

BEFORE THE
GOVERNING BOARD OF THE
SAN FRANCISCO UNIFIED SCHOOL DISTRICT
CITY AND COUNTY OF SAN FRANCISCO

In the Matter of the Non-Reemployment of
117.80 Full-Time Equivalent Certificated
Employees,

Respondents.

OAH No. 2013030206

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter on April 8, 2013, in San Francisco, California.

William M. Quinn, Jr., Senior Deputy General Counsel, San Francisco Unified School District, represented complainant Roger L. Buschmann, Chief Human Resources Officer, San Francisco Unified School District.

Stewart Weinberg, Attorney at Law, Weinberg, Roger & Rosenfeld, represented all of the respondents, all of whom are members of the United Educators of San Francisco (UESF).

The matter was submitted on April 8, 2013.

FACTUAL FINDINGS

1. Complainant Roger L. Buschmann issued the accusation in his official capacity as Chief Human Resources Officer of the San Francisco Unified School District (district).

2. Respondents are certificated employees of the district. The respondents are identified on Appendix A, attached hereto and incorporated herein by this reference.

3. On February 26, 2013, the district's governing board adopted Resolution No. 132-26S01, in which it resolved to reduce or discontinue particular kinds of services for the 2013-2014 school year, and directed the superintendent to give notice to certificated employees that their services would be reduced or eliminated at the end of the 2012-2013 school year (the PKS resolution). The resolution states that "a total of . . . 117.80 FTE in instructional services, as set forth in Exhibit A, shall be reduced or eliminated no later than

the beginning of the 2013-14 school year”¹ Exhibit A to the board’s resolution is set forth in Appendix B to this proposed decision, attached hereto and incorporated herein by this reference.²

4. The PKS resolution states the governing board’s determination that it is necessary to retain the services of certain certificated employees regardless of their seniority, pursuant to Education Code section 44955, subdivision (d)(1). The resolution identifies the criteria that the district will apply to “skip” those employees.

5. The PKS resolution establishes the criteria that the district will use to determine whether a senior employee identified for layoff is “competent,” within the meaning of Education Code section 44955, subdivision (b), to displace a junior employee.

6. On February 26, 2013, the governing board adopted Resolution No. 132-26S02, which sets forth the district’s criteria to establish the relative order of seniority among employees with the same first date of paid service. The district and UESF applied these criteria in the course of a tie-breaking exercise on March 8, 2013.

7. On or before March 15, 2013, the district gave written notice to respondents of the recommendation that their services will not be required for the 2013-2014 school year. The reasons for the recommendation were set forth in these preliminary layoff notices. In determining the number of FTE to be reduced or eliminated, and before sending out preliminary layoff notices, the district took into account all positively assured attrition.

8. An agreement between the district and UESF provides for the filing of a uniform request for hearing on behalf of all respondents, the service of a uniform accusation upon all respondents, and the filing of a uniform notice of defense by all respondents. Pursuant to that agreement, all respondents filed a timely request for hearing; all respondents were timely served with an accusation; and all respondents filed a timely a notice of defense. All prehearing jurisdictional requirements have been met.

Stipulations

9. For reasons set forth in the parties’ written stipulations, the district rescinds the layoff notices issued to the following employees:

¹ “FTE” means full-time equivalent.

² In addition to reductions of 117.80 FTE in Instructional Services, the PKS resolution calls for reductions of 24.00 FTE in Administrative Services. None of the administrators affected by the resolution are respondents in this proceeding.

Aleman, Jose Eduardo
Anderson, Susan Caroline
Barclay, Melissa Ann
Barma, Katrina Lyn
Buchanan, Sarah Lisa
Candelario, Maria T.
Crahan, Laura L.
Cusumano, Joanna
Deis, Erin
Drinkwater, Martha Merencio
Evenhouse, Craig S.
Gardner, David Kerksick
Gomez-Lobo, Jimena
Jenkins-Stevens, Sally E.
Kalligeros, Eleni V.
Kenny, Larissa B.
Klein, Susan Roberta
Lauer, Emily
Lew, Brandon Terence
Lockwood-Holden, Rose Frances
Lopez, Carolyn S.
Lopez, Jimmy

Luc, Minh
Milstead, Jill Dianne
Navarro, Charles John
Newton, Christopher John
Ong, Marilyn Tan
Parker, Helen L.
Pettibone, Kathleen Ann
Pulgarin, Alma
Ramirez, Laura P.
Rossman, Leah Marie
Safavi, Farzaneh
Salewski, Shipley Robertson
Scherotter, Daniel H.
Valera-Collazo, Covadonga
Valle, Lillian
Vendrasco, Marie D.
Villanova, Barbara
Werner, Nancy S.
Wherity, William Mordaunt
Wuorenmaa, Asija Chappel
Young, Judith Ann
Youngs, Amy M.

The accusation against these employees is dismissed. They are no longer respondents in this proceeding.

Individual issues

10. Gustavo Amador's seniority date is August 20, 2008. He has received a layoff notice. At this time, Amador is on a leave of absence because he did not obtain a BCLAD in a timely manner. He has entered a new program to obtain his certification, which he hopes to obtain in about a year. Amador loves his job and his students miss him. He would like to be retained to teach his class again for the 2013-2014 school year. Amador's seniority date, however, subjects him to layoff due to the reductions in Building Trades and Construction called for by the PKS resolution.

11. Jeremiah Abee's seniority date is February 15, 2013. He teaches physical education at Denman Middle School. Abee states that it has been a hard position for the district to fill, and he would like very much to fill it again next year. He has been admitted to a credential program in the fall. (He is teaching on an emergency credential now.) Abee's seniority date, however, subjects him to layoff due to the reductions in physical education called for by the PKS resolution.

Other matters

12. The cause for the reduction in particular kinds of services relates to the welfare of the district's schools and the pupils thereof.

13. Except as otherwise permitted by statute, no permanent employee is being terminated while any probationary employee, or any other employee with less seniority, is being retained to render a service which the permanent employee is certificated and competent to render.

LEGAL CONCLUSION

Cause exists because of the reduction or elimination of particular kinds of services pursuant to Education Code section 44955 to give notice to the remaining respondents in 117.80 FTE positions that their services will not be required for the 2013-2014 school year.

RECOMMENDATION

Notice may be given to all remaining respondents in 117.80 FTE positions that their services will not be required for the 2013-2014 school year because of the reduction or elimination of particular kinds of services.

DATED: _____

DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings