

BEFORE THE
GOVERNING BOARD OF THE
HAWTHORNE SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

Certain Certificated Employees of the
Hawthorne School District,

Respondents.

OAH Case No. 2009030298

PROPOSED DECISION

This matter was heard by Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, on April 23, 2009, in Hawthorne, California.

Atkinson, Andelson, Loya, Ruud & Romo, by Cathie L. Fields, represented the Hawthorne School District (District).

Trygstad, Schwab & Trygstad, by Daniel J. Kolodziej, represented Maria Arevalo, Lurdes Casillas, Alicia Forster, Amy Freed, Melissa Gilbert, Jennifer Glass, Lisa Goodwin, Chris Jahnke, Angelica Launius, Maria Leyva, Yvonne Nunez, Jeramie Stewart, Selena Trondsen, Alicia Vallejo, and Heather Whitney (collectively, Respondents). All of the Respondents were present at the hearing except for Chris Jahnke.

The District served a preliminary notice of layoff on 134 certificated employees, and later rescinded the notices as to 111 employees. Pursuant to the District's List of Respondents dated April 23, 2009, which was admitted in evidence at the hearing as Exhibit 10, Respondents are the remaining certificated employees whose employment is still at issue.

At the start the hearing, the parties stipulated to the dismissal of the Accusation as to Respondents Chris Jahnke, Mindy Siegler, and Jeramie Stewart. In addition, prior to the hearing, the Accusation was withdrawn as to Respondent Matthew Cirillo.

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

FACTUAL FINDINGS

1. Donald R. Carrington is the Superintendent of the District, and filed the Accusation in his official capacity.

2. Respondents are certificated employees of the District.

3. On February 25, 2009, the Board of Trustees of the District (Governing Board) adopted Resolution 23 to reduce or discontinue particular kinds of services (PKS), totaling 107.5 full-time equivalent (FTE) positions, for the 2009-2010 school year, as follows:

1.	Kindergarten through Fifth Grade Classroom Instruction	58 F.T.E.
2.	Middle School Classroom Instruction (Multiple Subject)	7 F.T.E.
3.	Special Projects Teacher (Bilingual) - Eucalyptus	1 F.T.E.
4.	Special Projects Teacher - Jefferson	1 F.T.E.
5.	Special Projects Teacher (Non-Bilingual) - Kornblum	1 F.T.E.
6.	Special Projects Teacher (Bilingual) - Ramona	1 F.T.E.
7.	Special Projects Teacher - Washington	1.5 F.T.E.
8.	Special Projects Teacher (Non-Bilingual) - Zela Davis	3 F.T.E.
9.	Special Projects Teacher - Bud Carson Middle	1 F.T.E.
10.	Special Projects Teacher - Hawthorne Middle	2 F.T.E.
11.	Special Projects Teacher - Prairie Vista Middle	2 F.T.E.
12.	Literacy Coach - Eucalyptus	1 F.T.E.
13.	Literacy Coach - Kornblum	1 F.T.E.
14.	Literacy Coach - York	1 F.T.E.
15.	Counselors	5 F.T.E.
16.	Psychologists	2 F.T.E.
17.	Dean of Students	1 F.T.E.
18.	Project Facilitator (Even Start)	1 F.T.E.
19.	Preschool Parenting Teacher (Even Start)	1 F.T.E.
20.	Elementary Physical Education Instruction	3 F.T.E.
21.	Middle School Physical Education Instruction	3 F.T.E.
22.	Middle School Health Instruction	1 F.T.E.
23.	Middle School Art Instruction	1 F.T.E.
24.	Middle School Orchestra/Music Instruction	1 F.T.E.
25.	Teacher on Special Assignment - Teacher Support Specialist	1 F.T.E.
26.	Teacher on Special Assignment - Technology	1 F.T.E.
27.	Teacher on Special Assignment - GATE	1 F.T.E.
28.	Teacher on Special Assignment - English Learner Specialist	1 F.T.E.
29.	Teacher on Special Assignment - Nutrition Network	2 F.T.E.
30.	Teacher on Special Assignment - Professional Development Specialist	1 F.T.E.

TOTAL: 107.5
F.T.E.

4. The Governing Board determined that, due to the reduction or discontinuance of services, it would be necessary to decrease the number of certificated employees by a corresponding number of FTE positions, and directed Superintendent Carrington or his designee to take all necessary and proper actions to accomplish the purpose of Resolution 23.

5. On February 25, 2009, the Governing Board also adopted Resolution 24, setting forth criteria for determining seniority among certificated employees with the same seniority date.

6. Before March 15, 2009, the District served 134 certificated employees a written notice that it had been recommended that notice be given to them, pursuant to Education Code sections 44949 and 44955,¹ that their services would not be required for the next school year. Each written notice set forth the reasons for the recommendation and noted that the Governing Board of the District had passed a resolution reducing certificated staff by 107.5 FTE positions. Notice was served by personal service or by certified mail.

The written notice further advised the employees of their right to a hearing, which had to be in writing and delivered to Assistant Superintendent Shelley Rose on or before 4:30 p.m. on March 19, 2009. The notice also stated that the failure to request a hearing by that date "shall constitute a waiver of your right to a hearing." The employees were provided a blank hearing request form entitled "Request for Hearing - Certificated Employee Layoffs" for their use, if desired. The District received timely requests for hearing from 100 employees, including Respondents.

7. On March 26, 2009, the District rescinded the layoff notices that had been sent to 111 certificated employees. The District rescinded the notices because the Governing Board was able to move tier-3 funds to the general fund, and further analysis of class size reduction revealed that the District would not need to increase class sizes in grades 1 through 3.

8. Respondents are certificated employees who timely requested a hearing under section 44949, subdivision (b), and whose layoff notice was not rescinded by the District.

9. The request for hearing submitted by each of the Respondents was made on the same form, not the blank form provided by the District, but rather a form entitled "Notice of Defense." The form stated, in part, that it was a "Request for Hearing," and that, "This constitutes my notice of defense pursuant to Government Code section 11506." The District construed these requests as requests for hearing under section 44949, subdivision (b), and proceeded according to section 44949, subdivision (c), by issuing and serving an Accusation on the Respondents.

¹ All further statutory references are to the Education Code, unless otherwise indicated.

10. (A) On March 30, 2009, the District issued the Accusation, and thereafter served it on Respondents. The Accusation packet included a blank notice of defense form. The Notice of Accusation informed Respondents that a notice of defense had to be submitted by April 6, 2009, otherwise "the Board may proceed on the Accusation without a hearing." None of the Respondents submitted a notice of defense by April 6, 2009, or anytime after the Accusation was served on March 30, 2009. In its Pre-Hearing Brief (Exhibit 11), the District objected to Respondents' failure to submit notices of defense following their receipt of the Accusation, and contended that Respondents waived their right to a hearing on the Accusation.

(B) In the interest of justice, and because the District has not shown it was prejudiced, Respondents are granted a hearing on the Accusation. Government Code section 11506, subdivision (c), provides in part: "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." Respondents did file notices of defense, but not according to the time sequence contemplated under section 44949, subdivision (c)(1), and Government Code section 11506. To find Respondents in default under these circumstances would favor form over substance. Respondents have demonstrated their intent to defend against the inevitable hearing on the Accusation.

11. All prehearing jurisdictional requirements have been met.

12. The services set forth in Factual Finding 3 are particular kinds of services which may be reduced or discontinued within the meaning of section 44955.

13. The Governing Board took action to reduce or discontinue the services set forth in Factual Finding 3 to ensure that the District can meet its financial obligations for the next school year. The District estimates a revenue shortfall of \$2.2 million for the 2009-2010 school year. 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.

14. The reduction of services set forth in Factual Finding 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.

15. The District properly considered all known attrition, resignations, and retirements in determining the actual number of necessary layoff notices to be delivered and in making the decision about rescinding some of the notices. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 636.)

16. The District 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 teachers rendering services not included in the particular kinds of services being discontinued or reduced, i.e., special education and high school classes.

17. By stipulation of the parties, the Accusation is dismissed as against Respondents Chris Jahnke (#468), Mindy Siegler (#475), and Jeramie Stewart (#465). Their respective employment status with the District is not at issue in this layoff proceeding.

18. The parties stipulated that, for purposes of this layoff proceeding only, the respective seniority dates of Respondents Selena Trondsen (#483) and Heather Whitney (#481) are changed from August 26, 2008, to August 25, 2008. As a result of this change in seniority date, and after applying the tie-breaker criteria, Respondent Whitney's position on the Certificated PKS Layoff Chart (Exhibit 9) is now between employees #467 and #468, and Respondent Trondsen's position is now between employees #475 and #476.

19. (A) Respondents Melissa Gilbert (#471), Lisa Goodwin (#462), Chris Jahnke (#468), Jennifer Glass (#469), Amy Freed (#473), and Yvonne Nunez (#472), are first-year probationary employees with a seniority date of August 25, 2008. Respondents Gilbert, Goodwin, Jahnke, Glass, and Freed each contend their seniority date should be changed to August 18, 2008, and Respondent Nunez contends her seniority date should be changed to August 19, 2008. At the hearing, Respondent Gilbert's testimony was offered as representative of the contentions of these respondents.

(B) The seniority date of a certificated employee is defined as the date the employee "first rendered paid service in a probationary capacity." (§ 44845.). These respondents contend their first paid date of service in a probationary capacity was at a new teacher training they attended on August 18-20, 2008. This contention is not persuasive. These respondents were paid a stipend of \$140 per day for attending the training, but the stipend was not part of their contractual salary. New teachers received a letter describing the training as "required," but there was no consequence if a teacher did not attend, and the District did not consider the training mandatory. There was no evidence that this training was required as a condition of employment with the District. Therefore, Respondents Gilbert, Goodwin, Jahnke, Glass, Freed, and Nunez are not entitled to change their August 25, 2008, seniority date.

(C) Respondent Gilbert's signature on a copy of the seniority list, showing her seniority date as August 25, 2008, which her principal told her to sign, should not be held against her. Respondent Gilbert testified credibly that she was not informed of her rights as to her seniority date or the legal effect of her signature on the seniority list. She acted in response to her principal's e-mail that the seniority list had to be signed by the end of the day.

20. Respondent Heather Whitney (#481) is a first-year kindergarten teacher. Pursuant to the stipulation in Factual Finding 18, her seniority date is August 25, 2008. Respondent Whitney was originally offered employment with the District on August 19,

2008, which she accepted on that date. When she accepted the District's job offer on August 19, it was too late for her to attend the new teacher training on August 18-20, 2008. The principal at her school site told her to attend a new curriculum math training on August 22, 2008, which she did and was paid for her attendance. No one except her principal told her to attend the math training. Respondent Whitney is not entitled to have her seniority date changed to August 22, 2008, as it was not established her attendance at the math training was mandatory or a required condition of employment.

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

22. All other arguments presented by Respondents were not persuasive and not established by the evidence. The District followed the required procedures and did not act in an arbitrary or capricious manner.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of Factual Findings 1-11.

2. The services listed in Factual Finding 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of Factual Findings 3 and 12.

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 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of Factual Findings 1-22.

4. Cause exists to reduce the District's teaching positions as described above and to give notice to the affected teachers pursuant to section 44955. (*Campbell v. Abbot* (1978) 76 Cal.App.3d 796; *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.) Based on the Factual Findings and Legal Conclusions herein, the names of the affected teachers, those to whom final notices of layoff may be given, are as follows: Maria Arevalo, Lurdes Casillas, Alicia Forster, Amy Freed, Melissa Gilbert, Jennifer Glass, Lisa Goodwin, Angelica Launius, Maria Leyva, Yvonne Nunez, Selena Trondsen, Alicia Vallejo, and Heather Whitney.

ORDER

1. Because of the reductions of services, the District may give notice to the teachers identified in Legal Conclusion 4 that their services will not be required for the 2009-2010 school year.

2. The Accusation is dismissed against Respondents Chris Jahnke, Mindy Siegler, and Jeramie Stewart.

DATED: May ____, 2009

ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings