

BEFORE THE
GOVERNING BOARD
STANDARD SCHOOL DISTRICT
COUNTY OF KERN
STATE OF CALIFORNIA

In the Matter of the Layoff of:

Mary Jane Taylor and Kati Wonderly,

Respondents.

OAH Case No. L2010031651

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on May 4, 2010, in Bakersfield, California.¹

Stephen A. Mendyk, Attorney at Law, represented Kevin Silberberg (Silberberg), Superintendent of the Standard School District (District).

Paul A. Welchans, Attorney at Law, represented Mary Jane Taylor (Taylor) and Kati Wonderly (Wonderly), collectively referred to as Respondents.

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2010-2011 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2010-2011 school year.

Oral and documentary evidence, and evidence by oral stipulation on the record, was presented at the hearing, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Superintendent Silberberg filed the Accusation in his official capacity.
2. Respondents are certificated employees of the District.

¹ The hearing in this matter was continued from its previously-scheduled date, April 12, 2010, and the deadlines set forth in Education Code sections 44949, subdivision (c), and 44955, subdivision (c), have been extended in accordance with Education Code section 44949, subdivision (e).

3. On February 9, 2010, the Governing Board of the District (Governing Board) adopted Resolution number 2010-14, reducing 10 full-time-equivalent positions in Kindergarten through Sixth Grade classroom services for the 2010-2011 school year.

4. Superintendent Silberberg thereafter provided written notice to the Governing Board that he recommended the termination of Respondents' services for the 2010-2011 school year due to the reduction of particular kinds of services.

5. On March 10, 2010, the District provided notice to Respondents that their services will not be required for the 2010-2011 school year due to the reduction of particular kinds of services. Respondents filed timely requests for hearing.

6. On March 26, 2010, the District filed and served the Accusation and other required documents on Respondents. Respondents thereafter timely filed a Notice of Defense, seeking a determination of whether cause exists for not reemploying them for the 2010-2011 school year.

7. All prehearing jurisdictional requirements have been met.

8. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.

9. The Governing Board took action to reduce the services set forth in factual finding number 3 primarily because of anticipated declines in State funding. The decision to reduce or discontinue the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

10. The reduction of services set forth in factual finding number 3, in the context of reductions necessitated by the anticipated cuts in State funding, is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

11. On February 9, 2010, the Governing Board adopted Resolution 2010-15, setting forth its tie-breaking criteria for employees with the same seniority date. Points were awarded for meeting one or more of the following criteria: credentialing; experience; extracurricular activities; special education credential; evaluations; CLAD certificate; BCLAD certificate; units earned beyond a Bachelor's Degree; earned degree beyond a Bachelor's degree. The criteria are reasonable as they relate to the skills and qualifications of certificated employees.

12. Respondent Wonderly challenged the seniority date assigned to two retained teachers, Lindsay Atchley (Atchley) and Michelle Turner (Turner), June 14, 2007 and June 7,

2007, respectively. Respondent Wonderly's first date of paid service is June 26, 2007.

13. The District has a practice of allowing certificated employees to start work during the Summer to prepare the curriculum they will use with students. Teachers are paid when they work on curriculum preparation, although the rate was not established at the hearing. Atchley, Turner, and Respondent Wonderly performed curriculum work in the Summer of 2007, pertaining to their elementary school teaching assignment.

14. The collective bargaining agreement between the District and the certificated employees' representative, the Standard Teachers Association (STA), provides for 183 days of duty for returning teachers and for 185 days of duty for teachers in their first year of employment. Paula Woodard, STA President, testified without contradiction that the District has not consulted or bargained about extending the additional duty period for new teachers beyond the two days in the collective bargaining agreement.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to Education Code sections 44949 and 44955, by reason of factual finding numbers 1 through 7.

2. The services listed in factual finding number 3 are particular kinds of services within the meaning of Education Code section 44955, by reason of factual finding numbers 3 and 8.

3. Cause exists under Education Code sections 44949 and 44955 for the reduction of the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 14.

4. The seniority date of a certificated employee is defined as the date the employee "first rendered paid service in a probationary capacity." (§ 44845.) These words must be given their plain and commonsense meaning in order to effectuate the legislative intent. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 775; *California Teachers Assn. v. Governing Bd. of Rialto Unified School District* (1997) 14 Cal.4th 627, 632-633; *Steketee v. Lintz, Williams & Rothberg* (1985) 38 Cal.3d 46, 51-52.) The statute requires crediting a certificated employee with the seniority date on which he or she was first paid to render service in a probationary capacity. The statute does not expressly require a particular salary rate or schedule, a particular type of service in a probationary capacity, or that the service be "mandatory," in order for the paid service to be credited for seniority purposes.

Atchley, Turner, and Respondent Wonderly were hired to render services in a probationary capacity and the curriculum work they performed, for which they were paid, was part of the teaching services they were hired to perform. Respondent Wonderly nevertheless

argues that all teachers should be limited to the two days of additional seniority permitted by the collective bargaining agreement as days of duty. However, this limitation is not evident from the plain language of the statute. Nor did Respondent Wonderly present any authority or persuasive argument for such statutory construction. Accordingly, the construction suggested by Respondent Wonderly would impermissibly modify the plain language of the statute and will not be accepted. Moreover, to the extent that the collective bargaining agreement can be read to modify the statute, it must yield.

5. The District did not retain any certificated employee junior to Respondents to perform a service Respondents are competent and certificated to render.

6. Cause exists to terminate the services of Respondents Taylor and Wonderly for the 2010-2011 school year due to the reduction of particular kinds of services, by reason of factual finding numbers 1 through 14 and legal conclusion numbers 1 through 5.

ORDER

The Accusations are sustained and the District may notify Respondents Taylor and Wonderly that their services will not be needed during the 2010-2011 school year due to the reduction of particular kinds of services.

DATED:_____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings