

BEFORE THE LOS ANGELES COUNTY
SUPERINTENDENT OF SCHOOLS

In the Matter of the Accusations Against:

CERTAIN CERTIFICATED EMPLOYEES,

Respondents.

OAH Case No. 2009030301

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on April 30, 2009, in Downey, California.

Aaron V. O'Donnell, Attorney at Law, Atkinson, Andelson, Loya, Ruud & Romo, represented the Los Angeles County Superintendent of Schools (referred to herein as the Los Angeles County Office of Education (LACOE)).

Daniel J. Kolodziej, Attorney at Law, Trygstad, Schwab & Trygstad, represented Victor Agbo, John Clayton, Steven Fischer, Michael J. Hammett, Girum Jiru, James Kern, Richard McCloud, Irene Murray, David Olivares, Raymond Olivas, LC Pate, Norma Portillo, Kimberly Scott, Arcelia Torres, Patricia Umukoro, and Sonia Vinski (Respondents).

The parties submitted the matter for decision on April 30, 2009.

FACTUAL FINDINGS

1. Carolina H. Pavia, LACOE's Assistant Superintendent of Human Resources, filed the Accusations in her official capacity. LACOE served the Accusations on all Respondents timely.

2. LACOE dismissed the Accusation as to Respondents Kimberly Scott, John Clayton, and James Kern.

3. Respondents are employed as probationary or permanent certificated employees of LACOE.

4. On March 2, 2009, by resolution (no. 24), LACOE determined to reduce and/or discontinue certain services within the school district, and directed the Assistant Superintendent of Human Resources to give notice to certificated employees that their services would not be needed for the 2009-2010 school year.

5. On or before March 13, 2009, the Superintendent was given notice by the Assistant Superintendent of Human Resources, in writing, that it was her recommendation

that all Respondents be notified that all Respondents' services would not be required for the 2009-2010 school year. The written notice was also provided to Respondents; it stated the reasons for the layoff and informed each Respondent of his or her right to request an administrative hearing.

6. Respondents requested administrative hearings to determine if there was cause for not reemploying them for the 2009-2010 school year.

7. The parties proceeded as if all Respondents had submitted timely notices of defense, though LACOE asserted that two Respondents' notices of defense were filed untimely.

8. The recommendation that Respondents be terminated from employment was not related to their competency as teachers.

9. The Board's resolution number 24, dated March 2, 2009, proposed a layoff of 173.90 full-time equivalent (FTE) positions.

10. The services at issue were "particular kinds of services" that could 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 constituted a proper exercise of discretion.

11. The reduction or discontinuation of those particular kinds of services related to the welfare of LACOE and its pupils. The reduction or discontinuation of those particular kinds of services was necessary to decrease the number of certificated employees of LACOE.

12. LACOE maintains a seniority list that contains employees' seniority dates (first date of paid service), current assignments and locations, credentials, and authorizations.

13. To assure the accuracy of the seniority list, LACOE requested Respondents, in writing, to verify and confirm, or seek corrections to that information maintained by LACOE on its seniority list. LACOE considered all responses thereto. Respondents did not challenge the accuracy of the seniority list.

14. LACOE used the seniority list to determine who would be laid off for each kind of service reduced or eliminated. LACOE then checked all Respondents' credentials to determine whether they could "bump" other employees.

15. In various cases, several Respondents shared a first date of paid service and LACOE was required to apply the tiebreaker criteria approved by resolution.

16. LACOE's resolution number 26 established tiebreaker criteria to determine the order of termination for employees who first rendered paid service to LACOE on the same day. In developing and approving the tiebreaker criteria, the Board determined that these

criteria best served the needs of LACOE and its students, and would be applied, effective the 2009-2010 school year.

17. At hearing, Respondents did not argue that LACOE applied the tiebreaker criteria inappropriately or that the criteria were unfair or otherwise inappropriate. The evidence established that the tiebreaker criteria were fair and applied fairly to Respondents.

18. The parties stipulated that Richard Chime's seniority date, shown as November 28, 2007, was changed to November 19, 2007, and that Respondent Victor Agbo's seniority date, shown as September 1, 2007, was changed to August 22, 2007.¹ The parties acknowledged that these changes would not impact Respondent Agbo's layoff.

19. No certificated employee junior to any Respondent was retained to perform any services that any Respondent was certificated and competent to render.

LEGAL CONCLUSIONS

1. The parties met all notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955.

2. Cause exists to sustain LACOE's action to reduce or discontinue 173.90 full-time equivalent positions, as set forth by resolution, for the 2009-2010 school year, pursuant to Education Code sections 44949 and 44955, as set forth in Factual Findings 1-19, and Legal Conclusions 3-7.

3. Education Code section 44955 states, in pertinent part:

[¶] . . . [¶]

(b) whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, or . . . when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is

¹ Richard Chime was served with an initial notice, as described in Factual Finding 4, however, he was not named on the list that LACOE counsel clarified at hearing contained the Respondents at issue in this matter (Appendix I). Richard Chime is not a Respondent. Therefore, while the parties' complete stipulation is herein mentioned, only the portion related to Respondent Agbo is relevant.

retained to render a service which said permanent employee is certificated and competent to render.

4. Education Code section 44949 states, in pertinent part:

(a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

[¶] . . . [¶]

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year.

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

[¶] . . . [¶]

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board. Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced.

5. The services identified in LACOE's resolution number 24 are particular kinds of services that it can reduce or discontinue under Education Code section 44955. LACOE's decision to reduce or discontinue the identified services was not arbitrary or capricious; it

was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of LACOE's schools and pupils within the meaning of Education Code sections 44949 and 44955. LACOE correctly identified the certificated employees providing the particular kinds of services that it directed to be reduced or discontinued.

6. A school district may reduce services within the meaning of Education Code 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.)

7. No junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render.

ORDER

1(a). The Accusation served on Respondents is sustained, with the exceptions of Respondents Kimberly Scott, John Clayton, and James Kern.

1(b). The Accusations against Respondents Kimberly Scott, John Clayton, and James Kern are dismissed.

1(c). Notice shall be given to Respondents, other than those excepted above, as required by law, that their services will be terminated at the close of the 2008-2009 academic year. Notice shall be given in inverse order of seniority.

Dated: May 4, 2009

DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings