

BEFORE THE
GOVERNING BOARD OF THE
SANTA MARIA-BONITA SCHOOL DISTRICT
COUNTY OF SANTA BARBARA
STATE OF CALIFORNIA

In the Matter of the Layoff Of:

Sally Aparicio and Other Certificated
Employees of the Santa Maria-Bonita
School District,

Respondents.

OAH Case No. L2009030042

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 3, 2009, in Santa Maria, California.

Douglas T. Green, Attorney at Law, represented Joanne Cameron, Ed.D. (Cameron), Assistant Superintendent for Human Resources, Santa Maria-Bonita School District (District).

John F. Sachs, Attorney at Law, represented Sally Aparicio, Allison Appel, Summer Arguijo, Helena Avedikian, Sandra Blanc, Christopher Brown, Stephanie Burks, Kelly Burt, Rudy Calderon, Donna Carlson, Rocio Castaneda, Steven Clark, Margaret Cofield, Tiffany Crane, Shawna Courtright, Melody DeMoss, Kathryn Donovan-Payne, Karen Echols, Heather Equinoa, Katherine Ferguson, Carey Fiske, Lela Gabaldon, Chelsey Gates, Sheila Gemignani, Christine Gomes, Brian Gong, Sheridan Gonzalez, Kathleen Grace-Velazquez, Teri Hidle, Robert A. Jimenez, Ami Kilmer, Amber King, Sharon Kuhbänder, Christy Ledbetter, Marisa Maquinalez, Janet Marsalek, Patrick McMullen, Teresa McNeer, Lisa McNeil, Janet Meyers, Kathleen Mitchell, Leslie Moreno, Elenor Novo, Monica Nuno, Aimee Oani, Crystal O'Brien, Kellie Ouellette, Diane Pecen, Joshua Pierce, Rebecca Pinto, Crystal Recinos, Ashley Reed, Stacie Rivera, Sally Rodriguez, Tammy Saurman, Nicole Schnieder, Allison Sherman, Ronald Smith, Danielle Snyder, Erica Spohn, Catherine Soto, Julie Steigler, Holly Stone, Michelle Sullivan, Crystal Villapania, Shannon Verbryke, Rebecca Wagner-Koznek, Debra Waller, Sarah Watkins, Brittany Wilson, Nicole Wiseman, and Lonnie Zavala (Respondents).

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2009-2010 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2009-2010 school year.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. Assistant Superintendent Cameron filed the Accusation in her official capacity.
2. Respondents are certificated employees of the District.
3. On March 4, 2009, the Governing Board of the District (Governing Board) adopted Resolution number 08-17, reducing 60.5 full-time equivalent (FTE) positions for the 2009-2010 school year, in the following services: elementary instruction, Kindergarten through Sixth Grade (55.5 FTE); Opportunity Classes in Seventh and Eighth Grades (4 FTE); and Band (1 FTE).
4. Superintendent Cameron thereafter notified the Governing Board that she recommended notice be provided to Respondents that their services would not be required for the 2009-2010 school year due to the reduction of particular kinds of services.
5. On or about March 5, 2009, the District provided notice to Respondents that their services will not be required for the 2009-2010 school year due to the reduction of particular kinds of services. Respondents filed timely requests for hearing.
6. On or about March 17, 2009, the District filed and served the Accusation on Respondents. Respondents thereafter filed timely notices of defense, seeking a determination of whether cause exists for not reemploying them for the 2009-2010 school year.
7. All prehearing jurisdictional requirements have been met.
8. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.¹
9. The Governing Board took action to reduce the services set forth in factual finding number 3 primarily because of the uncertainty surrounding future funding, as the District estimates a significant reduction in State revenues. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.
10. The reduction of services set forth in factual finding number 3 is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

¹ All further references are to the Education Code.

11. On March 4, 2009, the District adopted Resolution 08-19 setting forth criteria to break ties among certificated employees with the same first paid date of service. In order of importance, the criteria are: credentialing; education; experience; and performance. The District did not need to apply the criteria in order to terminate the services of any Respondent.²

12. Respondent Katherine Donovan-Payne (Donovan-Payne) has a seniority date of August 14, 2007. She holds a multiple subject credential, a reading specialist certificate, and a certificate of eligibility in special education. The latter certificate makes her eligible to teach special education classes, if such classes are available. However, at the time of the hearing, the District did not anticipate having an open special education class for Respondent Donovan-Payne to teach.

13. Respondent Lonnie Zavala (Zavala), has a seniority date of August 9, 2006, and holds a single subject physical education credential with a supplemental authorization in health sciences. He testified at the hearing that he is certificated and competent to teach physical education classes that two other certificated employees, Kelly Hargett (Hargett) and Gwendolyn Pryor (Pryor), have been retained to teach. Hargett, who has a seniority date of August 3, 2005, holds a single subject social science credential with a supplemental authorization in dance. Pryor's seniority date is July 27, 1995, and she holds a multiple subject credential with a supplemental authorization in physical education and science. Respondent Zavala asserts that these teachers are not as highly qualified to teach physical education as he is because they do not hold physical education credentials, and instead rely on more limited authorizations to teach the classes. Despite the argument about the relative merit of his credential, Zavala did not dispute that Hargett and Pryor were actually certificated to teach physical education classes. Moreover, both Hargett and Pryor are more senior than Respondent Zavala. In addition, Hargett and Pryor are employed as full-time employees, whereas Respondent Zavala is employed in a .5 FTE position. Accordingly, Respondent Zavala did not establish that he should have been retained to perform the services that Hargett or Pryor were retained to perform.

14. No certificated employee junior to any Respondent was retained to render a service which any Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 7.

2. The services listed in factual finding number 3 are determined to be particular

² The District applied the criteria to prepare a rehire list, and several Respondents presented testimony regarding the criteria as it pertains to them.

kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 8.

3. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 14.

4. Cause exists to terminate the services of Respondent Zavala, by reason of factual finding number 13. He has less seniority than the two teachers retained to teach physical education. While Hargett and Pryor did not possess a single subject physical education credential, they did possess teaching certificates that authorized them to teach physical education and had been teaching the subject matter. Moreover, Respondent Zavala cannot force the District to divide the full-time position of another teacher to accommodate his part-time position. (*Murray v. Sonoma County Office of Education* (1989) 208 Cal.App.3d 456; *King v. Berkeley Unified School District* (1979) 89 Cal.App.3d 1016.)

5. Cause exists to terminate the services of Respondents Sally Aparicio, Allison Appel, Summer Arguijo, Helena Avedikian, Sandra Blanc, Christopher Brown, Stephanie Burks, Kelly Burt, Rudy Calderon, Donna Carlson, Rocio Castaneda, Steven Clark, Margaret Cofield, Tiffany Crane, Shawna Courtright, Melody DeMoss, Donovan-Payne, Karen Echols, Heather Equinoa, Katherine Ferguson, Carey Fiske, Lela Gabaldon, Chelsey Gates, Sheila Gemignani, Christine Gomes, Brian Gong, Sheridan Gonzalez, Kathleen Grace-Velazquez, Teri Hidle, Robert A. Jimenez, Ami Kilmer, Amber King, Sharon Kuhbander, Christy Ledbetter, Marisa Maquinalez, Janet Marsalek, Patrick McMullen, Teresa McNeer, Lisa McNeil, Janet Meyers, Kathleen Mitchell, Leslie Moreno, Elenor Novo, Monica Nuno, Aimee Oani, Crystal O'Brien, Kellie Ouellette, Diane Pecen, Joshua Pierce, Rebecca Pinto, Crystal Recinos, Ashley Reed, Stacie Rivera, Sally Rodriguez, Tammy Saurman, Nicole Schnieder, Allison Sherman, Ronald Smith, Danielle Snyder, Erica Spohn, Catherine Soto, Julie Steigler, Holly Stone, Michelle Sullivan, Crystal Villapania, Shannon Verbryke, Rebecca Wagner-Koznek, Debra Waller, Sarah Watkins, Brittany Wilson, Nicole Wiseman, and Lonnie Zavala, by reason of factual finding numbers 1 through 14, and legal conclusion numbers 1 through 4.

6. It is not necessary address the correctness of the District's rehire list. The instant proceeding, to determine whether cause exists to reemploy certificated employees for the ensuing school year, is authorized by sections 44949 and 44955. Section 44955 provides: "As between employees who first rendered paid service on the same date, the governing board shall determine *the order of termination* solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose *order of termination* is so determined, the governing body shall furnish in writing . . . a statement of the specific criteria used in determining the *order of termination* and the application of the criteria in ranking each employee relative to other employees in the group. . . ." (Emphasis added.) Thus, the plain

meaning of the statute directs review of the order of termination, not the order of reemployment. Preferential rehiring is the subject of other statutory provisions, such as, for instance, sections 44956 and 44957. Inasmuch as the application of the tie-breaking criteria did not impact the order of termination of any Respondent, it is not necessary to modify, create, or direct the creation or modification of the derived rehire list.

ORDER

The Accusation is sustained and the District may notify Respondents Sally Aparicio, Allison Appel, Summer Arguijo, Helena Avedikian, Sandra Blanc, Christopher Brown, Stephanie Burks, Kelly Burt, Rudy Calderon, Donna Carlson, Rocio Castaneda, Steven Clark, Margaret Cofield, Tiffany Crane, Shawna Courtright, Melody DeMoss, Kathryn Donovan-Payne, Karen Echols, Heather Equinoa, Katherine Ferguson, Carey Fiske, Lela Gabaldon, Chelsey Gates, Sheila Gemignani, Christine Gomes, Brian Gong, Sheridan Gonzalez, Kathleen Grace-Velazquez, Teri Hidle, Robert A. Jimenez, Ami Kilmer, Amber King, Sharon Kuhbander, Christy Ledbetter, Marisa Maquinalez, Janet Marsalek, Patrick McMullen, Teresa McNeer, Lisa McNeil, Janet Meyers, Kathleen Mitchell, Leslie Moreno, Elenor Novo, Monica Nuno, Aimee Oani, Crystal O'Brien, Kellie Ouellette, Diane Pecen, Joshua Pierce, Rebecca Pinto, Crystal Recinos, Ashley Reed, Stacie Rivera, Sally Rodriguez, Tammy Saurman, Nicole Schnieder, Allison Sherman, Ronald Smith, Danielle Snyder, Erica Spohn, Catherine Soto, Julie Steigler, Holly Stone, Michelle Sullivan, Crystal Villapania, Shannon Verbryke, Rebecca Wagner-Koznek, Debra Waller, Sarah Watkins, Brittany Wilson, Nicole Wiseman, and Lonnie Zavala that their services will not be needed during the 2009-2010 school year due to the reduction of particular kinds of services.

DATED: _____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings