

BEFORE THE
GOVERNING BOARD OF THE
GROSSMONT UNION HIGH SCHOOL DISTRICT
SAN DIEGO COUNTY, CALIFORNIA

In the Matter of the Employment Status of:

OAH No. L2004030596

All Certificated Employees of the Grossmont
Union High School District Who Received
Preliminary Layoff Notices for the 2004-
2005 School Year,

Respondents.

PROPOSED DECISION

On April 14, 2004, a Request for Proposed Decision in Uncontested Case was filed by Petitioner Grossmont Union High School District.

Anthony P. De Marco, Attorney at Law, represented Petitioner Grossmont Union High School District.

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, subsequently received the request and considered the matter in San Diego, California, on April 21, 2004.

No appearance was made by or on behalf of any certificated employee of the Grossmont Union High School District who received a preliminary layoff notice for the 2004-2005 school year, including Respondents M. Linsey Kitchens and Michael A. Truffa.

On April 27, 2004, the matter was submitted.

FACTUAL FINDINGS

The Grossmont Union High School District

1. The Grossmont Union High School District (the District) is located in San Diego County, California. The District serves the educational needs of high school students and provides other educational services and supports.

The District is governed by a five member Board of Education (the Board).

2. The District employs many certificated employees. The certificated employees provide educational services and supports to the District's students.

Resolution No. 2003-158

3. On March 11, 2004, the Board unanimously adopted Resolution No. 2003-158, which recommended a reduction in particular kinds of services for the 2004-2005 school year.

4. Resolution No. 2003-158 provided:

REDUCTION OR ELIMINATION OF CERTAIN CERTIFICATED SERVICES
(Education Code Sections 44949 and 44955)

WHEREAS, Sections 44944 and 44955 of the Education Code require action by the Governing Board in order to reduce or eliminate services and permit the layoff of certificated employees and;

WHEREAS, the Superintendent of the Grossmont Union High School District has recommended to the Governing Board that particular kinds of services be reduced or eliminated no later than the beginning of the 2004-2005 school year; and

WHEREAS, the Governing Board has determined that a reduction or elimination of particular kinds of services is needed no later than the beginning of the 2004-2004 school year; and

WHEREAS, the Governing Board has considered all positively assured attrition which has occurred to date, that is all deaths, resignations, retirements and other permanent vacancies in reducing these services and, but for the attrition already assured, would have found it necessary to reduce additional particular kinds of services.

NOW, THEREFORE, BE IT RESOLVED by the Governing Board of the Grossmont Union High School District:

1. That all the foregoing recitals are true and correct.
2. That because of the financial constraints resulting from revenue being insufficient to maintain the current levels of programs, and necessary program changes resulting therefrom, the Governing Board hereby determines to reduce or eliminate those positions set forth in **Exhibit A**, attached hereto and incorporated by reference herein, listing by level, subject field or classification, and full-time equivalent, those positions which shall be reduced or eliminated no later than the beginning of the 2004-2005 school year.
3. That because of the elimination and reduction of particular kinds of services listed in **Exhibit A** it is necessary to terminate at the end of the 2003-2004 school year certificated employees equal in number to the positions affected in the reduction or elimination of the above-described service.

4. That the seniority and qualifications of some of the employees in the services being reduced are eliminated are such that they have displacement rights by virtue of seniority, and that no employee will be terminated while a less senior employee is retained to render a service which the more senior employee is both certificated and competent to render.
5. That in selecting those probationary and permanent certificated employees who shall receive notice of termination pursuant to this Resolution, Education Code section 44955 requires the Governing Board to state specific criteria to be used in order of termination of certificated employees who first rendered paid service to the Governing Board in a probationary position on the same date.
6. That the criteria to be used in determining the order of termination of certificated employees who first rendered paid service to the Governing Board in a probationary position on the same date are listed and described in **Exhibit B**, which is attached hereto and incorporated by reference herein.
7. That the criteria to be used in determining the order of termination of certificated employees who first rendered paid service to the Governing Board in a probationary position on the same date, listed and described in **Exhibit B**, are based solely on the needs of the District and the students thereof.
8. That in selecting those probationary and permanent certificated employees who shall receive notice of termination pursuant to this Resolution, Education Code section 44955 allows the Governing Board to deviate from terminating a certificated employee in order of seniority by virtue of the competence, credential(s), assignment, and the specific needs of the District and its students.
9. That the criteria that will be applied to deviate from terminating certificated employees who may otherwise be terminated by order of seniority will be based on the needs of the students of the District, and will ensure that no employee will be terminated while a less senior employee is both certificated and competent to render.
10. That the Superintendent or his designated representative will send appropriate notices to all employees possibly affected by virtue of the reduction or elimination of particular kinds of services.
11. That the action of this Governing Board will not, in any way, be considered to prejudice the rights of certificated employees to whom notices will be given as to the Governing Board's consideration of any proposed decision by an administrative law judge in the event a hearing is requested by any employee

PASSED AND ADOPTED by the Governing Board of the Grossmont Union High School District this 11 day of March 2004, by the following vote:

AYES: Cass, Wills, Schreiber, Page and Kelly

NOES:

ABSENT:

5. Exhibit A - attached to Resolution No. 2003-158 - provided for the reduction or elimination of the following kinds of services or programs, in full-time equivalent positions (FTE), including preparation and travel periods where applicable:

Secondary

English	10.00 FTE
Math	14.80 FTE
Social Science	7.00 FTE
Family & Consumer Science	1.00 FTE
Foreign Language	2.20 FTE
Visual & Performing Arts	2.60 FTE
Science	3.00 FTE
Physical Education	1.30 FTE
Phoenix	1.00 FTE
Special Education	6.30 FTE
TUPE Grant	<u>1.00 FTE</u>

Total: 50.20 FTE

6. Exhibit B - attached to Resolution No. 2003-158 - provided the criteria to be applied to determine the order of layoff for those certificated employees with the same date of first paid probationary service. Exhibit B provided:

1. Persons with preliminary or clear credentials in the following subjects, in priority order listed:
 - A. Visual and Performing Arts
 - B. Math
 - C. Science
 - D. Foreign Language
 - E. English
 - F. Phoenix
 - G. Social Service
 - H. Physical Education
 - I. Other Electives
2. Persons with preliminary or clear credentials or certificates authorizing services in classes for limited or non-English proficient students priority listed as follows:
 - A. Cross Cultural Language and Academic Development (CLAD) Bilingual
Cross Cultural Language and Academic Development (BCLAD)
3. Persons with preliminary or clear credentials.
4. Total years of full-time teaching experience.
5. A lottery among individuals who remain tied with the GEA President or his designee invited to attend with the first name being drawn the most senior down to the last name drawn being least senior.

Jurisdictional Matters

7. On and before March 15, 2004, Respondents M. Linsey Kitchens (Kitchens) and Michael A. Truffa (Truffa), each of whom was employed by the District as a certificated employee, received written notice that the District's Superintendent had recommended that Respondents not be reemployed the 2004-2005 school year.

8. Kitchens and Truffa submitted a timely request for a hearing.

9. On or before March 25, 2004, the District's Assistant Superintendent, Human Resources, on behalf of the District, filed and timely served an Accusation and other required jurisdictional documents on each Respondent, which included a Notice of Hearing.

10. Neither Kitchens nor Truffa filed a Notice of Defense. Counsel for Respondents confirmed that neither Kitchens nor Truffa wanted a hearing.

11. The Board did not adopt a resolution to "skip" junior employees with special credentials, skills, training or experience over more senior employees. No junior employee will be retained to render a service which either Kitchens or Truffa are certificated and competent to render, as established by the District's seniority list.

12. All certificated employees subject to the reduction in service action will be placed on a reemployment list pursuant to Education Code sections 44956 and 44957.

13. Final notices of the Governing Board's decision not to reemploy Kitchens and Truffa must be served before May 15, 2004.

The Reduction or Elimination of Particular Kinds of Services and Programs

14. The particular kinds of services identified by the Board as being subject to reduction or elimination (listed as Exhibit A to Resolution 2003-158, set forth in Factual Finding 5) were "particular kinds of services" that the Board was authorized to reduce or discontinue within the meaning of Education Code section 44955.

The Board's decision to reduce or discontinue the particular kinds of services was not fraudulent, arbitrary or capricious, but constituted an appropriate exercise of the Board's discretion. The extent to which particular kinds of services were reduced or eliminated was a matter well within the Board's discretion.

The District's staff and the Board considered known positive attrition including resignations and retirements in determining the number of layoff notices to be served.

Each certificated employee providing a particular kind of service who was the subject of this layoff proceeding was given a preliminary notice of the reduction of the particular kind of service being provided.

It was not established that any particular kind of service was lowered to levels less than those levels mandated by state or federal law.

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.

The Seniority List

15. It was not established that the Certificated Non-Management Temporary/Probationary Status Report dated March 25, 2004 (Exhibit 4) was inaccurate or that it did not provide an accurate basis for determining the identity of those credentialed employees who should be given layoff notices.

LEGAL CONCLUSIONS

1. *Jurisdiction:* Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied as to those certificated employees identified in the seniority lists.

2. *The Decision to Reduce/Eliminate Particular Kinds of Services:* A school district may consider its financial circumstances in deciding whether to reduce or discontinue a particular kind of service. *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 630.

3. A school board's decision to reduce or discontinue particular kinds of services need not be tied to any statistical computation. It is within a school board's discretion, subject to the minimum level required by law, to determine the extent to which a reduction of services is necessary and proper under the circumstances. A school board's decision is made at the time of the final notice. *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636.

4. *Bumping:* Under the statutory scheme, a senior employee whose position is discontinued has the right to transfer to a continuing position he or she is certificated and competent to fill, and in so doing may displace or "bump" a junior employee. *Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399, 405.

5. Cause exists to affirm the Board's reduction of 50.20 FTE positions by the reducing or eliminating the particular kinds of services identified in Exhibit A and in the amounts determined by the Board in Resolution No. 2003-158 (Factual Findings 3, 4, 5 and 14). 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 related to the welfare of the District and its students.

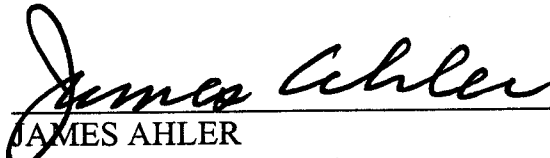
6. As a result of the reduction or discontinuation of particular kinds of service, cause exists to give final notice to Respondents M. Linsey Kitchens and Michael A. Truffa that their services will not be required for the 2004-2005 school year.

RECOMMENDATIONS

1. Notice shall be given to Respondents M. Linsey Kitchens and Michael A. Truffa that their services will not be required for the 2004-2005 school year because of the reduction or discontinuation of the identified particular kinds of services.

2. The aforementioned notice must be given before May 15, 2004.

DATED: April 30, 2004.


JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings