of the two teachers the District plans to use to teach the subject is limited to cars built in 1976 or earlier. Even if possessed of historical interest in older cars, students will not be prepared to work on modern cars, which cars have undergone major and significant changes since 1976. In these circumstances, the reduction in industrial arts services, which services are, in effect, the auto mechanics courses taught by Respondent, is not in the best interests of, or related to the welfare of, the District and its pupils.

20. No certificated employee junior to respondent was retained to render a service which Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 9.

2. The services listed in factual finding number 10 are determined to be a particular kind of service within the meaning of section 44955.

3. In cases, such as this one, where a district seeks to reduce particular kinds of services and to issue a layoff notices to affected employees, Section 44949 requires a "determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils thereof." By reason of factual finding numbers 13 through 19, reduction of industrial arts and Respondent's layoff will effectively deprive District students of their only competent auto mechanics teacher, which result is not "related to the welfare of the schools and the pupils thereof," within the meaning of section 44949.

4. Cause does not exist to reduce the number of certificated employees of the District by 1 FTE position due to the reduction or discontinuance of the services described in factual finding number 10, by reason of factual finding numbers 1 through 19, and legal conclusion number 3.

5. Cause does not exist to terminate the services of Respondent for the 2004-05 school year due to the reduction or discontinuance of particular kinds of services, by reason of factual finding numbers 1 through 19 and legal conclusion numbers 1 through 4.

ORDER

1. The Accusation is dismissed.
2. The District may not terminate Respondent's services for the 2004-05 school year.

DATED: _____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings