

BEFORE THE
GOVERNING BOARD
GROSSMONT UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Employment Status of
Forty Two Certificated Employees:

OAH No. L2005030585

Respondents.

PROPOSED DECISION

Stephen E. Hjelt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in El Cajon, California on April 26, 2005.

Pamela A. Dempsey, Attorney at Law, of Parham & Rajcic, represented the Grossmont Union High School District.

No appearance was made by or on behalf of any respondent except Gary Juhl who appeared and represented himself.

The matter was submitted on April 26, 2005.

FACTUAL FINDINGS

1. Terry Ryan, Superintendent with the Grossmont Union High School District, made and filed the Accusations in his official capacity as such public officer of the Grossmont Union High School District.

2. Respondents are certificated District employees.

3. On March 3, 2005, in accordance with Education Code sections 44949 and 44955, the Governing Board of the District (the Board) issued a resolution regarding the reduction in the number of certificated employees because of the following reasons:

“Because of the financial constraints resulting from revenue being insufficient to maintain the current levels of programs, and necessary program changes

resulting therefrom, the Governing Board determined to reduce or eliminate certain positions no later than the beginning of the 2005-2006 school year."

The recommendation that Respondents be terminated from employment was not related to their competency as teachers.

4. On or before March 15, 2005, a notice of termination 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 notices of termination specifically stated that Respondents' services would not be required for the ensuing year. Each notice set forth the reasons for the recommendation.

Each notice advised Respondents of their right to a hearing, that each Respondent had to deliver a request for a hearing in writing to the person sending the notice of termination by April 4, 2005, which was more than seven days after the notice of termination was served, and that the failure to request a hearing would constitute the waiver of the right to a hearing.

5. 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. Accusations were timely served on Respondents thereafter. Each Respondent appearing in this matter filed a timely Notice of Defense. All prehearing jurisdictional requirements were met.

7. The Board took action to reduce or discontinue the following particular kinds of services for the 2005-2006 school year:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
Administrators	1.0 FTE
Alternative Education	3.0 FTE
Art	2.0 FTE
Business Education	1.0 FTE
Consumer Science/Home Economics	3.0 FTE
Curriculum Specialist	1.0 FTE
Counseling	2.0 FTE
English	4.8 FTE
Foreign Language	3.0 FTE
French	1.0
German	1.0
Spanish	1.0

Math	3.0 FTE
Performing Arts	1.0 FTE
Physical Education	4.0 FTE
Science	3.8 FTE
Social Science	3.6 FTE
Special Education	1.0 FTE
Work Experience	4.8 FTE

The proposed reductions total 42.0 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 exercise of discretion.

9. The reduction or discontinuation of particular kinds of services 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. The Board considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

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

12. The District established a reasonable and appropriate method for determining the order of seniority of its certificated employees and established criteria to determine the order of termination of certificated employees who first rendered paid service in a probationary position on the same date. The criteria to break ties was appropriate and it was applied appropriately.

13. Much of the language in this Decision is couched in what could be described as "legalese." The Decision uses legal terms such as "particular kinds of service" and "full-time equivalent." The "legalese" defines a comprehensive body of law that can be as confusing and complex as the terms of art used in this Decision. However, when one gets past the legalese, this case revolves around a set of questions that must be answered. The questions focus on trying to balance two conflicting sets of needs and goals. The first need is that of the School District. The District must act in a fiscally prudent fashion and risks being placed in involuntary receivership should it fail to make prudent decisions to balance its financial books. The second need is that of teachers, generally and specifically, Respondents, in this case. Teachers are our unsung heroes who nurture, challenge, and stimulate our young students. They deserve the full protection of the law in trying to retain their hard-earned employment.

14. The layoff system is predicated on seniority. That means quite simply that the last hired generally is the first laid off. It is often, lamentably, the most energetic and best trained young teacher who gets the pink layoff slip. When that unfortunate bit of bad news must be delivered, the law requires that such an affected teacher be accorded an opportunity to contest the decision. The law also requires that such bad news be delivered by a date that will allow such a teacher the maximum opportunity to find other employment.

15. The laws, both statutory and decisional, in the teacher layoff cases demand that a school district strictly comply with a variety of notice requirements or be deemed to have involuntarily rehired the teacher in question. The law also demands that the school district make these difficult decisions based on a well thought out and clearly articulated set of factors that all relate solely to the well-being of the students of the district. Teacher layoff hearings are required so that a District can be put to the test and an independent judgment made about the layoff choices it proposes. Sometimes a District might seek to use the layoff process to punish a disfavored teacher or reward the less worthy. These hearings exist to allow an affected teacher to have such a claim heard and determined.

16. In this case, the evidence and the reasonable inferences that flow from it, strongly support a finding that the Grossmont Union High School District has acted appropriately and with due caution in taking the steps it took. Serious financial problems face the district because of lessened funding from the Legislature. In order to balance the budget, the District thought long and hard about where and how much to cut. None of the scenarios were terribly appealing. However, the layoffs that have been proposed were well thought out and are consistent with the District's mandate to promote the welfare of the District and its students.

17. The only respondent to appear and testify at the hearing was Gary Juhl. He is a 35 year old Physical Education teacher at El Cajon Valley High School. One can only assume that he is representative of the quality and the enthusiasm of the other respondents who were, regrettably, slated for layoff. He seems devoted to his job and his students and in a completely fair world would not be the subject of this layoff proceeding. Unfortunately, despite some part-time employment with the District, his first date of paid service with the District is August 16, 2004 and therefore the action taken by the District to lay him off is appropriate. It can only be hoped that further attrition takes place and he can stay employed with the District as he is a valuable asset to the students he comes in contact with.

18. At the hearing the District moved to Dismiss the Accusation against 22 respondents. These were: Wayne T. Tribble, Julia Marie Bohe, Shelly K. Poliska, Ronald L. Toretto, Staci Nicol Ortiz, Nicole M. Sabell, Jessica Menard, Ellen A. Gadon, Brittany S. Luecht, Melissa D. Amerian, Ryan W. Hass, Shoshana M. Adams, Andrew A. Banuelos, Randy M. Cambou, Christopher Emerick, Summer D. Lambert, William R. Lourey, Drew E. Stewart, Olivia R. Wilson, Mary L. Nishikawa, R. Vargas-Wilson and Lori E. Trim. The Motion To Dismiss is granted.

19. The District established that grounds exist to serve final layoff notices on the following individuals totaling 17.4 FTE:

James Scott Killen	1.0 FTE
Robby Tuttle	.8 FTE
Susan Streeper	.6 FTE
Mark Alamillo	1.0 FTE
Michael Dundovich	1.0 FTE
Brenden Sexton	1.0 FTE
Summer Smith	1.0 FTE
Ross Bartell	1.0 FTE
Sarah Oconnor	1.0 FTE
Brandon Accardi	1.0 FTE
Stephen George	.4 FTE
Gary Juhl	1.0 FTE
Megan Lilien	1.0 FTE
Von Petrasko	1.0 FTE
Boyd Stewart	1.0 FTE
Joel Tropp	1.0 FTE
Patric Greenhalgh	.6 FTE
Jill Enright	1.0 FTE
Marguerite Rohmer	1.0 FTE

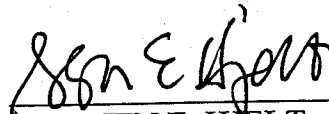
LEGAL CONCLUSIONS

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 Grossmont Union High School District to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof. A preponderance of the evidence sustained the charges set forth in the Accusation. It is recommended that the Board give Respondents notice before May 15, 2005, that their services will no longer be required by the District.
3. Cause exists under Education Code sections 44949 and 44955 for the Grossmont Union High School District to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof.

ORDER

The Accusations are sustained. Notice shall be given to Respondents James Scott Killen, Robby Tuttle, Susan Streeper, Mark Alamillo, Michael Dundovich, Brenden Sexton, Summer Smith, Ross Bartell, Sarah Oconnor, Brandon Accardi, Stephen George, Gary Juhl, Megan Lilien, Von Petrasko, Boyd Stewart, Joel Tropp, Patric Greenhalgh, Jill Enright, Marguerite Rohmer, before May 15, 2005, that their services will not be required because of the reduction or discontinuation of particular services as indicated.

DATED: May 6, 2005



STEPHEN E. HJELT
Administrative Law Judge
Office of Administrative Hearings