

**BEFORE THE
BOARD OF TRUSTEES
OF THE OLD ADOBE UNION SCHOOL DISTRICT
SONOMA COUNTY
STATE OF CALIFORNIA**

In the Matter of the Statement of Reduction in Force of:

ONE PERMANENT CLASSIFIED EMPLOYEE,

Respondent.

OAH No. 2023040422

PROPOSED DECISION

Administrative Law Judge Michael C. Starkey, State of California, Office of Administrative Hearings (OAH), heard this matter on April 24, 2023, via videoconference.

Attorney Loren W. Soukup represented Old Adobe Union School District, Sonoma County (District).

Labor relations representative Jeremy Arnold represented respondent Paula Bernardini, who was present.

The record was held open through April 24, 2023, for the District to submit copies of OAH proposed decisions relevant to a specific legal issue. Later in the day, the District submitted a letter and a copy of an OAH proposed decision, which was marked for identification as Exhibit 12. The matter was submitted on April 24, 2023.

FACTUAL FINDINGS

1. On March 3, 2022, the Board of Trustees of the Old Adobe Union School District (Board), adopted "Resolution No. 790" entitled "In the Matter of the Elimination of Certain Positions in the Permanent Classified Service and Directing Notification of Classified Employees" (Resolution No. 790), reducing or discontinuing particular kinds of services "as of the end of the 2023-2024 school year"¹ due to "lack of work and/or lack of funds and/or for compliance with the seniority requirements of the Education Code," and directing the District's superintendent or designee to implement procedures necessary to eliminate the relevant positions.

2. The services identified to be eliminated in Resolution No. 790 included: "Instructional Assistant, Classroom" (three 3.5-hours-per-day positions, one 5.75-hours-per-day position, and one 6.3-hours-per-day position) and "Instructional Assistant, Academic Intervention" (one 4-hours-per-week position, one 2-hours-per-week position, one 2.5-hours-per-week position, and one 5-hours-per-week position).

3. The services set forth in Resolution No. 790 are particular kinds of services that may be reduced or discontinued within the meaning of Education Code sections 45117 and 45308 (all further statutory references are to the Education Code unless otherwise stated).

¹ From context, including the notice to respondent, it is clear that the Board intended to eliminate these positions at the end of the current school year, prior to the beginning of the 2023-2024 school year. No party argued otherwise.

4. On or before March 15, 2023, the District personally served preliminary layoff notices and associated documents to all relevant classified employees except respondent Paula Bernardini.

5. On March 15, 2023, Cindy Friberg, Co-Superintendent of the District, unsuccessfully attempted to personally serve a preliminary layoff notice upon respondent prior to respondent's regular work hours. Friberg was aware of respondent's regular work hours and provided no explanation for the timing of this attempt at personal service.

6. Later on March 15, 2023, the District sent respondent a preliminary layoff notice letter with attached copies of relevant sections of the Education Code via certified mail, return receipt requested, addressed to respondent's residence.

7. At approximately 6:15 p.m. on March 15, 2023, Friberg spoke with respondent via telephone and orally informed her of the intended layoff.

8. On March 17, 2023, respondent received the preliminary layoff notice and attachments that were sent via certified mail on March 15, 2023.

9. This preliminary layoff notice indicates that it was transmitted by personal delivery. Friberg explained that this is because she intended to serve it that way.

10. On March 24, 2023, the District received a written request for hearing from respondent, dated March 23, 2023.

11. On April 12, 2023, Friberg signed the District Statement of Reduction in Force in her official capacity as the Co-Superintendent of the District.

12. This proceeding followed. The sole issue in dispute is whether the District timely served respondent with the preliminary layoff notice.

13. Respondent has been employed by the District for 17 months. She works at Miwok Valley Elementary School. Her primary duties are assisting the teacher in the classroom and working with students individually.

14. The reductions in force set forth in Resolution No. 790 are necessary due to lack of funding and decreased enrollment.

15. The District employed respondent in only two classifications: Instructional Assistant, Classroom (3.5 hours per day), and Instructional Assistant, Academic Intervention (5 hours per week). Respondent was the least senior classified employee of the District in the former classification and was a temporary employee in the latter classification.

LEGAL CONCLUSIONS

1. Section 45117, subdivision (a)(1), requires a school district to give written preliminary notice of a layoff to a classified employee “[n]o later than March 15.” Respondent argues that the District’s actions in this case did not constitute timely notice. The District argues that sending the preliminary layoff notice to respondent at her residence via certified mail, return receipt requested, on March 15, 2023, does constitute timely notice to respondent. Section 45117, subdivision (a)(1), is silent as to what manner of service will suffice. However, subdivision (c)(3)(A) states:

Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed,

or when it is deposited in the United States registered mail, postage prepaid, and addressed to the last known address of the employee.

Subdivision (c) primarily addresses procedures in the event a classified employee requests a hearing. However, the phrase “[a]ny notice” is expansive and unambiguous. Moreover, section 44949—a parallel statute applicable to the layoff of certificated employees—contains an identical sentence, but placed in its own subdivision, further supporting the view that this directive regarding the effectiveness of service by registered mail is applicable to all notices related to employee layoffs, not just those relating to hearing procedures. Accordingly, the District’s preliminary layoff notice to respondent in this matter was timely under section 45117, subdivision (c)(3)(A). (Factual Finding 6.)

2. Cause to lay off respondent was not otherwise contested and was established via the evidence presented at hearing. (Factual Findings 1, 2, 3, 11, 14 and 15.)

3. Pursuant to sections 45117 and 45308, the District’s reduction in force must be sustained.

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ORDER

The District's reduction in force is sustained as to respondent Paula Bernardini. Notice may be given to respondent that her services will not be required for the 2023-2024 school year.

DATE: 04/26/2023



MICHAEL C. STARKEY

Administrative Law Judge

Office of Administrative Hearings