

BEFORE THE
GOVERNING BOARD OF THE
SCOTIA UNION SCHOOL DISTRICT

In the Matter of the Non-Reemployment of
3.8 Full-Time Equivalent Certificated
Employees for the School Year 2008-2009,

OAH No. 2008030996

Respondent.

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Eureka, California, on April 22, 2008.

Stephen L. Hartsell, General Counsel, North Coast Schools Legal Consortium, represented the Scotia Union School District.

Paul Hagen, Esq., Bragg, Perlman, Russ, Stunich & Eads, LLP, represented respondent Dana Christen, who was present.

The matter was submitted for decision on April 22, 2008.

FACTUAL FINDINGS

1. On March 13, 2008, the governing board of the Scotia Union School District adopted Resolution No. 2008-005, in which the board resolved to reduce or discontinue particular kinds of services at the end of the 2007-2008 school year. The following particular kinds of services are to be eliminated:

- 2.00 K-4th Grade Classroom Teaching Positions.
- 1.00 5th-8th Grade Departmentalized Teaching Position.
- 0.80 Music Teaching Position.

The resolution directed the district's superintendent, or her designee, to initiate procedures to not reemploy the equivalent of 3.8 full-time equivalent certificated employees of the district pursuant to Education Code sections 44949 and 44955.

2. On March 14, 2008, District Superintendent Jaenelle L. Lampp sent notice to five certificated employees of her recommendation that their services would be reduced or discontinued for the 2008-2009 school year. Two of those employees requested a hearing to determine if there was cause to not re-employ them. Prior to hearing, the district withdrew

the accusation against Amy Gossien. Dana Christen is the remaining respondent in this proceeding.

3. The parties stipulated that the district has complied with all procedural requirements of Education Code section 449949 and 44955.

4. The decision to reduce 3.8 full-time equivalent teaching positions was based on a combination of declining enrollment and an anticipated loss of revenue from the State of California for the 2008-2009 school year.

5. Respondent has been employed with the district since September 8, 1981, as a 0.8 FTE music teacher. In addition to holding a single subject music credential and having a master's degree in music, respondent holds a multiple subject credential which authorizes her to teach in self-contained classrooms up to grade nine. This credential would therefore authorize respondent to teach in the district's self-contained classrooms.

Respondent is one of the more senior teachers in the district. Respondent argues that she should be able to bump into a self-contained classroom teaching position held by teachers junior to her. Each teacher junior to respondent holds a 1.0 FTE position. Thus respondent is requesting to partially bump a more junior teacher for four-fifths of that teacher's full-time position.

The district argues that part-time employees are not entitled to bump into full-time positions, citing a number of cases that analyze rehire rights under Education Code section 44956. (See e.g., *Murray v. Sonoma County of Office of Education* (1989) 208 Cal.App.3d 456, 460; *Waldron v. Sulphur Springs Union School District* (1979) 96 Cal.App. 3d 506; *King v. Berkeley Unified School District* (1979) 89 Cal.App.3d 1016, 1020-1021.) As a part-time teacher, respondent is not entitled to an assignment greater than 0.8 FTE. Thus, if respondent were permitted to bump a junior teacher, she would only be retained for 0.8 FTE of the classroom teaching position, and the junior teacher would be retained for the remaining 0.2 FTE position. This would translate to respondent teaching four days a week, and the junior teacher teaching one day a week, or some other tedious arrangement. While this split teaching arrangement might be practical in some programs and in some districts, it would not be practical or efficient in a small elementary program like Scotia's where all classroom teachers work full-time. It is therefore determined that the district should not be forced to split an elementary teaching position to accommodate a senior part-time employee. Respondent is not entitled to bump a more junior teacher from four-fifths of her position.

6. No certificated employee junior in seniority to respondent is being retained by the district to perform services that respondent is certificated and competent to render.

7. The reduction or discontinuation of particular kinds of services is related to the welfare of the schools and the pupils thereof.

LEGAL CONCLUSIONS

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

2. Cause exists because of the reduction of particular kinds of services pursuant to Education Code section 44955 to give notice to respondents that their services will not be required for the 2008-2009 school year. The cause relates solely to the welfare of the schools and its pupils within the meaning of Education Code section 44949.

ORDER

Notice may be given to respondent Dana Christen that her services will not be required for the 2008-2009 school year because of the reduction of particular kinds of services.

DATED: April 30, 2008



MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings