

BEFORE THE  
GOVERNING BOARD  
OF THE  
VAL VERDE UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Reduction in Force  
(RIF) of Certain Certificated Teachers  
Employed by the Val Verde Unified School  
District:

OAH No. 2009030459

Respondents.

**PROPOSED DECISION**

Stephen E. Hjelt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Perris, California on April 1, 2009.

Spencer Covert, Attorney at Law, of Parker and Covert, LLP, represented the Val Verde Unified School District (District).

Carlos Perez, Esq. of Reich, Adell & Cvitan, represented respondent certificated employees of the Val Verde Unified School District who received preliminary layoff notices as indicated in the record.

The District has decided to reduce or discontinue certain educational services and has given respondents and other certificated employees of the District 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.

The matter was submitted on April 1, 2009, with the understanding that counsel for the parties, in lieu of oral closing argument, could submit written argument as well as proposed findings by the close of business on April 6, 2009. Both parties filed written argument which was marked accordingly and became part of the record. Counsel for the District also submitted proposed findings, legal conclusions and recommendation which was marked for identification as well.

Oral and documentary evidence, and evidence by way of stipulation, was presented and received. The case was submitted for decision on April 6, 2009.

## FACTUAL FINDINGS

### *The Val Verde Unified School District*

1. The Val Verde Unified School District (Val Verde or District) is a unified school district serving over 18,000 students in Riverside County. The District serves a diverse student community. Its educational facilities include 14 K-5 schools, four comprehensive middle schools, two comprehensive high schools, a continuation high school, and an opportunity school program for grades 6-12 known as the “Student Success Academy” (SSA).

2. The District is governed by an elected five-member Board of Education (Board). Dr. Carroll D. Brown is the District Superintendent. He is supported by an administrative staff that includes Dave Marshall, Deputy Superintendent for Educational Services and Human Resources, Mr. Michael Boyd, Deputy Superintendent, Business Services, and Dr. Norman E.W. Towels, Assistant Superintendent and Principal of the Student Success Academy. Mr. Boyd, Mr. Marshall and Dr. Towels testified at the administrative hearing on behalf of the Board of Education and the District.

### *The Fiscal Crisis-Economic Layoffs*

3. Proposition 13 limited the imposition of property taxes and reduced a major source of assured revenue for funding public education in California. Since Proposition 13, public school districts have looked primarily to the State of California and to other governmental entities for funding.

A school district cannot determine the level of state funding it will receive until the state budget is chaptered, an event usually occurring in late June. Before then, a school district’s governing board must take steps to make certain that ends meet if a worst-case financial scenario develops. California’s current economic crisis has made budgeting problems far more complicated than they were before. Some prior years left districts sailing in stormy seas. This year’s state and national financial crisis can only be described as a tsunami.

A school board’s legal obligation to balance its budget often requires that some teachers, administrators and/or other certificated employees be given preliminary layoff notices, warning them that their services will not be required for the next school year. Under Education Code section 44949, preliminary layoff notices must be given to affected certificated employees no later than March 15.

The economic layoff statutes found in the Education Code generally require the retention of senior employees over more junior employees and the retention of permanent employees over probationary employees and other employees with less seniority. A public school district may deviate from the general rule requiring termination in reverse order of seniority only if it can demonstrate that identifiable junior employees possess a credential,

special training or experience necessary to teach a course of study or to provide services which more senior employees do not possess.

The fiscal crisis that the state of California found itself in has created a ripple effect of chaos and dislocation throughout the state. This is particularly the case for school districts. At the time of the adoption of the layoff resolution in February 2009, all school districts in California were mindful of the State-wide budget crisis and its potential impact on State funding for schools at the level that was budgeted originally for the 2008-09 school year.

The District was also projecting a decline in enrollment for the following school year from the current enrollment of 18,482 regular education students to 18,178 students.

On March 26, 2009, the Board of Education adopted a Negative Certification for its Second Interim Financial Report for the current 2008-09 fiscal year and for forecast years 2009-10 and 2010-11. The Board and the District, through the Superintendent and Deputy Superintendent Boyd, consulted with and received input from the Riverside County Department of Education prior to recommending the "Negative Certification" to the Board for adoption.

The Second Interim Financial Report established that the District will most likely face a \$4.5 million dollar reduction in general fund revenue for the current 2008-09 fiscal year. In addition, the District's revenue limit, according to the Second Interim Report, will be reduced 13% for the current and next fiscal year.

State law mandates that the District maintain a minimum 3% reserve in its general fund. Based on current projections, the fund balance will be \$1.7 million short of the amount needed to fund a 3% reserve in the 2008-09 general fund budget and \$4.1 million dollars short of the amount needed to fund a 3% reserve in the 2009-10 general fund budget. For the 2010-11 budget, the amount needed will be \$9.5 million dollars.

The District faces another daunting fiscal obstacle. It presently owes the State \$11.5 million dollars, plus interest, over a four-year period as a result of the State finding a "Material Inaccuracy" regarding the District's school facility building program. The District is currently required to pay the State \$2.5 million for the 2008-09 fiscal year and for each of the next three years. The District is seeking to renegotiate the payment schedule and is also seeking legislation regarding the repayment schedule. In addition, this matter is presently on appeal in the courts. In the meantime, the payments are required by the Riverside County Department of Education to be included within the District's financial statements, thereby resulting in the "Negative Certification."

### *The District's Response*

4. In fall 2008, the Superintendent met with Mr. Marshall and Mr. Boyd to review the District's financial matters, staffing and enrollment. These meetings led to Mr. Boyd creating a comparison of the current staffing allocation at the District's schools with the projected staffing allocation for the 2009-2010 school year. Eventually, these meetings

produced a document entitled “Teacher Allocations 2009-2010-Allocations as of January 23, 2009.” (Exh. 13 in evidence.) In this document, it was calculated that the District could reduce 32 full-time equivalent positions (FTEs) at grades K-5, 38 FTEs at grades 6-8, 39 FTEs at grades 9-12, including the SSA, and 17 additional FTEs comprised of seven elementary music, two middle school music, one elementary/middle school athletic director, two bilingual facilitators, one middle school literacy coordinator and four special education SDC/RSP teachers.

5. Mr. Marshall then took the proposed reductions and met with the principals from the middle schools and the high schools to determine how to allocate the particular reductions with respect to the 38 FTEs to be reduced at the middle schools and the 39 FTEs to be reduced at the high schools. As a result of these meetings, which took place over several days, Mr. Marshall, in consultation with the site administrators, determined the particular services to be reduced at the middle schools and high schools. These reductions were, in turn, illustrated on the documents entitled “Middle Schools-Allocation Work Sheet” (Exh. 5 in evidence) and “High Schools-Allocation Work Sheet” (Exh. 6 in evidence).

6. Based on the analysis provided by Mr. Boyd and Mr. Marshall, the Superintendent in turn recommended a layoff resolution to the Board for adoption. Resolution No. 08-09-30 (Exhibit 1 in evidence) set forth the particular kinds of services that were identified in Exhibits 5, 6 and the 17 additional FTEs identified as “Additional Teachers” in Exhibit 13.

7. On February 10, 2009, the Board adopted Resolution No. 08-09-30 recommending a reduction or discontinuance of particular kinds of services provided by the District for the 2009-2010 school year. The Board’s adoption of Resolution No. 08-09-30 set forth a list of the particular kinds of services being reduced and was based on the welfare of the schools and their students.

8. Resolution No. 08-09-30 provided:

**“VAL VERDE UNIFIED SCHOOL DISTRICT  
RIVERSIDE COUNTY, STATE OF CALIFORNIA**

**RESOLUTION NO. 08-09-30 CALLING FOR LAYOFF OF  
CERTIFICATED EMPLOYEES DUE TO A REDUCTION OR  
DISCONTINUANCE OF PARTICULAR KINDS OF SERVICES**

**WHEREAS**, the District's Governing Board, upon recommendation of the Superintendent, has determined that it is in the best interest of the District, and the students thereof, to layoff probationary and permanent certificated employees pursuant to the provisions of Education Code section 44955 by virtue of the decision of the Board of Education to reduce or discontinue certain particular kinds of services hereinafter enumerated.

**NOW, THEREFORE, IT IS HEREBY RESOLVED, DETERMINED AND ORDERED AS FOLLOWS:**

1. Pursuant to Education Code section 44955, the following particular kinds of services shall be reduced or discontinued at the close of the 2008-2009 school year. The particular kinds of services to be reduced or discontinued by full time equivalent positions are as follows:

**ELEMENTARY SCHOOL**

- 1.1 Reduce thirty-two (32) certificated positions – Elementary Classroom Teacher (K-5)
- 1.2 Discontinue seven (7) certificated positions – Itinerant Music Teacher

