

BEFORE THE GOVERNING BOARD OF THE
NAPA VALLEY UNIFIED SCHOOL DISTRICT
COUNTY OF NAPA, CALIFORNIA

In the Matter of the Non-Reemployment of:

CERTAIN CERTIFICATED EMPLOYEES,

Respondents.

OAH No. 2011030473

PROPOSED DECISION

This matter was heard before Diane Schneider, Administrative Law Judge, State of California, Office of Administrative Hearings, in Napa, California, on April 28, 2011.

Sally Jensen Dutcher, Attorney at Law, Kronick, Moskovitz, Tiedemann and Girard, represented the Napa Valley Unified School District.

David Weintraub, Attorney at Law, Beeson, Tayer & Bodine, represented the respondents identified in Attachment A, who were not present at the hearing.

There was no appearance by or on behalf of the respondents identified in Attachment B.

The matter was submitted for decision on April 28, 2011.

FACTUAL FINDINGS

1. Patrick J. Sweeney, Ed.D., made and filed the Accusations in his official capacity as Superintendent of the Napa Valley Unified School District (district).

2. On March 3, 2011, the district's Governing Board (board) adopted Resolutions A and B, which set forth the board's determination that it will be necessary for the district to reduce or discontinue particular kinds of services (PKS) for the 2011-2012 school year, for a total of 88.45 full-time equivalent (FTE) certificated positions. (Resolutions A and B are set forth in Attachment C.)

3. All notices were timely and properly served. All notices and other jurisdictional requirements contained in Education Code sections 44949 and 44955 have been provided or satisfied.

4. At the hearing, the district rescinded layoff notices issued to a number of employees. The employees whose layoff notices were rescinded on the day of the hearing are identified in Attachment D. As result, the employees listed in Attachment D who requested a hearing, are no longer respondents in this proceeding.

5. At the hearing, the district presented a “Final Layoff List” of employees, who are identified in Attachment E.

6. The district took into account all positively assured attrition as of March 15 in determining how many teachers should receive preliminary layoff notices. Following the issuance of the preliminary layoff notices, the district learned that about 70 teachers were retiring. The district did not rescind any preliminary layoff notices in response to this information. Respondents contend that the district erred when it failed to take into account the retirements that were announced after March 15. This contention is without merit. A school district is not required to consider positively assured attrition that occurs after it issues its preliminary layoff notices. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635.)

7. Respondents argue that the board’s action to reduce or discontinue particular kinds of services was unreasonable. This contention is without merit. In determining how to allocate its resources, a school district is given broad discretion to reduce or discontinue particular kinds of services and lay off teachers. In the instant case, the board acted to reduce or discontinue particular kinds of services due to budgetary concerns and uncertainty surrounding future funding. This was a proper exercise of discretion, and was related to the welfare of the district and its pupils.

8. Respondents Michelle Davis and Amy Smith each assert, based upon similar facts, that the district is eliminating more services than is rendered necessary pursuant to board Resolution A.

Davis occupies a .60 FTE position teaching science.¹ Pursuant to the terms of Resolution A, the positions of High School Science Department Chairs were reduced by .40 FTE.² Because these positions were held by teachers more senior to Davis, the High School

¹ Davis also occupies a .40 FTE position teaching physical education that was subject to the PKS reductions set forth in Attachment C. She does not raise any issues with respect to the elimination of her .40 FTE position teaching physical education.

² There are two department chairs who each occupy a .20 FTE.

Science Department Chairs bumped into .40 FTE of Davis' position, thereby reducing her remaining FTE to .20.

A similar set of facts applies to respondent Amy Smith, who occupies a .60 FTE position teaching world language. Pursuant to the terms of Resolution A, the positions of High School World Language Department Chairs were reduced by .40 FTE. Because these positions were held by teachers more senior to Smith, the High School World Language Department Chairs bumped into .40 FTE of Smith's position, thereby reducing her remaining FTE to .20. Smith and Davis are both at the bottom of the seniority list. For this reason, neither of them has the right to bump into another .20 FTE position.

Davis and Smith do not contest the validity of senior teachers bumping into .40 FTE of their .60 FTE positions. For this reason, they do not challenge the propriety of reducing their positions by .40 FTE. Rather, they contend that the district should not be allowed to eliminate .20 of their FTE positions because such action will result in eliminating more services than is authorized by Resolution A. They are correct. A district may not eliminate more services than is required by a PKS reduction. (Ed. Code, § 44955, subd. (b).) The board's resolution did not deem it necessary to eliminate .20 FTE positions in either high school science or high school math. As such, the district exceeded its authority when it eliminated Davis' and Smith's .60 FTE positions in science and world language, respectively. Davis and Smith are entitled to each retain a .20 FTE position in these subject areas.

The district does not presently have a .20 FTE position in either high school science or high school world language. This understandably poses a challenge to the district; however, this challenge does not authorize the district to eliminate services in excess of what is required by the PKS reduction. To hold otherwise would contravene the provisions of Education Code section 44955, subdivision (b).

9. No junior employee is being retained to render a service that any respondent is certificated and competent to perform.

10. All contentions made by respondents not specifically addressed above are found to be without merit and are rejected.

LEGAL CONCLUSIONS

1. The services identified in Attachment C are particular kinds of services that may be reduced or discontinued under Education Code section 44955. The board's decision to reduce or discontinue the identified services complied with the guidelines set forth in Education Code section 44955. The board's decision was neither arbitrary nor capricious, and was a proper exercise of its discretion.

2. Except as set forth in Legal Conclusion 3, cause exists because of the reduction or elimination 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 2011-2012 school year. The cause relates to the welfare of the schools and the pupils thereof within the meaning of section 44949.

3. In accordance with Factual Finding 8, cause exists only to give respondent Davis notice that her services will be reduced by .80 FTE. (Cause to reduce Davis' services exists for a total of .80 FTE based upon the reduction of her .40 FTE position in physical education and the reduction of her .40 FTE position teaching high school science.) Cause exists only to give respondent Smith notice that her services will be reduced by .40 FTE.

ORDER

1. In accordance with Factual Finding 8 and Legal Conclusion 3, the district may give notice to Davis that her services will be reduced by .80 FTE, and to Smith that her services will be reduced by .40 FTE, for the 2011-2012 school year.

2. Notice may be given to the remaining respondents identified in Attachment E that their services will be reduced or eliminated for the 2011-2012 school year because of the reduction or discontinuation of particular kinds of services.

DATED: _____

DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings

List of Attachments

Attachment A: Respondent's represented by David Weintraub

Attachment B: Respondent's who are unrepresented

Attachment C: Board Resolutions A and B

Attachment D: List of Certificated Employees Whose Layoffs are Rescinded

Attachment E: Final Layoff List of Respondents