

BEFORE THE
GOVERNING BOARD OF THE
CAJON VALLEY UNION SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations for Lay-Off
of Certificated Employees against:

PAMELA BUEHL, et al.,

Respondents.

OAH No. 2004020426

PROPOSED DECISION

Greer D. Knopf, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in El Cajon, California on April 20, 2004.

Richard J. Currier, attorney at law, represented the Cajon Valley Union School District.

Fern Steiner, attorney at law appeared on behalf of and represented respondents Pamela Buehl, Carrie Ignacio, Todd Inouye, David Larson, Nicole McDaniel, Sylvia Oedewaldt, Susan Plack, Shannon Savinon, Carrie Semik, and Darren Smith.

Respondents Michele Hardin, Debra Jordan, and Melanie Wigley failed to appear at the hearing and no one appeared on their behalf.

The matter was submitted on April 20, 2004.

FACTUAL FINDINGS

1. Dr. Janice Cook, Superintendent (hereinafter referred to as "the Superintendent"), of the Cajon Valley School District, made and filed the Accusations dated March 24, 2004 in her official capacity as Superintendent of the Cajon Valley School District (hereinafter referred to as "the District"). The accusations were filed against 17 respondents, but four were withdrawn by the District on or before the day of the hearing, leaving 13 remaining respondents. The 13 remaining respondents named in the accusations are Pamela Buehl, Michele Hardin, Carrie Ignacio, Todd Inouye, Debra Jordan, David Larson, Nicolle

McDaniel, Sylvia Wedewaldt, Susan Plack, Shannon Savinon, Carrie Semik, Darren Smith, and Melanie Wigley.

2. Respondents Pamela Buehl, Michele Hardin, Carrie Ignacio, Todd Inouye, Debra Jordan, David Larson, Nicolle McDaniel, Sylvia Wedewaldt, Susan Plack, Shannon Savinon, Carrie Semik, Darren Smith, and Melanie Wigley (hereinafter referred to as "Respondents") are all certificated employees of the District.

3. On March 9, 2004, in accordance with Education Code sections 44949 and 44955, the Superintendent notified the Governing Board of the District (hereinafter referred to as "the Board") in writing of the Superintendent's recommendation to reduce or discontinue positions for the ensuing school year. The Superintendent stated the reasons for the recommendation. The Superintendent recommended the reduction of particular kinds of services of a total of 84.06 full time equivalents, as follows:

<u>Particular Kinds of Services</u>	<u>Number of Full Time Equivalent Positions</u>
Assistant Principal	.50 Full Time Equivalent
Psychologist	2.66 Full Time Equivalents
Counselor	.20 Full Time Equivalent
School Nurse	.10 Full Time Equivalent
Elementary Teaching (First-Third Grade)	56.00 Full Time Equivalents
Elementary Teaching (Fourth-Sixth Grade)	14.80 Full Time Equivalents
Teacher – ASB	.40 Full Time Equivalent
Teacher – Physical Education	2.30 Full Time Equivalents
Teacher – Alternative Learning Center	1.20 Full Time Equivalents
Teacher – Students at Work (EMCO)	1.00 Full Time Equivalent
Teacher – Students at Work (KIB)	.80 Full Time Equivalent
Teacher – Students at Work (SAW)	.20 Full Time Equivalent
Teacher – Yearbook	.20 Full Time Equivalent
Teacher – Geometry	.20 Full Time Equivalent
Teacher – Art	.45 Full Time Equivalent
Teacher – Writing	.20 Full Time Equivalent
Teacher – Computer	.25 Full Time Equivalent
Teacher – 8 th Grade Science	.20 Full Time Equivalent
Teacher – English	.40 Full Time Equivalent
Teacher – Math Lab	1.00 Full Time Equivalent
Teacher – Music	1.00 Full Time Equivalent

4. On March 9, 2004, the Board adopted a resolution recommending a reduction in particular kinds of services provided by the District for the 2004-2005 school year, as recommended by the Superintendent in paragraph 3 above. The Board directed the Superintendent to give Preliminary Layoff Notices to employees.

5. Prior to March 15, 2003, a written notice of termination (hereinafter referred to as "the written notice") was delivered to each Respondent, either by personal delivery or by depositing the notice of termination in the United States registered mail, postage prepaid and addressed to the Respondent's last known address. The written notice notified respondents that his or her services will not be required for the upcoming 2004-2005 school year. The written notice specifically stated that each of the Respondents' services would not be required for the ensuing year. Each notice set forth the reasons for the recommendation.

Each written notice advised Respondents they each had a right to a hearing, each Respondent had to deliver a request for a hearing in writing to the person sending the notice of termination within seven days after the notice of termination was served, and the failure to request a hearing would constitute the waiver of the right to a hearing. Each appearing Respondent timely filed a written request for a hearing to determine if there was cause for not reemploying that Respondent for the ensuing year.

6. Subsequently, on March 24, 2003, the Superintendent filed and timely served on behalf of the District the Accusation herein for each of the Respondents. Rhoda Barno and Amanda Consigli did not file a Notice of Defense in response to the Accusations and therefore are deemed to have waived their right to a hearing. Each of the Respondents appearing in this matter filed a timely Notice of Defense. All pre-hearing jurisdictional requirements were met.

7. The Board's March 9, 2004 resolution to reduce services for the ensuing school year reduced the following particular kinds of services for the 2004-2005 school year:

<u>Particular Kind of Service</u>	<u>Number of Full Time Equivalent Positions</u>
Assistant Principal	.50 Full Time Equivalent
Psychologist	2.66 Full Time Equivalents
Counselor	.20 Full Time Equivalent
School Nurse	.10 Full Time Equivalent
Elementary Teaching (First-Third Grade)	56.00 Full Time Equivalents
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Teacher – English	.40 Full Time Equivalent
Teacher – Math Lab	1.00 Full Time Equivalent
Teacher – Music	1.00 Full Time Equivalent

The reductions adopted by the Board's resolution on March 9, 2004 totaled 84.06 full-time equivalent (FTE) positions.

8. The services were "particular kinds of services" that could be reduced or discontinued within the meaning of Education Code section 44955. The Board's decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious, but constituted a proper and reasonable exercise of discretion. The Board's action was taken after consideration of the projected budget shortfall for the ensuing school year. It is projected that the District must reduce its budget for the 2004-2005 school year by approximately 1.7 to 2 million dollars. The Board's action to reduce services is a proper exercise of its discretion to address projected fiscal shortages for the 2004-2005 school year.

9. The reduction or discontinuation of particular kinds of services is related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Board.

10. Subsequent to the action the Board took on March 9, 2004 to reduce services by 84.06 FTE positions, the District continued to evaluate its personnel needs. Since the Board's action, the District has terminated all of its temporary teachers. After further evaluation and after taking into consideration upcoming retirements, the District has now determined it can meet its fiscal needs by reducing services by a total of 51.56 FTE positions for the 2004-2005 school year. To accomplish this reduction of services, the District needs to give final notices of termination to the 13 respondents now remaining in this proceeding.

11. No certificated employee junior to any Respondent is being retained to perform any services which any Respondent is certificated and competent to render.

12. Some junior employees with specialized training who were hired after other more senior Respondents are being retained by the District. However, these junior employees are credentialed in specialized areas such as special education or bilingual education. The District needs personnel to teach special education and bilingual education and the junior employees being retained have the special training and experience necessary to teach those courses of study which others with more seniority do not possess. In addition, the District plans to assign such junior employees with special credentials, training, or experience to assignments in special education or bilingual education in the next school year.

13. Some of the Respondents began their service with the District on the same date. Between these employees who first rendered paid service to the district on the same date, the governing board determined their order of termination on the basis of needs of the district and the students. The specific criteria used to determine the order of termination was set forth in tie-breaking criteria adopted by the Board. The criteria were fairly applied to rank those employees hired on the same date.

LEGAL CONCLUSIONS

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

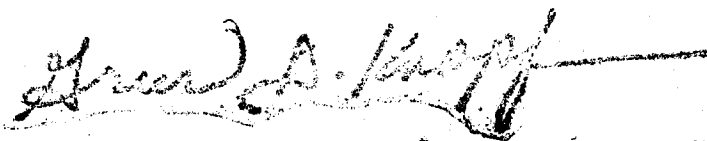
2. Cause exists under Education Code sections 44949 and 44955 for the Cajon Valley Union School District to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuation of particular kinds of services is related solely to the welfare of the schools and the pupils thereof. A preponderance of the evidence sustained the charges set forth in the Accusations herein. Cause exists for the Board to give Respondents notice before May 15, 2004, that their services will no longer be required by the District in the ensuing school year.

ORDER

The Accusations served on the Respondents are sustained and notice shall be given to Respondents Pamela Buehl, Michele Harin, Carrie Ignacio, Todd Inouye, Debra Jordan, David Larson, Nicolle McDaniel, Sylvia Oedevaldt, Susan Plack, Shannon Savinon, Carrie Semik, Darren Smith, and Melanie Wigley before May 15, 2004 that their services will not be required in the next school year because of the reduction or discontinuation of particular services as indicated.

DATED: _____

5/3/04



GREER D. KNOPF
Administrative Law Judge
Office of Administrative Hearings