

BEFORE THE
BOARD OF EDUCATION
SANTA CLARA UNIFIED SCHOOL DISTRICT

In the Matter of the Accusation Against:

CERTAIN CERTIFICATED
EMPLOYEES,

Respondents.

OAH No. 2012030554

PROPOSED DECISION

Administrative Law Judge Diane Schneider, Office of Administrative Hearings, State of California, heard this matter on April 30, 2012, in Santa Clara, California.

Richard M. Noack, Attorney at Law, Hopkins & Carley, represented the Santa Clara Unified School District.

Christopher E. Schumb, Attorney at Law, represented the respondents listed in Attachment A, with the exception of Juan Alvarado, Hardeep Mann and Elizabeth Morotti. Each respondent represented by Mr. Schumb was present. There was no appearance by or on behalf of respondents Alvarado, Mann or Morotti.

The matter was submitted for decision on April 30, 2012.

FACTUAL FINDINGS

1. Brad Syth made and filed the Accusations in his official capacity as Assistant Superintendent of the Santa Clara Unified School District (district).

2. The respondents in this matter, identified in Attachment A, are certificated employees of the district. Prior to the commencement of the hearing, the district withdrew the Accusation filed against Gina Corsello.

3. On February 16, 2012, the district's Governing Board (board) adopted Resolution No. 12-07, which sets forth the board's determination that it will be necessary for the district to reduce or discontinue particular kinds of services (PKS) for the 2012-2013 school year. (Resolution No. 12-07 is set forth in Attachment B.)

4. On February 16, 2012, the board also adopted Resolution No. 12-08 (Tiebreaker Resolution). The Tiebreaker Resolution sets forth the criteria to be used to determine the

seniority of certificated employees with the same seniority date. (Resolution No. 12-08 is set forth in Attachment C.) After the district applied the tie breaking criteria to employees with the same seniority date, it created a Re-Hire Ranking List. (The Re-Hire Ranking List is set forth in Attachment D.)

5. At the hearing the district rescinded the layoff notices issued to Georjean Ambrose, Erin Chapman, Michael Hickey, Rhonda Kunkel, Tasha Linn, Stacey MacDonough-Wolfe, Hardep Mann, Courtney Smith and Christine Surber.

6. The parties stipulated to the seniority dates of the following respondents: Ramis Ahrary, August 17, 2009; Juan Alvarado, August 1, 2008; David Fernandez, August 10, 2007; Heather Kent, August 17, 2009; Nicole Lentz, August 20, 2008¹; Elena Mikhailova, August 16, 2007; Dayna Rizzo, August 17, 2009. The parties also stipulated that Holly LaBarbera will be considered as a 1.0 FTE probationary employee.

7. 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.

8. The reduction or discontinuation of services is related to the welfare of the district and of its pupils.

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

10. No contentions were raised by or on behalf of any respondent.

LEGAL CONCLUSIONS

1. The services identified in Attachment B 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. Cause exists because of the reduction or elimination of particular kinds of services pursuant to Education Code section 44955 to give notice to respondents Ramis Ahrary, Juan Alvarado, Barbara Atmore, Alice Bressette, David Fernandez, Erika Garcia, Heather Kent, Holly LaBarbera, Monique LaBonte, Nicole Lentz, Elena Mikhailova, Elizabeth Morotti, and Dayna Rizzo 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.

¹ The parties also stipulated that Lentz is a probationary employee.

3. Based upon the district's withdrawal of the Accusation filed against Gina Corsello prior to the hearing, the Accusation filed against her is dismissed. Cause, therefore, does not exist to issue a final layoff notice to Gina Corsello.

4. Based upon the district's rescission of the layoff notices issued to Georjean Ambrose, Erin Chapman, Michael Hickey, Rhonda Kunkel, Tasha Linn, Stacey MacDonough-Wolfe, Hardep Mann, Courtney Smith and Christine Surber, the Accusations filed against them are dismissed. Cause, therefore, does not exist to issue final layoff notices to Georjean Ambrose, Erin Chapman, Michael Hickey, Rhonda Kunkel, Tasha Linn, Stacey MacDonough-Wolfe, Hardep Mann, Courtney Smith and Christine Surber.

ORDER

1. Notice may be given to respondents Ramis Ahrary, Juan Alvarado, Barbara Atmore, Alice Bressette, David Fernandez, Erika Garcia, Heather Kent, Holly LaBarbera, Monique LaBonte, Nicole Lentz, Elena Mikhailova, Elizabeth Morotti, and Dayna Rizza that their services may be reduced or eliminated for the 2012-2013 school year because of the reduction or discontinuation of particular kinds of services.

2. The Accusation is dismissed as to Gina Corsello, Georjean Ambrose, Erin Chapman, Michael Hickey, Rhonda Kunkel, Tasha Linn, Stacey MacDonough-Wolfe, Hardep Mann, Courtney Smith and Christine Surber.

3. The district shall amend its seniority list in accordance with the stipulations set forth in Factual Finding 6.

DATED: _____

DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings

List of Attachments

Attachment A: List of Respondents
Attachment B: Resolution No. 12-07
Attachment C: Resolution No. 12-08
Attachment D: Re-Hire Ranking List