

BEFORE THE
GOVERNING BOARD OF THE
PALMDALE SCHOOL DISTRICT
STATE OF CALIFORNIA

In The Matter Of The Accusation Against:

OAH No. L 2005030148

WARREN ALBERTSON, SNYDER
RONAY, KISHA LANGFORD,
JACQUELINE NAGLE, MAGALI
CASTILLO, EVETTE GONZALEZ,
SHARI BAKER, REBECA MOIR, LISA
SEELEY, ROSALIE MATALON, TERRI
GOFF, MICHELLE MOKLEBUST,
CARMEN ROSE, JOAN WILLIAMSON,
and JEFF GUIDA,¹

Respondents

PROPOSED DECISION

Carolyn D. Magnuson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 25 and 26, 2005, at the offices of the Palmdale School District in Palmdale, California. Oral arguments were heard on April 29, 2005 via telephonic conference.

Michael Garrison and Brooke Nelson, Attorneys at Law, represented the School District.

Richard Schwab, Attorney at Law, represented all the Respondents except Lisa Seely, who did not request a hearing.

The record was left open until May 2, 2005 for the District to file additional documentation. The District's submission was received on May 2, 2005. The record was closed, and the matter was submitted for decision on May 2, 2005.

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¹ In the course of the hearing, the Accusations against some of the Respondents were withdrawn by the District. Therefore, those individuals are no longer included in the heading.

FACTUAL FINDINGS

1. Jack J. Gyves is the Superintendent (Superintendent) of the Palmdale School District (District).

2. In each of the four prior school years, the District has had to cut costs in the aggregate amount of approximately \$23 million in order to balance its budget. Forty percent of the cost savings were achieved by reducing classified staff positions; thirty-two percent of the cost savings were achieved by reducing management positions; and 8.5 percent of the cost savings were achieved by reducing certificated positions.

3. By December 2004, the Superintendent and his staff were aware that the District would probably be required to further reduce its costs for the 2005 – 2006 school year. From December 2004 through February 2005, the District's staff, at various levels of responsibility and in various forums, discussed the District's financial situation and considered options to address the projected shortfall. Anyone who was interested could have participated in these discussions.

4. Eighty percent of the District's budget is spent on salaries/wages and benefits. After four consecutive years of budget reductions, the District has few remaining options for cutting costs other than reducing its staff.

5. In February 2005, each teacher was given notice of the seniority date and credential information shown for that teacher in the District's records and was instructed to notify the District of any errors in the information. From then until March 15, 2005, the District revised its seniority and credential information as the teachers provided additional information.

6. On March 1, 2005, the District's Board met and was informed that the District's projected budget shortfall for the 2005 – 2006 school year was approximately six million dollars. To reduce the shortfall, the Superintendent recommended to the Board that it discontinue or reduce the following:

- Head Start/State Preschool Services (Reduce)
- Nurses Services (Reduce)
- Music Teachers Services (Reduce)
- Psychologists Services (Reduce)
- Counselors Services (Eliminate)
- Early Childhood Special Education Services (Reduce)
- Deaf and Hard of Hearing Services (Reduce)
- SDC Mild/Moderate Services (Reduce)
- SDC Moderate/Severe Services (Reduce)

7. These services were chosen for reduction because the existing staffing ratio was lower than required, so class size could be increased and the District would still meet its teacher to student ratio obligations. In addition, the District projected a reduction in the number of special education students it would be serving.

8. In response to the Superintendent's recommendation, the Board passed a number of resolutions on March 1, 2005, including a resolution to reduce or eliminate certificated services by 37 full time equivalent (FTE) positions² (Resolution #36-2004/05), a resolution establishing seniority dates and credentialing status (Resolution #37-2004/05), and a resolution establishing seniority date tie breaking criteria (Resolution #38-2004/05).

9. On or before March 15, 2005, the District served on each Respondent a written notice of the Superintendent's recommendation that notice be given to Respondents pursuant to Education Code sections 44949 and 44955 that their services would not be required for the next school year. Each written notice stated that the Board had passed a resolution to reduce or discontinue particular services at the close of the 2004 – 05 school year, which would result in the elimination of 37 full time equivalent positions (FTE) for certificated employees of the District.

10. Notice was served on the Respondents as required by law. The Respondents timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year.

11. Thereafter, the Superintendent made and filed Accusations against each of the employees who requested a hearing. The Accusations, with required accompanying documents and blank Notices of Defense, were timely served on those employees.

12. Notices of Defense were timely filed by some of the Respondents herein. However, Respondents Ronay, Langford, Nagle, Castillo, Gonzalez, Moir, Bowder, Rivera, and Wences did not file Notices of Defense.

13. Respondents in this proceeding are probationary or permanent certificated employees of the District.

14. The seniority list created by the District was based entirely on the employees' first date of paid service in a certificated position.

