

BEFORE THE
GOVERNING BOARD
FALLBROOK UNION ELEMENTARY SCHOOL DISTRICT
SAN DIEGO COUNTY, CALIFORNIA

In the Matter of the Employment Status of:

OAH No. L2006031031

24 PERMANENT CERTIFICATED
EMPLOYEES, including DAVID REILLY,

Respondents.

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Fallbrook, California, on April 19, 2006.

Pamela A. Dempsey, Attorney at Law, represented the Fallbrook Union Elementary School District.

Jon Y. Vanderpool, Attorney at Law, represented David Reilly, who was present throughout the administrative hearing.

The matter was submitted on April 19, 2006.

FACTUAL FINDINGS

The Fallbrook Union Elementary School District

1. The Fallbrook Union Elementary School District (the District) is nestled in the coastal foothills about 50 miles northeast of San Diego, California. The District has nine schools, seven within the Fallbrook area and two on the military base of Camp Pendleton.

The District extends from the Pacific Ocean east to Interstate 15 and includes seven elementary schools, one middle school, and a home school program. The District serves about 5,600 students from kindergarten through eighth grade and employs over 300 certificated employees to carry out its educational mission.

2. The District is governed by a five member Board of Education (the Board), each member being a duly elected official.

The Chief Executive Officer is James M. Choate, the Superintendent of Schools. The Executive Cabinet includes an Assistant Superintendent of Instruction, an Assistant Superintendent of Business Services, and an Assistant Superintendent of Employer-Employee Relations.

James C. Whitlock (Assistant Superintendent Whitlock) is responsible for human resource matters, including reductions in force, in his role as the Assistant Superintendent of Employer-Employee Relations.

Economic Layoffs

3. Proposition 13 limited local property taxes and reduced a major source of assured revenue for the funding of public education. Following the passage of Proposition 13, a public school district primarily looks to the State of California and other governmental entities for funding.

A school district cannot determine the level of funding it will receive until the state budget is chaptered, an event usually occurring in late June. Before then, the governing board of a school district must take precautionary steps to make certain that financial ends meet in the event that a worst-case funding scenario develops. To meet its duty to be fiscally responsible, a school board frequently reviews the particular kinds of services it provides through its certificated employees and then determines if some of those services can be reduced or eliminated.

A school board's obligation to balance a budget in light of a potential but unknown shortfall often requires that teachers, administrators and other valued certificated employees be given preliminary layoff notices, i.e., notices warning that their services will not be required in the next school year. Under Education Code section 44949, these preliminary layoff notices must be given no later than March 15.

The economic layoff statutes found in the Education Code generally require the retention of more senior employees over more junior employees and the retention of permanent employees over probationary employees.

The Situation at Fallbrook Union Elementary School District

4. Around January 2006, the Board and the District became aware of pending funding issues. The Board was concerned with the impact of these issues on the District's operations. The District looked into ways to trim the budget, which included the reduction or elimination of particular kinds of services being provided by certificated employees.

The District determined where positions had to be eliminated within the District through a process involving the allocation of Personnel Staffing Units (PSU) to each school. In all, it was determined that the budget had to be reduced by about two dozen full-time equivalent certificated positions. On the basis of the District's evaluation, it was concluded

one position held by a certificated employee at Potter Junior High School had to be eliminated, thereby reducing the certificated staff at Potter Junior High School from 46 to 45 employees.

Assistant Superintendent Whitlock contacted Lisa Denham (Principal Denham), the Principal of Potter Junior High School, and advised her of the District's need to reduce her staff by one teacher. Assistant Superintendent Whitlock asked her to review the situation at Potter Junior High School and to provide the Executive Cabinet with a recommendation. Principal Denham was told to make a recommendation that would result in the least adverse educational impact.

Principal Denham evaluated the situation at Potter Junior High School and reluctantly concluded that eliminating the Woodshop program would have the least adverse impact on the educational process. The Woodshop program required one full-time equivalent position.

In reaching this determination, she relied on her three years experience as Principal, Acting Principal, and Assistant Principal of Potter Junior High School; her understanding of what core classes needed to be retained to meet the District's educational objectives; what was actually being taught in the classrooms based upon her classroom visits; the credentials held by those persons teaching elective classes; and, the relative level of interest based on past and current attendance in elective classes including Woodshop, Art, Computer Technology, Music and Band, and AVID. Principal Denham did not interview either respondent (who taught five eighth grade classes of Woodshop and one class of Yearbook, who held an Industrial Arts teaching credential and a Social Sciences teaching credential, and whose seniority date was August 21, 2002) or Julie Hinkhouse (who taught two 7th grade Art classes and six 8th grade Art classes, who held a Single Subject Art teaching credential, and whose seniority date was August 22, 2003).

After concluding that the elimination of the Woodshop program would pose the least risk of harm to the ongoing educational process at her school, Principal Denham reported back to the Executive Cabinet. She explained her reasoning to the Executive Cabinet, which agreed with her conclusion.

With regard to respondent's employment, it was determined respondent did not have a teaching credential which would permit him to teach Art and that no teacher holding a Social Sciences teaching credential who was hired after respondent was going to be retained.

The District's decisions concerning reductions in force were made in the best interests of the District and its students.

5. Under Assistant Superintendent Whitlock's supervision, a certificated seniority list was developed for those certificated employees providing services in the 2005-2006 school year. That list contained the teacher's name, a seniority date based upon the teacher's first date of paid service in a bargaining unit position under the collective bargaining agreement, the teacher's assignment, the school to which the teacher was assigned, the credential(s) held by the teacher, whether the teacher should receive a

preliminary layoff notice, the full-time equivalent positions the teacher held, and whether the position held by the teacher was subject to the proposed reduction.

6. Thereafter, the Superintendent recommended to the Board that a number of full-time equivalent positions within the District be eliminated including four Assistant Principal/Coordinator positions, four Lead Teacher positions, one Lead Teacher/Counselor position, three Counselor positions, one Psychologist position, two Categorical Teaching Service positions, one Ecology Center Teacher position, eight Classroom Teaching positions, and the Woodshop program.

7. On March 6, 2006, the Board adopted Resolution No. #16-05/06, based on its determination that it was necessary for the District to reduce or discontinue particular kinds of certificated services for the 2006-2007 school year.

8. Resolution No. #16-05/06 stated:

"WHEREAS, Sections 44949 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 Fallbrook Union Elementary School District has recommended to the Governing Board that particular kinds of services be reduced or eliminated no later than the beginning of the 2006-2007 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 2006-2007 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 Fallbrook Union Elementary School District:

1. That all of 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 there from, the Governing Board hereby determines to render or eliminate from 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 2006-20007 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 2005-2006 school year certificated employees equal in number to the positions affected in the reduction or eliminate of the above-described service.
4. That the seniority and qualifications of some of the employees in the services being reduced or 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 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 determining the 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. 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 Fallbrook Union Elementary School District and the students thereof.
8. That in selecting those probationary and permanent certificated employees who shall received notice of

termination pursuant to this resolution, Education Code section 44955 allows the Governing Board to deviate from terminating a certificate employee in order of seniority by virtue of their 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 retained to render service which the more 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 and 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 notice will be given as to the Superintendent's consideration of any proposed decision by an administrative law judge in the event a hearing is requested by any employee.

ADOPTED by the Governing Board of the Fallbrook Union Elementary School District this Sixth day of March 2006."

9. Exhibit A set forth the particular kinds of services and the number of full-time equivalent teaching positions as follows:

<u>Particular Kinds of Services or Programs</u>	<u>Number of Full-Time Equivalent Positions</u>
Assistant Principal/Coordinator	4
Lead Teacher	4
Lead Teacher/Counselor	1
Counselor	3
Psychologist	1
Categorical Teaching Services	2
Ecology Center Teacher	1
Opportunity Classroom Teacher	1
Woodshop Program	1

10. Exhibit B set forth tie-breaking criteria which are not relevant to this proceeding.

11. Twenty-four certificated employees were served with a preliminary layoff notice dated March 7, 2006, to which was attached Board Resolution No. #16-05/06, Exhibits A and B, copies of Education Code sections 44949 and 44955, and a blank Request for Hearing Form that was to be completed and returned to Assistant Superintendent Whitlock. Respondent was one of the certificated employees who received the preliminary layoff notice and attachments.

Respondent requested a hearing immediately after he was served with the aforementioned layoff notice and attachments.

The Administrative Proceeding

12. Respondent and the other certificated employees who requested a hearing were personally served with a notice of accusation and acknowledgment of request for hearing, the accusation, a blank notice of defense, copies of Education Code sections 44949 and 44955, and copies of Government Code sections 11500, 11505, 11506, 11507.5, 11507.6, 11507.7, 11590 and 11520.

Respondent filed a notice of defense dated March 30, 2006. The matter was set for an administrative hearing.

13. On April 19, 2006, the record in the administrative hearing was opened. Jurisdictional documents were presented, stipulations were received, the District's motion to dismiss the accusations filed against all certificated employees other than respondent was granted,² sworn testimony and documentary evidence was received, closing arguments were given, the record was closed and the matter was submitted.

The Woodshop Program

14. The Woodshop program at Potter Junior High School has been in existence for as long as Assistant Superintendent Whitlock could remember, and he did not dispute that it

¹ The number of FTEs subject to reduction or elimination actually added up to 26. Why the number (24) was set forth in Exhibit A was not established. If there was an error in addition, it was not significant in this proceeding since it resulted in fewer employees, rather than more employees, being given notice.

² Between the date the accusation was filed and the date of the hearing, all but one of the positions for which layoff notices were served became open as a result of retirements and the granting of unpaid leaves. Only respondent's position remained subject to reduction or elimination.

may have been a part of the school for 45 years. He described the Woodshop program as a "source of pride" and praised respondent's efforts and skills.

15. Assistant Superintendent Whitlock and Principal Denham admired respondent, both personally and professionally, and it was obvious that having to eliminate the Woodshop program at Potter Junior High School was a difficult matter that was required by the financial circumstances and not any animus against respondent.

16. Respondent has an extensive teaching background. He taught woodshop at the high school and junior high school level; stagecraft (set design and construction); a variety of drafting classes, blueprint reading, and architectural model construction; graphic arts, newspaper production, photography and video production at the high school level; yearbook at the high school and junior high school level; U.S. History at the high school level; and Algebra and Remedial Math. He served as an Assistant Principal at Warner Middle School and was twice selected Mentor Teacher by his peers at Leuzinger High School. In addition to his teaching experience, respondent was a member of the California Army National Guard and he holds a general contractor's license.

Respondent understands the value in creating finished projects from raw materials and the satisfaction that can bring to students. He proudly displayed a number of unique, well-crafted mirrors, frames and shelves made by his 8th grade Woodshop students. He introduced copies of letters from students and parents who appreciated his thoughtful care in teaching woodworking.

Respondent argued that students learn through a variety of experiences, and that woodworking opens paths to many students who would otherwise find learning difficult or uninteresting. He believes the Woodshop program reinforces the core subjects in countless ways, and that it meets the District's core values.

Respondent argued Principal Denham's belief that Woodshop was the least popular, least attended elective was untrue. He produced his own statistical study which showed that Woodshop provided educational services to more 8th graders than Art, and that Woodshop was not available to 7th graders although Art was.

Respondent testified in a credible and sincere fashion. He clearly enjoys his work as Woodshop teacher and the satisfaction that brings.

*The Reduction or Elimination of
Particular Kinds of Services and Programs*

17. The elimination of the Woodshop program involved the exercise of discretion. The decision was related to the welfare of the schools and its pupils within the meaning of Education Code section 44949, subdivision (c). It was a difficult decision that was reasonably made, even though others may have reached a different decision. The Woodshop program was a "particular kind of service" the Board was authorized to discontinue within the meaning of Education Code section 44955.

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

No certificated employee who was junior to respondent was retained to provide services within the District which respondent was competent and qualified to render by reason of his teaching certificate. Respondent does not have a credential to teach Art.

No particular kinds of services were lowered to levels less than those levels mandated by state or federal law.

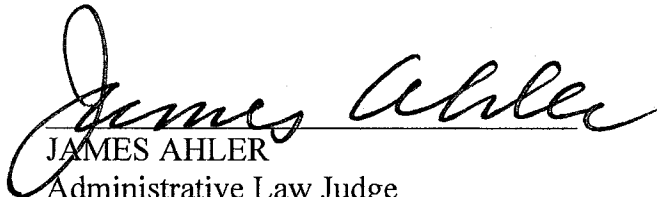
LEGAL CONCLUSIONS

1. 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 respondent David Reilly.
2. A governing board's decision to reduce or discontinue particular kinds of services need not be tied to any statistical computation, such as a reduction in the number of students. The number of PKS reductions depends totally upon a district's decision as to how many services will be reduced. It is within the board's discretion to determine the amount by which it will reduce a particular service. *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 645-636.
3. "In determining whether the decision of a school board is reasonable as distinguished from fraudulent, arbitrary, or capricious, its action is measured by the standard set by reason and reasonable people, bearing in mind that such a standard may permit a difference of opinion on the same subject." *Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 796, 808.
4. Cause exists to affirm the Board's elimination of the Woodshop program as identified in Board Resolution No. #16-05/06. The Board's decision was not arbitrary or capricious, but was a valid exercise of its discretion. The Board's elimination of this particular kind of service was related to the welfare of the District and its students.
5. Cause exists under Education Code section 44955 to give notice to David Reilly that his services will not be required by the District for the 2006-2007 school year.

RECOMMENDATION

Notice shall be given to David Reilly under Education Code section 44955 that his services will not be required by the Fallbrook Union Elementary School District for the 2006-2007 school year.

DATED: 4/20/06


JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings