

**BEFORE THE GOVERNING BOARD OF
THE BASSETT UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

OAH No. 2009020825

Certificated Employees of the Bassett
Unified School District,

Respondents.

PROPOSED DECISION

Chris Ruiz, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this matter on April 8, 2009, in City of Industry, California.

Joel B. Mason, Esq., represented the Bassett Unified School District (District).

Michael R. Feinberg, Esq., represented the Respondent teachers (Respondents).

The District served a Notice of Layoff on each of the Respondent teachers. The District served Accusation packets on 50 teachers. Those 50 teachers at issue are listed on page 165 of Exhibit 7. Exhibit 7, page 165, is hereby incorporated by reference as if fully set forth herein. At the hearing, the District withdrew the Notice of Layoff and Accusation as to those teachers listed in Exhibit 5, pages 98 and 98A. Exhibit 5 is hereby incorporated by reference as if fully set forth herein.

At the conclusion of the hearing, Respondents requested additional time to submit case citations in support of their contentions. That request was granted. Respondents' list of citations was due by April 9, 2009. The District's response was due by April 10, 2009. No additional documents were received by the ALJ.

FACTUAL FINDINGS

1. Dr. Cynthia Byrd, Superintendent of the District, acting in her official capacity, caused all pleadings, notices and other papers to be filed and served upon each Respondent pursuant to the provisions of Education Code sections 44949 and 44955. All pre-hearing jurisdictional requirements were met.

2. Respondents are employed by the District as permanent, probationary, intern, pre-intern, emergency permitted, waiver, and/or temporary certificated employees of the District.

3. On February 19, 2009, pursuant to Education Code sections 44949 and 44955, the Governing Board of the District (Board) issued Resolution number 17-09 which approved the recommendation by the Superintendent that notice be given to Respondents that their services will not be required for the ensuing school year and stating the reasons for that recommendation.

4. Prior to March 15, 2009, Respondents were given written notice of the recommendation that notice be given to Respondents, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the ensuing school year and stating the reasons for that recommendation.

5. It was established that cause exists, within the meaning of Education Code sections 44949 and 44955, for not reemploying Respondents for the ensuing school year for all of the reasons set forth below.

6. The District decided the following:

The following particular kinds of services of the District will be reduced or eliminated no later than the beginning of the 2009-10 school year:

Elementary K-6 Multiple Subject Teachers	23	FTE ¹
Middle School 6-8 Multiple Subject Teachers	2	FTE
Student Achievement Resource Teachers	7	FTE
Secondary Mathematics Teachers	2	FTE
Secondary English Teachers	2	FTE
Secondary Science Teachers	1	FTE
Secondary History/Social Science Teachers	1	FTE
Secondary Spanish Language Teachers	1	FTE
Secondary 9-12 counselor	1	FTE

¹ Full- Time Employee position(s).

Middle School 6-8 counselor 1 FTE

TOTAL CERTIFICATED POSITIONS 41 FTE

7. The Board decided that it is necessary to decrease the number of certificated employees as a result of the reduction in services. These services are “particular kinds of services” that may 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 rather, constituted a proper exercise of discretion. The Board is faced with a budget shortfall and with a declining student enrollment.

8. The reduction or discontinuation of these particular kinds of services is related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services is necessary to decrease the number of certificated employees of the District as determined by the Board. This reduction is necessary because of budget reductions and because of declining enrollment.

9. The Board properly 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 prior to March 15, 2009. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App. 3d 627 at 636).

10. The District properly created its seniority list by determining the first date of paid service of each certificated employee and properly utilized reasonable “tie-breaker” criteria when necessary. The District “skipped” over eight categories of personnel as described in Exhibit 1A which is hereby incorporated by reference as if fully set forth herein. Respondents did not challenge these “skips” except as discussed below.

11. The District’s seniority list, Exhibit 2B, was not finalized until the day of hearing. Respondents’ objected to its admission into evidence. The objection was overruled after Respondents declined the ALJ’s offer to consider a request for a continuance. Exhibit 2B is hereby incorporated by reference as if fully set forth herein. While the seniority list was not corrected and completed until the day of hearing, it was, nevertheless, eventually made accurate.

12. Exhibit 2B lists 268 District employees in order of seniority. Number 1 is the most senior District employee and number 268 is the least senior employee. Next to some employee’s assigned seniority number is a handwritten “LO,” which indicates that that teacher is scheduled to be laid off. After Exhibit 2B was modified during the hearing, consistent with the various agreements between the parties, there remained 35 teachers with “LO” written next to their seniority number and their name. The District desires to layoff these 35 remaining employees only.

Respondents William McCandliss and William Martin

13. William McCandliss' (McCandliss) seniority number is 265. He is a physics teacher. Exhibit 2B initially showed McCandliss scheduled for layoff. However, the District withdrew the Accusation as to him at hearing. The District "skipped" McCandliss because he is a physics teacher.

14. As a result of skipping McCandliss, William Martin (Martin), seniority number 245, was added to the layoff list. Respondent Martin is a science teacher at a continuation school where he teaches both physical science and life science. If Martin were to be laid-off, the only other person employed by the District that could teach Martin's classes is Dave Albay-Yenney (Yenney), seniority number 76. Yenney is presently on "special assignment," the details of which the District did not provide. Yenney could also teach McCandliss' physics classes. Martin contended that the District improperly skipped McCandliss, resulting in Martin's name being added to the layoff list. Martin contended that the District should have transferred Yenney to teach the less senior McCandliss' physics classes, thus resulting in the preservation of Martin's job.

15. It was not established that the District improperly skipped McCandliss. He teaches physics, one of the categories of teachers that the District decided to skip. It was not established that the District was required to transfer Yenney to McCandliss' assignment. The District's decision as not arbitrary or capricious.

16. California Education Code section 44956.5 states:

For a certificated employee initially employed in an administrative position on or after July 1, 1983, who transfers to a teaching position, the period of employment in the administrative position shall not be included in determining seniority for purposes of Sections 44955 and 44956, except for school site administrators who shall earn up to a maximum of three years seniority while serving as site administrators.

17. All other arguments presented by Respondents were unconvincing and were not established by the evidence. Respondents' did not establish that the District did not follow the required procedures or that the District acted in an arbitrary and capricious manner.

CONCLUSIONS OF LAW

1. Jurisdiction for these proceedings exists pursuant to Education Code sections 44949 and 44955.

2. Each of the services set forth in Findings 5 and 6 is a particular kind of service which may be reduced or discontinued in accordance with applicable statutes and case law.

3. The District's decision to reduce or discontinue the services is neither arbitrary nor capricious, but rather a proper exercise of the District's discretion.

4. Cause exists to reduce the District's teaching positions as described above and to give notice to the affected teachers pursuant to Education Code section 44955. (*Campbell v. Abbot* (1978) 76 Cal.App.3d 796; *Degener v. Governing Board* (1977) 67 Cal.App.3d 689). Based on the above Findings, including the preamble to this Proposed Decision, the names of the affected teachers, those as to whom final notices of layoff may be given, are as follows:

All Respondent teachers listed in exhibit 2B, with a "LO" next to their seniority number and name, except that any of those teachers whose names who are listed on page 98 and 98A of Exhibit 5. Those names listed in Exhibit 5 are to be removed from the exhibit 2B list and the Accusation is dismissed as to those teachers.

ORDER

Because of the reductions of services, the District may give notice to the teachers identified in Legal Conclusion No. 4 that their services will not be required for the 2009-2010 school year.

Dated: April ____, 2009.

CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings