The FISCAL REPORT an informational update

Copyright © 2009 School Services of California, Inc.

Volume 29 For Publication Date: September 4, 2009 No. 18

Summer Layoff Lessons

Following the early enactment of the 2009-10 Budget, we encouraged districts and county offices of education to use the tried and true March 15 layoff window to reduce certificated services, assuming worst case scenarios. As the economic outlook continued to deteriorate, we reported that, if necessary, local educational agencies could utilize Education Code Section (E.C.) 44955.5 to pursue a layoff prior to August 15, 2009.

In early May, a proposed amendment to ABX3 32 (Silva, R-Huntington Beach), a bill to extend the May 15 final layoff to June 15, would have closed the second layoff window this year. When it was apparent that the measure would not pass unless amended to make E.C. 44955.5 inoperative, the author pulled the bill. Districts and county offices of education who exercised their authority under E.C. 44955.5 were told that they were embarking on an historic layoff journey.

Of the approximately 71 summer layoff hearings initially scheduled by the Office of Administrative Hearings (OAH), only 22 went to hearing. While the number of full-time equivalents and the particular kinds of services differed from one district to the next, arguments made by respondents in the decisions we've reviewed were consistent across the state. The legal conclusions and factual findings of the Administrative Law Judges (ALJs) in these cases were equally consistent.

Arguments made by respondents . . .	**Legal conclusions and rulings of the ALJs . . .**
Statute requires and district failed to prove financial necessity	Budget priorities are within the discretion of the governing board District not required to prove financial peril "Necessity" of E.C. 44955.5 substantially identical to E.C. 44955 and therefore determinations of necessity to reduce or discontinue particular kinds of service are reserved to the discretion of the governing board Decisions of the governing board should not be subject to argument as to the wisdom of their enactment, necessity of the resolution, the selection of services, or the questions as to the board's motivation-they need only to be reasonable and within their established discretion
Reductions in service must be proportional	The governing board is not bound to reduce certificated employees in proportion to their historical dollar share of salaried positions in the district
Resolution to reduce particular kinds of services (PKS) under E.C. 44955.5 improper	E.C. 44955.5 incorporated by reference the reasons stated in E.C. 44955

	Discontinuance of the particular kinds of service set forth in the resolution is related to the welfare of the schools and the students within the meaning of E.C. 44949 and 44955 The ALJ need only to determine that there is sufficient evidence to show that the board's decision was not arbitrary and capricious
District must include federal stimulus dollars and other fund balances and reserves in demonstrating financial necessity	E.C. 44955.5 makes no mention of the need to also consider other revenue sources, including federal stimulus dollars or other fund balances or reserves Once the 2% base revenue limit per unit of average daily attendance threshold has been met, the governing board has discretion to determine that it is necessary to decrease the number of permanent certificated employees
E.C. 44955 and 44955.5 are mutually exclusive and the district's authority to issue August 15 notices is limited by having conducted a May 15 layoff	Legislative intent is evident and does not prohibit a district from using the two statutes in the same year The authority of a district to do a summer layoff is not limited by its use of the May layoff

The presiding ALJs consistently made the following factual findings:

The actions taken by the governing board were reasonable
The governing board's decision is not arbitrary or capricious
Procedural requirements were met by the district
The governing board acted reasonably and its actions were well within its established discretion

In the decisions we reviewed, the conclusions were clear and based on evidence and sound legal arguments. However, legal challenges are still likely. And while the ALJs' decisions were favorable to districts, we would encourage local educational agencies to continue to rely on the tried and true March 15 process for reducing certificated service. We can expect the 2% revenue limit threshold to continue into the future, but whether the Legislature will adopt future Budgets in time for districts to take advantage of this option is anyone's guess.

-Suzanne Speck

posted 08/20/2009

Copyright 2009 School Services of California