

BEFORE THE
GOVERNING BOARD
OF THE TWAIN HARTE-LONG BARN
UNION SCHOOL DISTRICT

In the Matter of the Accusation Against:

SUZANNE DeLACY,

Respondent.

OAH No. N2006030678

PROPOSED DECISION

Administrative Law Judge Ann Elizabeth Sarli, State of California, Office of Administrative Hearings, heard this matter in Twain Harte, California, on May 22, 2006.

Thomas M. Griffin, Attorney at Law, represented the complainant.

Matthew J. Gauger, Attorney at Law, of Weinberg, Roger & Rosenfeld, represented the California Federation of Teachers, and respondent, Suzanne DeLacy. Also present was Greg Eddy, Field Representative, California Federation of Teachers (Federation).

Evidence was received, the hearing was closed, and the matter was submitted on May 22, 2006.¹

FACTUAL FINDINGS

1. Mike Brusa, Superintendent, Twain Harte-Long Barn Union School District of Tuolumne County (District), State of California, filed the Accusation in his official capacity.

2. On March 1, 2006, the Governing Board of the District adopted Resolution No. 2006-03-01 (Resolution). The Resolution was based on a recommendation from the

¹ Respondent waived the statutory deadlines in Education Code sections 44949 and 44955, to June 7, 2006 (proposed decision) and June 15, 2006 (final decision).

Superintendent, that a .5 full time equivalent (FTE) position be eliminated because the District anticipated a \$30,000 reduction of federal funds. The Resolution stated that if the District's 27.75 FTE certificated positions and the District's .5 FTE position funded by federal funds were to continue into the subsequent school year, state and federal funding would not likely be sufficient to fund all certificated personnel. The Resolution directed the Superintendent to give notice to a certificated employee filling one half-time Title 1 position that his/her services and position would be eliminated in the 2006-2007 school year.

3. By letter dated March 6, 2006, the Superintendent provided written notice to Suzanne DeLacy (DeLacy) that it had been recommended that notice be given to her, pursuant to Education Code sections 44949 and 44955, that her services will not be required for the ensuing year ("March 15 Notice"). The Resolution setting forth the reasons for the recommendation was attached to the March 15 Notice.

4. DeLacy made a timely written request for a hearing to determine if there is cause for not reemploying her for the ensuing school year. The Accusation was timely served on DeLacy, and DeLacy timely filed a Notice of Defense. All pre-hearing jurisdictional requirements have been met.

5. DeLacy is presently employed as a half-time certificated employee of the District, in a Title I special education position. She holds a Life Standard Elementary Teaching Credential and a Clear Specialist Instruction Credential in Special Education, Authorized Field: Learning Handicapped. Prior to her employment with the district, she was employed part-time as a special education teacher by a Tri-County Consortium that provided special education services to the District and other school districts in the area. Pursuant to Education Code section 44903.7, when DeLacy's position was transferred to the District in August of 1997, she retained her original seniority date based on employment with the Tri-County Consortium, i.e., September 1, 1990. At all times since her employment with the District, respondent has worked half-time (.5 FTE).

6. In 2002, De Lacy was a permanent certificated employee of the District. Her position was eliminated pursuant to a Board Resolution reducing particular kinds of services. She contested the Board's action and requested a hearing. De Lacy maintained that the District must retain her because the District was retaining less senior permanent employees and a probationary employee to provide services which she was certificated and competent to render, as set forth in Education Code section 44955, subdivision (b). The District maintained that De Lacy was not a full-time employee of the District; the part-time position she held had been eliminated by the District; and the only employees junior to her who were providing services that she is certificated and competent to render were full-time employees of the District.

7. The Administrative Law Judge found that "[t]he District is not required to create a part-time position for respondent, and respondent may not 'bump' a full-time employee out of his or her position; nor is respondent entitled to a full-time position with the District. Murray v. Sonoma County Office of Education (1989) 208 Cal.App.3d 456, 460.

Respondent's efforts to distinguish Murray on the grounds that it is a reinstatement case and not an initial layoff case are not persuasive." The Board adopted the decision of the Administrative Law Judge. De Lacy filed a Writ of Mandamus (Writ) in the Superior Court, challenging the Board's decision.

8. While the Writ was pending, the District and DeLacy entered into settlement negotiations. On December 18, 2002, Mike Brusa, on behalf of the District, Greg Eddy, on behalf of the Federation, and De Lacy, executed a "Settlement Agreement And Release of All Claims" (Settlement Agreement). The "subject" of the Settlement Agreement was identified as follows: "this Agreement is a settlement and release of all existing claims and differences between the parties concerning the layoff of DeLacy by the District at the conclusion of the 2001-2002 school year and her claim for reemployment during the fall 2002 semester." In exchange for DeLacy's dismissal of the Writ, the District agreed to pay De Lacy \$4,453. The District also agreed to the following terms:

- A. DeLacy will be rehired in a .5 FTE Title 1 teaching position, which will be designated a year-to-year categorically funded position under Education Code section 44909. She will be provided with a temporary contract.
- B. The District will follow the layoff process described in Education Code section 44955 if the District seeks to eliminate the Title 1 teaching position. If this process results in DeLacy's layoff, she will have reemployment rights pursuant to Education Code section 44956 and will retain her seniority date of September 1, 1990.
- C. Through the end of the Spring 2006 semester, DeLacy shall be permitted to voluntarily transfer from her .5 FTE Title 1 position into any .5 F.T.E. or less probationary/permanent teaching position which the District may establish and for which she is qualified to teach.

9. The parties agree herein that the Settlement Agreement controls the manner in which the instant reduction in services may be conducted, since the reduction in services results in the elimination of .5 FTE Title 1 teaching position presently occupied by DeLacy. DeLacy contends that the District is in breach of the Settlement Agreement in several respects, and must retain her services for the 2006-2007 school year.

10. The initial point of dispute is whether DeLacy is a permanent or temporary employee of the District. DeLacy was a permanent employee of the District in 2002 when she was initially subject to lay off. The District maintains that DeLacy relinquished her permanent status and agreed to become a temporary employee in exchange for employment in the 2002-2003 school year. Since she was deemed a temporary employee, she would ordinarily be subject to non-re-election. To protect her from non-re-election in subsequent years, the District agreed to extend to her the lay off protections of Education Code section 44909. Likewise, the District agreed to furnish her with the reinstatement rights a permanent employee would hold under Education Code section 44956. In support of its position, the District points to the terms of the Settlement Agreement to wit: "She will be provided with a temporary contract," and the fact that in each successive school year, since the 2002

Settlement Agreement, DeLacy has entered into temporary employment contracts with the District.

11. DeLacy maintains that she did not relinquish her permanent status with the District, but merely accepted temporary assignments after the 2001-2002 school year. The lay off and reinstatement protections were added to the Settlement Agreement only to ensure that even though she occupied a temporary position, she would retain the rights of a permanent employee. She points as additional evidence to the language of the contract. The contract specifies that she retains her original seniority date and permits her to step into any permanent/probationary .5 FTE position the District may establish until the end of the 2006 school year, provided she was qualified for the position..

12. The issue of whether DeLacy has permanent or temporary status is only pertinent here when addressing the issue of whether DeLacy is eligible to "bump" permanent and probationary certificated employees with less seniority, or whether she may only bump temporary employees with less seniority. DeLacy maintains that she may bump several junior teachers:

Judy Skoglund is a temporary employee, with a seniority date junior to DeLacy. She holds a Elementary Credential and occupies 1 FTE in grade K-1.

Karoline Waggle is a temporary employee, with a seniority date junior to DeLacy. She holds a Multiple Subject Credential and occupies 1 FTE in grade 7/8 Math. Ms. Waggle was non-re-elected for the 2006-2007 school year.

Margaret Martin is a temporary employee, who resigned her position of temporary 1 FTE teaching SDC/RS. She holds a Multiple Subject Credential. Ms. Martin was non-re-elected for the 2006-2007 school year. Her position is currently vacant and the District is advertising the position, as 1 FTE in special education.

Michael Brown is a temporary employee, with a seniority date junior to DeLacy. He holds a Multiple Subject Credential, Science & CLAD, and occupies 1 FTE in grades 3-5.

Kathleen Olson is a permanent employee, with a seniority date junior to DeLacy. She holds a Multiple Subject Credential & CLAD and occupies .75 FTE in Title 1.

James Micheletti is a permanent employee, with a seniority date junior to DeLacy. He holds a Multiple Subject Credential & English and occupies 1 FTE in grade 8 LA/SS. He is currently on a leave of absence and the position is being advertised.

Karen Stapp is a permanent employee, with a seniority date junior to DeLacy. She holds a Multiple Subject Credential Clear and LH Emergency and occupies 1 FTE in Title 1.

Kimstar Herbert is a permanent employee, with a seniority date junior to DeLacy. She holds a Multiple Subject Credential & CLAD and occupies 1 FTE in grade K-2.

In making its determination to lay off DeLacy, the District did not consider her to fill any of these positions. The District relies on three rationales for its failure to consider DeLacy for any of these positions. (1) The District considers DeLacy a temporary employee who can not bump the permanent employees. (2) The District considers DeLacy unqualified to teach the position vacated by Karoline Waggle because the position requires course work in mathematics, and the position vacated by James Micheletti because the position requires coursework or certification in language arts. (3) The District did not consider DeLacy for any of these positions because she is a .5 FTE and all positions (except Olson's .75 FTE) are 1 FTE. The District maintains that it can not be compelled to create part time positions and it cannot be compelled to hire DeLacy for an additional .5FTE in order to avoid laying her off.²

13. The District's last argument is persuasive, and therefore it becomes unnecessary to decide the issue of whether DeLacy is now a temporary, as opposed to a permanent, employee. She cannot bump either permanent or temporary employees out of a 1 FTE, or a .75 FTE position, when she holds a .5 FTE. There are no .5 FTE (or lesser FTE) positions she can bump into.³ Nor can the District be compelled to hire her in a full time position, to carve vacant full time positions into half time positions, or to divide the .75 FTE position into fractional parts.

At the outset, the District has sound economic reasons to create only full time positions. It is difficult to recruit part- time teachers, especially in a rural area, and uneconomical to retain them. It is difficult to organize class offerings around part-time positions. The Superintendent voiced these concerns at hearing and verified that no part - time positions will be created or advertised in the 2006-2007 school year. Additionally, case law is clear that a District is not required to create part-time positions, and a part-time employee may not bump a full-time employee out of his or her position. The fact that DeLacy is willing to fill a full time position is not relevant. A part-time employee is not entitled to a full-time position with the District and DeLacy is not entitled to greater employment rights than she possessed prior to the lay off action. (*Murray v. Sonoma County Office of Education* (1989) 208 Cal.App.3d 456, 460.)

14. The services identified in the Resolution are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955. The decision to reduce the services is neither arbitrary nor capricious, but rather a proper exercise of the District's discretion. A district may properly consider its financial situation in

² The District maintains that DeLacy is free to apply for any full time position advertised, and she has not done so. Nor has she applied for any full time position in the many years of her employment with the District.

³ There is within the District a .5 FTE special education position currently occupied by Steve Brown, a 1 FTE permanent employee with a seniority date *senior* to DeLacy.

determining to reduce services. (San Jose Teachers Assn. v. Allen (1983) 144 Cal.App.3d 627, 630.)

15. Permanent and temporary certificated employees junior to DeLacy are being retained to perform services that she is certificated and competent to render. However, DeLacy is a .5FTE employee and said junior employees are retained to perform 1 FTE and .75 FTE services. DeLacy may not bump these junior employees out of a portion of their positions and is not entitled to employment rights in excess of her .5 FTE.

16. The reduction or discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the District's Title 1 services by .5 FTE, with reduction in a corresponding number of certificated employees of the District, as determined by the Governing Board.

LEGAL CONCLUSIONS


1. Jurisdiction for the subject proceeding exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

2. Cause exists because of the reduction or discontinuation of particular kinds of services pursuant to Education Code section 44955 to give notice to respondent Suzanne DeLacy occupying .5 full-time equivalent positions as set forth in the Factual Findings. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

Notice shall be given to respondent Suzanne DeLacy that her services will not be required for the 2006-2007 school year because of the reduction or discontinuation of particular kinds of services.

Dated: June 7, 2006



ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings