

BEFORE THE  
GOVERNING BOARD OF THE  
MORENO VALLEY UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the of the Reduction in  
Force Involving the Respondent's Listed  
in Exhibit A.

OAH No. 2009030216

**PROPOSED DECISION**

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 29 and 30, 2009, in Moreno Valley, California.

Melanie Petersen, Fagen, Friedman & Fulfroost, represented Moreno Valley Unified School District.

Jean Shin and Lisa Demiddivich, Rothner, Segall & Greenstone, represented many of the respondents listed in Appendix A.

Kathy Kulsick was represented by Henry Kraft, Parker & Covert.

No appearance was made by or on behalf of respondent Sonia Baltazar, who did not file a notice of defense.

Before the hearing the accusations served on Marcella Agrusa, Alaknanda Shanker and Denise West were withdrawn and their layoff notices were rescinded. During the hearing, the accusations served on Dejournett Shaw, Brad Allcock and Amy Johnson were withdrawn and their layoff notices rescinded.

The matter was submitted on April 30, 2009.

**FACTUAL FINDINGS**

1. Rowena T. Lagrosa, made and filed the accusation in her official capacity as Superintendent of the Moreno Valley Unified School District.
2. Respondents are listed on Appendix A, attached hereto and by this reference are incorporated herein. Each respondent is a certificated employee of the district.

3. On March 3, 2009, the Governing Board adopted Resolution No. 2008-09-55 reducing particular kinds of services and directing the superintendent to give appropriate notices to certificated employees whose positions would be affected by the action. The resolution identified the following categories:

<u>Job Title</u>	<u>FTE</u>
Art	1.0
AVID	1.0
Consulting Teacher	0.4
Counselors	20.0
Drug Prevention & School Safety Specialist	1.0
ELL Specialist	9.0
Elementary/Middle School K-6 Teacher	193.0
English/Language Arts	6.0
English Language Development Teacher	2.0
Health Science	1.8
Math	7.0
On Campus Suspension	10.0
Physical Education	4.0
Promise Facilitator	1.0
Science – Middle School	2.0
Teachers on Assignment	14.1
Title 1 Teacher	5.0
TV Production	<u>0.2</u>
TOTAL	282.5

4. On and before March 15, 2009<sup>1</sup>, Superintendent Lagrosa gave written notice to approximately 265 certificated employees, including respondents, of the recommendation that their services would not be required for the 2009-10 school year. The reasons for the recommendation were set forth in these preliminary layoff notices.

5. Respondents filed timely requests for hearing to determine if there was cause for terminating their services for the 2009-10 school year. An accusation was served on each respondent. The interns were not served with notices; instead, on April 28, 2009, they were sent letters advising them that their services would be terminated at the close of the current school year. All prehearing jurisdictional requirements were met.

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<sup>1</sup> The district introduced a sample of the notices sent to employees which was dated March 13, 2009, but did not offer evidence of the dates that the other notices were served.

6. The district waived its objection to those respondents who did not file a notice of defense but appeared at the hearing. Those respondents included Francisco Basantes, Hilda Garcia, Angelica Lepe, Deborah Olsen, Shannon Robinson, Rhyttania Rodriguez-Estrada, and Jeffrey Soria. The district did not waive its objections to intern Khunura Sok's participation in the hearing as she had not filed a notice of defense. In the interest of fairness and because there was no prejudice to the district, Sok was allowed to participate in the hearing. Government Code section 11506, subdivision (c), provides, in pertinent part: "The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense. . . . Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but *the agency in its discretion may nevertheless grant a hearing. . . .*" (Italics added).

7. Before issuing the preliminary layoff notices, the district took into account all positively assured attrition. The district must issue final layoff notices before May 15, and when it does so the district will take into account any additional attrition that has occurred. After that, further attrition will allow the district to rehire laid off employees.

8. The district established tie-breaking criteria to determine the order of termination for those employees who shared the same seniority dates. Three English teachers shared the same seniority date of August 11, 2008. The tie-breaking criteria were used to determine which of these three employees would receive a layoff notice.

9. The district also implemented a bump analysis to determine which employees could bump into a position being held by a junior employee.

10. The district skipped special education teachers because it is difficult to recruit and retain teachers to fill those positions. The district was required to implement the governing board's resolution in a manner that was consistent with the board's policies and the district's efforts to offer special education services to its students. There is no legal requirement mandating that skipping criteria be contained in a governing board's resolution.

11. The district also skipped NCLB teachers. This skip was specifically referenced in the resolution.

12. Education Code sections 44263 and 44256, subdivision (b), establish the minimum numbers of semester hours required to teach classes at the middle school and high school levels. The district originally alleged that Katelyn Bearman, Alisha Moberg, Gina Delucia, Megan Hannah, Gina Beloat, Patricia Jones, Patricia Ellis, Lori Georg, and Morelia Arroyo each lacked sufficient semester hours to bump into the position presently held by Laura Luna, an employee who did not receive a layoff notice. However, during the hearing as these respondents presented evidence of their semester hours, the district indicated that given the large number of layoffs at issue, it was not possible prior to hearing to review the files of every employee to determine semester hours and that it had to rely on its seniority list, which was the reason it sent verification requests to employees prior to March 15, 2009,

to verify the accuracy of information on the list.<sup>2</sup> The district conceded that employees who possessed sufficient semester hours should be permitted to bump into those positions. During the hearing, the district stipulated that Alisha Moberg, Katelyn Bearman, Janell Phillips, and Gina Beloat had 24 semester units in English, that Gina DeLuca had 23  $\frac{3}{4}$  semester units in English, that Patricia Ellis had 14  $\frac{2}{3}$  semester units in English, and that Lori Georg had 20 semester units in English. Accordingly, it is recommended the district review the files of those respondents to determine if any of them have the seniority and qualifications necessary to rescind the preliminary notices issued to these respondents.

13. Respondents argued that the layoffs will result in student:teacher ratios in violation of the Memorandum of Understanding (MOU) between the union and the district. However, these proceedings were not intended to address those types of issues and the administrative law court lacks jurisdiction to determine whether or not the proposed reduction of services will or will not violate the MOU.

14. Respondent Hilda Garcia was on maternity leave from February 16, 2009, until April 6, 2009. She testified she never received a layoff notice or an accusation packet. On March 26, 2009, she opened an e-mail dated March 19, 2009, reminding her of the upcoming hearing. Garcia replied to the e-mail inquiring what the e-mail meant, but she received no reply to her inquiry. Garcia had no knowledge that her position was being eliminated until April 28, 2009, the day before the hearing began, when her principal informed her that she was subject to the layoff. The district served its jurisdictional documents on Garcia via certified mail. However, the district's certified letter was returned to the district with the notation "Unclaimed. Unable to Forward." No other evidence was introduced by the district to establish that Garcia was served with required jurisdictional documents.. The district argued that the Education Code merely requires the notices to be deposited in the mail. However, when the district elects to serve respondents by certified mail and that mail is returned to the district, the district is placed on actual notice that the respondent may have no knowledge of the layoff proceedings, the very thing the service statutes seek to avoid. Without proper service on Garcia, she cannot be a party to these proceedings and this administrative law court lacks jurisdiction to proceed on the district's case filed against her. Education Code section 44955, subdivision (c), provides in part that if "a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year." Based on this statute, it is recommended that the layoff notice issued to Garcia be rescinded, that the accusation filed against her be dismissed, and that she be reemployed in the 2009-10 school year.

15. The district stipulated that respondents Erin Lozano and Diane Lewis each received a notice properly addressed to them, but that the notice each received contained the

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<sup>2</sup> The seniority list does not contain a column for semester hours in particular subjects and respondents should not be faulted for not verifying that information, especially when they had previously provided it to the district and it was in their personnel files. If these criteria were to be used, it was incumbent upon the district to determine if any of the teachers subject to layoff had sufficient semester hours to bump another employee.

other's actual notices. The parties argued about whether this error constituted a violation of these two respondents' due process rights. The envelopes were properly addressed, placing each respondent on notice that the district was attempting to serve them with a layoff notice. Each respondent filed a request for hearing and a notice of defense. There was no showing of prejudice and each respondent was allowed to participate in this hearing. The error was harmless and did not deprive either respondent of due process rights. (*Blalock v. Dunger* (1928) 205 Cal. 782, 784.)

16. Respondents argued that the layoffs of the reading and ELL teachers will require the district to provide these services in a different way. However, the district's decision to reduce or discontinue a particular kind of service, or offer those services in another way, was a matter reserved to the district's discretion and is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167; *Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4<sup>th</sup> 334, 343.)

17. Respondent Kathryn Kulsick, an administrator, alleged that she was told that she could not participate in these hearings, that she had been deprived her due process rights because she had not had an opportunity to conduct discovery, and that she had only retained counsel 48 hours before the hearing began. However, she admitted she was served with the district's notice and a letter terminating her services which included copies of the specific Education and Government Code sections detailing her rights to a hearing and discovery. These documents did not support Kulsick's contentions and she failed to demonstrate any prejudice,. Moreover, Kulsick's reliance on *Hildebrandt*, supra, was misplaced as Kulsick failed to demonstrate that any less senior employee was retained to fill a position that Kulsick was more senior and qualified to hold.

18. The district stipulated that the seniority dates of several employees should be corrected: Randy Dargitz should be September 12, 2005; Lanitta Edwards should be August 11, 2008; Gisela Gracian-Olmos should be October 25, 2006; Patricia Mota-Cornejo should be September 8, 2005; Cynthia Smith should be September 11, 2006; and Kristine Spencer should be February 7, 2007. According to the district these changes did not affect the layoff notices sent to these respondents and the respondents offered no evidence to rebut the district's contention.

19. Several teachers worked as long term substitute teachers before they were retained as probationary I teachers. They alleged that their seniority dates should be changed to reflect their time as substitutes. Although Education Code section 44918, subdivision (d), provides that time incurred as a day to day substitute teacher in the district may not be used when determining seniority, if these teachers worked more than 75 percent of the number of days in the year prior to being offered a probationary position, their temporary or substitute year is deemed to be a probationary year per Education Code section 44918. It is recommended the district review the files of those respondents to determine if any of them served for at least 75 percent of the number of days, and if they did, to correct their seniority

dates accordingly. Thereafter, it is recommended the district determine whether any of these teachers based upon these new seniority dates have the seniority and qualifications necessary to rescind the preliminary notices issued to them.

20. Other teachers testified about work towards their NCLB and other credentials, as well as credentials obtained after the March 15, 2009, layoff notices were served. However, the district was entitled to rely on the existing credentials on file on March 15 when determining to whom the layoff notices should be issued and there was no showing that the district acted arbitrarily or capriciously. Moreover, the fact that the district previously informed Milagro Ariaz and Morelia Arroyo that they had until the end of the 2008-09 school year to obtain their NCLB credentials did not demonstrated that the district had not misled them into thinking that they would not receive a layoff notice.

21. Respondent Janice Carter teaches business and is an administrative designee at Vista del Lago High School. She testified that because of her educational background, the numerous activities and jobs she performs at the school, and because her credentials permit the students she teaches receive a math credit, she was improperly bumped by a non-qualified employee. While the district contends it will offer the services previously offered by Carter in a different manner, Carter's testimony about the math credit her students receive because of her qualifications support a recommendation that the district review Carter's file to determine if a less senior, non-qualified employee impermissibly bumped Carter. This review is especially important because the district argued that "business teachers don't teach math," which directly contradicted Carter's testimony about the curriculum she provides her students.

22. Education Code section 44464 expressly provides that the interns do not have the rights provided by Education Code sections 44948 and 44949. A preponderance of the evidence did not demonstrate that the district acted in an arbitrary or capricious manner when it terminated the services of its interns. A preponderance of the evidence did not demonstrate that any respondent was qualified to bump an intern under the district's criteria used for determining "highly qualified."

23. No certificated junior employee is being retained by the district to perform services that any senior respondent is certificated and competent to render.

## LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

2. A district may reduce services within the meaning of section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to

deal with the pupils involved.” (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469, 473-474.) Junior teachers may be given retention priority over senior teachers only if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.)

4. Because of the reduction of particular kinds of services, cause exists pursuant to Education Code section 44955 to give notice to respondents that their services will not be required for the 2009-10 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949. The district has identified the certificated employees who are providing the particular kinds of services that the Board of Trustees directed be reduced or discontinued. It is recommended that the Board of Trustees give respondents notice before May 15, 2009, that their services will not be required by the District for the school year 2009-2010.

5. A preponderance of the evidence sustained the charges set forth in the accusation subject to the recommendations listed in the factual findings. This determination is based on all factual findings and on all legal conclusions.

#### RECOMMENDATION

It is recommended that the governing board give notice to the respondents whose names are set forth below except for Hilda Garcia and those respondents identified above in the Findings of Fact Nos. 12, 19 and 21, that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2009-2010 school year.

DATED: \_\_\_\_\_

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MARY AGNES MATYSZEWSKI  
Administrative Law Judge  
Office of Administrative Hearings

## Appendix A

### RESPONDENTS

Sima Abramson	Anita Barragan
Rosanna Ackerson-Bravo	Francisco Basantes
Marisol Acosta	Katelyn Beaman
Marcella Agrusa	Rebecca Beigle
Julie Alexander	Gina Beloat
Brad Allcock	Maria Bennett
Rebekah Anderson	Alma Bissot
Shannon Andrews	Kristen Blades
Brandon Annette	Mychelle Blandin
Kimberly Arcos	Claudine Bond
Salvador Arias	Juan Borja-Duarte
Tina Arias	Krystle Briese
Milagros Ariaz	Rebecca Buckhoff
Juana Arriaga	Traci Bulanek
Morelia Arroyo	Alicia Cagnolatti
Norma Avila	Silvano Cantu
Jennifer Baker	Janice Carter
Jamie Balancio	Erika Casas
Sonia Baltazar	Jessica Casas
Michelle Castaneda	Maria Esquivel
Nicole Castro	Matthew Fairbanks
Robin Charkins	Timothy Finfrock
Blanca Chiquito	Adam Flores
Shani Cigarroa	Carlos Flores

Deborah Collins	Elizabeth Florido
Angelica Cordova	Chris Fuerte
Norma Cordova	Marisol Gallegos
Ruben Cota	Sandra E. Garcia
Jennifer Covington	Curtis Gardner
Shelley Craig	Stephanie Garner
Araceli Cruz	Lori Georg
Randy Dargitz	Kyle Gerhard
Carolyn DeFazio	Esmeralda Gonzalez
Gina DeLucia	Guadalupe Gonzalez
Christine Dolmage	Gisela Gracian-Olmos
Yvette Dominguez	Christine Graves
Michelle Dotterer	Ileana Gutierrez
Daniel Dufour	Jose Gutierrez
Randy Dunn	Victoria Gutierrez
Lanitta Edwards	Jason Guttirez
Patricia Ellis	Marvin Hall
Megan Hannah	Diana Jones-Rivera
Cathy Harriman	Janelle Kell
Linda Harris	Amanda Kellis
Rosalba Henneman	Paul Kopp
Jacqueline Heredia	Cara Kuehner
Laura Hernandez	Kathy Kulsick
Ana Luisa Hernandez-Wauran	Maria LaBrie
Veronica Herrera	Jennifer Laramie
Adriana Hidalgo	Amber Largey
Eleanor Duque Holm	Sacia Larrance

Claire Horspool	Matthew Larsen
Alma Houser	Danette Leon
Timothy Howard	Angelica Lepe
Kristine Huizenga	Diane Marie Lewis
Berniece Hunt	Erin Lozano
Michael Hunter	Kathy Maddox
Nicole Jahnke	Lori Marshall
Amy Johnson	Katherine Martin
Tiffani Johnstone	Amanda Martinez
Kalah Jones	Liseth Martinez
Patricia Jones	
Rhea-Ann Matibag-Howard	
Typasha Jones	Christine McCoy
Carol McCune	Joseph Ochoa
Thomas Medina, Jr.	Deborah L. Olsen
Erica Melendrez	Courtney O'Neill
Sandra Merletti-Van Damme	Sandra Ortiz
April Mertz	Terrence Outlaw
Karla Michel	Karina Paredes
Lorena Michel-Jasso	Laura Patino
Alisha Moberg	Edma Payne
Allison Montejano	Liliana Paz
Michelle Montemayor	Jawad Pearson
Sara Montti	Tiffany Pedroza
Carmen Morales	John Pepe
Patricia Mota-Cornejo	Isabel Perez

Yolanda Mouton	Ruth Perez
Catalina Moye	Janell Phillips
Estela Munoz Gomez	Nicole Phillips
Veronica Murga	Lizeth Piskulich
Juliana Murray	Christian Poleyndard
Nadokia Neal	Claudia Preciado
Jason Norris	Linda Prows
Pedro Nuno	Natividad Quintanar
Erica Ochoa	Rachel Quintanar
Estella Ramirez	Curtis Sell
Jessica Ramirez	Yesenia Serrano
Justin Rice	Gabriela Serrato
Sherry Rice	Alaknanda Shanker
Christine Rightnar	Dejournett Shaw
Erika Riley	Javanah Shelby
Shannon Robinson	Daniel Singer
Susanna Rodriguez	Cynthia Smith
Rhyttania Rodriguez-Estrada	Jeffrey Soria
Liliana Rosas	Janeia Sotomayor
Judy Rosenberg	Kristine Spencer
Janet Ruffin	Garrick Stein
Daisy Salazar	Kristina Strathman
Edgar Sanchez	Shari Sutherlin
Juan Sanchez	Erika Tellez-Armijo
Rebeca Sanchez	Elena Telminova
Aida Sandoval	Anita Thompson
Ruben Sarabia, Jr.	Erika Torres

Deborah Saravia

Jantina Torres

Darlene Schmittle

Zenaida Torres

Sara Seekins

Todd Toulouse

Tera Trotter

Merri Turngreen

Shawnee Vasher

Antonio Vega

Arlene Vega

Sandra Vilas

Paulina Villalobos

Xaviera Villegas

Beth Walker-Toler

Felice Ward

Laurie Warner

Karlton Warren

Nicole Watson

Denise West

Alice Wheatley

Eltonia Williams

Lisa Winberg

Karon Woolsley

Marissa Zarate