

BEFORE THE GOVERNING BOARD OF THE
PLACER HILLS UNION SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Employment Status of:

JILL KIRKLAND, DAVID LIEBERT,
SARA LIEBERT, AND TRACY STOKES,

Respondents.

OAH No. N2007030617

PROPOSED DECISION

Robert Walker, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Meadow Vista, California, on April 24, 2007.

Heather Edwards, Attorney at Law,¹ represented the complainant, Fred H. Adam, Superintendent, Placer Hills Union School District.

Andrea Price, Attorney at Law,² represented the respondents, Jill Kirkland, David Liebert, Sara Liebert, and Tracy Stokes.

The matter was submitted on April 24, 2007.

FACTUAL FINDINGS

1. Respondents – Jill Kirkland, David Liebert, Sara Liebert, and Tracy Stokes – are certificated district employees.

2. Not later than March 15, 2007, in accordance with Education Code sections 44949 and 44955,³ the superintendent of the school district caused the governing board of the district and respondents to be notified in writing that it was recommended that respondents

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³ All references to the Code are to the Education Code unless otherwise specified.

be notified that the district would not require their services for the ensuing school year. The notice stated the reasons for the recommendation. The recommendation was not related to respondents' competency.

3. A notice was delivered to each respondent, either by personal delivery or by depositing the notice in the United States mail, registered, postage prepaid, and addressed to respondent's last known address.

4. The notice advised each respondent of the following: He or she had a right to a hearing. In order to obtain a hearing, he or she had to deliver a request for a hearing in writing to the person sending the notice. The request had to be delivered by March 21, 2007, (which was not less than seven days after the notice of termination was served.) And the failure to request a hearing would constitute a waiver of the right to a hearing.

5. Each respondent timely filed a written request for a hearing to determine whether there was cause for not reemploying him or her for the ensuing year. An accusation was timely served on each respondent. Each respondent filed a timely notice of defense. All prehearing jurisdictional requirements were met.

6. The recommendation was to reduce or discontinue "particular kinds of services." Within the meaning of Code section 44955, the services are particular kinds of services that can be reduced or discontinued. The recommendation to reduce or discontinue these services was not arbitrary or capricious but constituted a proper exercise of discretion.

7. The governing board of the district determined that, because particular kinds of services are to be reduced or discontinued, it is necessary to decrease the number of permanent employees in the district.

8. The reduction or discontinuation of particular kinds of services relates to the welfare of the district and its students. The reduction or discontinuation is necessary in order to decrease the number of certificated employees of the district.

9. Respondent David Liebert and a certificated English teacher, Suzanne Scotten, both began rendering paid service to the district on August 18, 2006. The district is retaining Ms. Scotten as an English teacher. Mr. Liebert contends that he should have been retained because he has a supplemental credential that qualifies him to teach English. The district retained Ms. Scotten rather than Mr. Liebert because, within the terms of the federal "No Child Left Behind" program, Ms. Scotten is a "highly qualified" English teacher. If the district were to employ an English teacher who has not demonstrated that he or she is "highly qualified," the district would subject itself to the risk of compliance monitoring. Mr. Liebert has not demonstrated that he is a "highly qualified" English teacher. (He is a "highly qualified" history teacher.) Mr. Liebert further contends that the district did not take appropriate steps to determine whether he, too, might satisfy the requirements to be designated a "highly qualified" English teacher. But it is Mr. Liebert's responsibility to demonstrate that he is a "highly qualified" English teacher, and he has not done that. At the

hearing in this matter, he testified, without specificity, that he graduated from college and has taken some courses related to English. It is found that the district had good cause to retain Ms. Scotten rather than Mr. Liebert.

10. The district is not retaining any employee who has less seniority than respondents have to render a service that respondents are certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Code sections 44949 and 44955. All notice and jurisdictional requirements contained in those sections were satisfied.

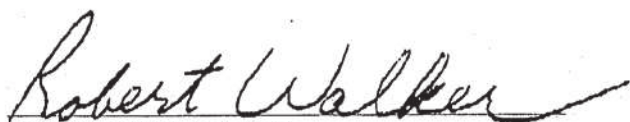
2. Within the terms of Code sections 44949 and 44955, the district has cause to reduce or discontinue particular kinds of services and to give notices to respondents that their services will not be required for the ensuing school year. The cause relates solely to the welfare of the schools and the pupils.

3. Respondent David Liebert and Ms. Scotten, both began rendering paid service to the district on August 18, 2006. The district appropriately chose to retain Ms. Scotten and terminate Mr. Liebert.

ORDER

The district may give notice to the respondents that the district will not require their services for the ensuing school year.

Dated: April 30, 2007



ROBERT WALKER

Administrative Law Judge

Office of Administrative Hearings