LEGAL CONCLUSIONS

15. All notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 have been met.

² Ultimately, the District sought to layoff only fourteen certificated employees.

16. The Complainant challenges the participation in the instant hearing of nine of the preschool teachers designated to be laid off. Those individuals failed to file timely Notices of Defense. The teachers reported they had been told, either directly or indirectly, by the President of their California Teachers' Association (CTA) chapter that they did not need to file the notices. The President testified she had been told by an assistant to the Assistant Superintendent for finance that the teachers did not need to file a Notice of Defense. That assistant acknowledges having a telephone conversation with the CTA chapter President, but denies discussing Notices of Defense in any way.

17. Education Code section 44549 provides, in part:

(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 therefore 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.

Therefore, except as specifically modified by the Education Code, proceedings under Education Code sections 44949 and 44955 are subject to the provisions of the Administrative Practice Act.

18. Government Code 11506 provides, in part:

(a) Within 15 days after service of the accusation the respondent may file with the agency a notice of defense . . .

(b) Within the time specified respondent may file one or more notices of defense upon any or all of these grounds but all of these notices shall be filed within that period unless the agency in its discretion authorizes the filing of a later notice.

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing. Unless objection is taken as provided in paragraph (3) of subdivision (a), all objections to the form of the accusation shall be deemed waived.

19. Respondents argue that the phrase "within the time specified respondent *may* file one or more notices of defense" found in Government Code section 11506, subdivision (b), makes filing a Notice of Defense optional, not mandatory.

20. If that phrase were the entirety of the Government Code provision, Respondents' argument might be well taken, but subdivision (c) of the section makes a respondent's entitlement to a hearing contingent on his or her filing a notice of defense and further states that failing to file the notice of defense constitutes a waiver of the right to a hearing.

21. Respondents argue that relief should be granted under Code of Civil Procedure 473, which authorizes a court to allow a party to correct a mistake as long as the error does not involve a jurisdictional issue. Complainant maintains that filing a notice of defense is jurisdictional. Complainant is correct. The relevant provision creates a condition precedent to becoming entitled to a hearing, which is expressed in mandatory language and provides consequences/punishment for failing to meet the condition. Thus, if there is no notice of defense, there is no jurisdiction.

22. Moreover, even if the requirement were merely directive, the Respondents have also failed to provide the court with a copy of the document each is proposing to submit as required by Code of Civil Procedure section 473, subdivision (2) (b) and are, thereby, barred from the relief they seek.

23. Respondents further argue that they did not file notices of defense because they detrimentally relied on representations made to them by Complainant's representative and that Complainant should, therefore, be estopped from raising the issue to bar their participation in these proceedings.

24. Assuming, without deciding, that a District representative told the teachers' representative that it was not necessary to file a notice of defense, Respondents are not entitled to the relief sought. One of the elements of establishing detrimental reliance is that the reliance must be reasonable. In this case, it was not.

25. Initially, every citizen is presumed to know the law, and the law clearly requires any teacher who wants a hearing on an accusation in a reduction in force (RIF) matter to file a notice of defense.

26. In addition, the letter sent to the teachers with the Accusation clearly states that a notice of defense had to be filed within 5 days if the teacher wanted a hearing. In light of the unambiguous language of the letter, it was not reasonable for the teachers to accept a representation that it was not necessary to file a notice of defense.

27. Therefore, Snyder Ronay, Kisha Langford, Jacqueline Nagle, Magali Castillo, Evette Gonzalez, and Rebeca Moir, none of whom filed notices of defense, are not entitled to participate in this hearing. The testimony of those individuals, which was provisionally received, is stricken from the record.

28. Shari Baker is a Head Start/State preschool teacher who did file a notice of defense. She did not challenge her position on the seniority list, but argued she should be retained because of her experience and contributions to the children. However, the legislature has decided that RIFs will be determined solely on the basis of seniority and has made no provision for assessing the quality of the work being done by those teachers being laid off. Therefore, there is no basis for changing Ms. Baker's status.

29. Rosalie Matalon did not contest her seniority date. She pointed out that she is very close to qualifying for her preliminary credential, that she is an effective teacher, and that she has experience which the District needs. Ms. Matalon entered the special education field at the urging of the District after being told by District staff that there was a shortage of special education teachers, which carried the implied promise that, if Ms. Matalon became a special education teacher, she would not have to worry about being laid off.

30. Ms. Matalon is being laid off because she was bumped by Cheri Dietzen. Ms. Dietzen was served with the preliminary notice of non-retention prior to March 15, 2005. She filed a request for hearing within the mandated time. However, Ms. Dietzen was not served with an Accusation until the week prior to the instant hearing, and she then filed a timely notice of defense. Ms. Matalon believes the late service on Ms. Dietzen was ineffective and that therefore, the District cannot lay off Ms. Dietzen, which in turn means Ms. Matalon would also be retained.

31. A review of the relevant statutes does not disclose a time frame within which an accusation must be served on a certificated employee. Obviously, there must be sufficient time that the individual is provided the opportunity to appear and participate in the proceedings. However, it is Ms. Dietzen, not Ms. Matalon, who has standing to object to the procedural anomaly, but Ms Dietzen did not protest.

32. Ms. Matalon failed to provide evidence and/or authority that would justify changing her layoff status.

33. Michelle Moglebust has been recommended by her college or university for a preliminary credential. She provided a copy of the notification letter to the District

around April 11, 2005. When the credential is issued, it will be effective April 1, 2005. Ms. Moglebust believes this change in her credential status should also change her layoff status.

34. The Board is entitled to make its retention determinations based on the credentialing information it has for each credentialed employee as of March 15th of any year. Existing credentials that have not been properly registered with the county board of education and credentials that are obtained subsequent to March 15th, even if all the prerequisites for the credential have been completed prior to that date, cannot be used to challenge a school district's retention decisions. (*Degener v. Governing Board* (1977) 67 Cal.App.3d 689, 698.) Therefore, Ms. Moglebust's entitlement to a preliminary credential does not change her status vis-à-vis the instant layoff.

35. Terri Goff is a deaf and hard of hearing (DHH) teacher. She believes the proposed reduction in DHH services is not justified and that the District has chosen to reduce those services in order to terminate her. Ms. Goff has been teaching on an emergency credential which expired the beginning of April and cannot be renewed. She is working toward obtaining a multi-subject credential and is fairly close to completing the course work.

36. Respondents' attorney suggested that, because the District knew it might be laying people off, it should have done all it could to place Ms. Goff and others at risk of being let go in the best possible position to be retained by hiring them for those teaching positions the District filled in early 2005 that are not subject to the RIF or by enrolling them in an internship program. Respondents' attorney also suggested that the District's failure to protect the teachers' interests reflects a hostility toward the teachers because of the labor impasse that exists between the two groups. The District denied any malevolent intent. And no direct evidence of such a motive was provided.³

37. The fact is that the District faces a six million dollar shortfall; inevitably some teachers will be laid off. If the District acted to protect one set of teachers, that would put others at greater risk of being laid off. Either way, the District would be faulted for what it did or did not do, and it certainly had no affirmative duty to act as Ms. Goff suggests it should have.

38. Ms. Goff's bottom line is that, because her emergency credential has expired and cannot be renewed, the District could not hire her to teach DHH students next year even if there were no RIF proceedings. Therefore, she is in no different position because of the RIF than she would have been otherwise.

39. Joan Williamson did not dispute her seniority date or credential status. She did challenge the District's projection of a declining enrollment in special education

³ If the purpose of the RIF were to punish the teachers and/or the union, one would expect a disproportionate share of the cuts would affect the teachers. In fact, nearly four times as many classified employees as teachers are being discharged.

programs, felt that enlarging the class sizes would be detrimental, and believed she should be retained.

40. The evidence established that the District has considered the need to meet statutorily mandated teacher/student ratios in the special education and preschool programs and has made a sufficient showing that it will be able to meet its statutory obligations with the retained staff.

41. It was not established that any certificated employee junior to any more senior employee was retained to perform any service which a more senior employee was certificated and competent to perform.

42. Cause exists to affirm the Board's reduction of certificated positions as a result of reducing or eliminating the particular kinds of services identified by the Board in the resolutions adopted by it on March 1, 2005. The Board's decision was not arbitrary or capricious, but constituted a valid exercise of its discretion. The Board's reduction and elimination of the particular kinds of services is related to the welfare of the District and its students.

43. As a result of the reduction or discontinuation of particular kinds of service, cause exists to give final notice to:

Warren Albertson, Snyder Ronay, Kisha Langford, Jacqueline Nagle, Magali Castillo, Evette Gonzalez, Shari Baker, Rebeca Moir, Lisa Seeley, Rosalie Matalon, Terri Goff, Michelle Moglebust, Carmen Rose, Joan Williamson and Jeff Guida.

ORDER

Wherefore, it is hereby ordered that notice may be given to Warren Albertson, Snyder Ronay, Kisha Langford, Jacqueline Nagle, Magali Castillo, Evette Gonzalez, Shari Baker, Rebeca Moir, Lisa Seeley, Rosalie Matalon, Terri Goff, Michelle Moglebust, Carmen Rose, Joan Williamson and Jeff Guida that their services will not be required for the 2005-2006 school year because of the reduction of particular kinds of services.

Dated: May 8, 2005

CAROLYN D. MAGNUSON
Administrative Law Judge
Office of Administrative Hearings