**MIDDLE SCHOOL**

- 1.3 Reduce three (3) certificated positions – Art Teacher
- 1.4 Reduce one (1) certificated position – Band Teacher - Instrumental Music
- 1.5 Reduce ten (10) certificated positions – Classroom Teacher – 6<sup>th</sup> Grade Core
- 1.6 Reduce one (1) certificated position – Computer Teacher
- 1.7 Reduce three (3) certificated positions – ELD Teacher
- 1.8 Reduce five (5) certificated positions – English Teacher
- 1.9 Discontinue two (2) certificated positions – Itinerant Music Teacher - Chorus
- 1.10 Discontinue one (1) certificated position – Literacy Coordinator
- 1.11 Reduce one (1) certificated position – Math Teacher
- 1.12 Reduce four (4) certificated positions – Physical Education Teacher
- 1.13 Reduce four (4) certificated positions – Science Teacher (Biological)
- 1.14 Reduce four (4) certificated positions – Social Science Teacher
- 1.15 Reduce two (2) certificated positions – Study Skills/Academic Skills Teacher

**HIGH SCHOOL**

- 1.16 Reduce one (1) certificated position – Art Teacher – Visual Arts
- 1.17 Reduce one (1) certificated position – Band Teacher - Instrumental Music

- 1.18 Reduce two (2) certificated positions – Bilingual Facilitator
- 1.19 Reduce one (1) certificated position – Business Teacher
- 1.20 Reduce three (3) certificated positions – ELD Teacher
- 1.21 Reduce ten (10) certificated positions – English Teacher
- 1.22 Discontinue one (1) certificated position – French Teacher
- 1.23 Reduce one (1) certificated position – Graphics Teacher
- 1.24 Reduce one (1) certificated position – Health Teacher
- 1.25 Reduce three (3) certificated positions – Math Teacher
- 1.26 Reduce four (4) certificated positions – Physical Education Teacher
- 1.27 Reduce one (1) certificated position – ROTC Teacher
- 1.28 Reduce one (1) certificated position – Science Teacher (Biological)
- 1.29 Reduce nine (9) certificated positions – Social Science Teacher
- 1.30 Reduce two (2) certificated positions – Spanish Teacher

**SPECIAL EDUCATION**

- 1.31 Reduce two (2) certificated positions – RSP Teacher-Special Education (6-8)
- 1.32 Reduce one (1) certificated position - SDC Teachers-Special Education (K-5)
- 1.33 Reduce one (1) certificated position - SDC Teachers-Special Education (6-8)

**OTHER**

- 1.34 Discontinue one (1) certificated position – Elementary/Middle School - Athletic Director, Education Services (Teacher on Special Assignment)

2. The Superintendent's designee is directed to serve notices of layoff on probationary or permanent certificated employees in accordance with and in the manner prescribed by Education Code sections 44955, and 44949 as a result of the reduction or discontinuance of the particular kinds of services specified in paragraph 1 of this Resolution.

**PASSED, ADOPTED AND SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2009,** by the Board of Education of the Val Verde Unified School District, at Perris, California by the following vote:

By: \_\_\_\_\_  
President, Board of Education

**VOTE:**

Attest: \_\_\_\_\_  
Carroll Brown, Ed.D.  
Superintendent and Secretary to the Governing  
Board of the Val Verde Unified School District”

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSENT: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_

9. On March 10, 2009, the Board adopted what is commonly referred to as a “tie breaker Resolution,” Resolution No. 08-09-33. The Resolution (Exh. 7 in evidence) provided:

**“VAL VERDE UNIFIED SCHOOL DISTRICT  
RIVERSIDE COUNTY, STATE OF CALIFORNIA**

**RESOLUTION NO. 08-09-33**

**RESOLUTION REGARDING RANKING CERTIFICATED EMPLOYEES  
SUBJECT TO LAYOFF PURSUANT TO EDUCATION CODE SECTION  
44955**

**WHEREAS**, the District’s Governing Board, upon recommendation of the Superintendent, took action prior to March 15, 2009 to authorize notice of layoff to certificated employees due to a reduction or discontinuance of particular kinds of services at the conclusion of the 2008-2009 school year; and

**WHEREAS**, this Resolution (commonly known as a “tie breaker resolution) is adopted pursuant to Education Code section 44955 (b) which provides that as between employees subject to layoff who rendered first paid service to the District on the same date, the Governing Board shall determine the order of termination solely on the needs of the District and the students thereof; and

**NOW THEREFORE**, be it resolved as follows:

Section 1. The following tie-breaker criteria are adopted with respect to the pending layoff proceedings for those employees subject to layoff. The criteria will be applied by the Deputy Superintendent, Educational Services/Human Resources.

Starting with those employees specified in Criteria One, if a tie exists with respect to employees with the same first date of paid service, then the tie will be broken by applying the criteria specified at Criteria Two, and if necessary, through Criteria Five. Should any employees still be tied, then the tie shall be broken by applying Criteria Six.

**One:** Certificated personnel who are assigned to the Student Success Academy for the 2008-2009 school year.

**Two:** Certificated personnel who possess a B-CLAD certificate for the K-12 level by August 11, 2008.

**Three:** Earned degrees from an accredited college or university beyond the BA/BS level as of August 11, 2008, for which salary placement is given.

**Four:** Higher salary placement on the Certificated Salary Schedule as of August 11, 2008, regardless of row or column. For example, cell E-12 is a higher salary placement than cell D-13, and A-6 is a higher salary placement than C-2. If different cells have the same salary, then it is stipulated that row placement will come before column placement, e.g. "B-4" cell is prioritized over cell "E-1."

**Five:** Certificated personnel serving during the 2008-2009 school year as an Athletic Coach for a grade 9, 10, 11, or 12 CIF league sport or as the cheer advisor or assistant cheer advisor for a High School Cheer Squad.

**Six:** If any tie still exists, then the tie shall be broken by using the last four digits of the certificated employee's social security number, with the higher four-digit number receiving the higher ranking among employees who are still tied."

10. On or before March 15, 2009, each certificated employee who is party to this proceeding was given a letter and notice that the Board had recommended that his or her services with the District would be terminated at the conclusion of the current school year. Most of these employees were personally served on February 24, 25, or 26, 2009. A copy of the sample preliminary layoff notice, which recited the services to be reduced from the layoff resolution, as well as the fact that the employee was entitled to request a hearing to determine whether there was legally justified cause for not reemploying the employee for the ensuing 2009-2010 school year, is in evidence as Exhibit 3.

The preliminary layoff notice supplied by the District was proper, appropriate, and duly served on each certificated employee who is a party to this proceeding. An accurate summary of all certificated employees that were served notice, along with whether or not they requested a hearing, is contained in exhibit 2 in evidence.

An Accusation packet was thereafter served on the certificated employees who requested a hearing and most of the employees receiving an Accusation package filed a Notice of Defense. All employees receiving an Accusation package were duly served with an Amended Notice of Hearing, advising them of the date, time and place of the layoff hearing. This information is also summarized in Exhibit 2, in evidence.

11. Mr. Marshall, with the assistance of the Human Resources Department staff, in turn, applied the tie-breaker criteria to the certificated employees in this proceeding. Exhibit

8 constitutes the District's implementation of the tie-breaker resolution that was prepared by Mr. Marshall and his staff.

### *The Administrative Hearing*

12. On April 1, 2009, the record in the administrative hearing was opened. Jurisdictional documents were presented. The District presented an opening statement. A written stipulation regarding the District's exhibits was received into evidence. (Exh. 18.) The District called as its witnesses Mr. Boyd, Mr. Marshall and Mr. Towels, who presented sworn testimony and documentary evidence and were cross-examined regarding the various exhibits and the reasons behind their adoption and preparation. Prior to the respondent's attorney calling witnesses there was a break in the proceedings so that respondents could meet with their attorney to review the exhibits. Respondent's attorney then presented exhibits and called one witness.

13. At the conclusion of the administrative hearing, it was agreed that in lieu of closing argument, counsel would be provided the opportunity to submit written argument and/or proposed findings to the Office of Administrative Hearings with respect to this matter by the close of business on April 6, 2009.

### *The Particular Kinds of Services*

14. The services identified by the Board for reduction or elimination in the layoff resolution are particular kinds of services that could properly be reduced and discontinued. The reduction and elimination of those services was neither arbitrary nor capricious, and the reduction or elimination of those services constituted a matter well within the proper exercise of the Board's discretion. The layoff related to the welfare of the district, the schools, and the students. No services were reduced below levels required by federal and state law.

### *The District's Layoff Procedure*

15. The Board's resolution called for the elimination or reduction of 126 FTEs in particular kinds of services. Using the Board's resolution and the District's seniority list, the District's staff first identified certificated employees who were not returning for the following 2009-2010 school year. The District staff then identified those employees by credential to determine whether the amount of particular kinds of services to be reduced could first be obtained by offsetting the number of layoffs by those employees who were not returning. This calculation is provided in Exhibit 10, in evidence, entitled "Certificated Layoff Worksheet-Employees Not Returning for the 2009-2010 School Year." Exhibit 10 lists the particular kinds of service that can be reduced through attrition.

16. The District's staff then created a lengthy worksheet to track those certificated employees by seniority to determine the remaining employees to be laid off, as well as those who had so-called "bumping" rights or who could be "skipped" from layoff. For those employees who provided the particular kinds of services identified in the resolution, the District determined if the employee could "bump" a more junior employee by providing a

particular kind of service that the more senior employee was credentialed and competent to provide. The Board's tie-breaking criteria established a method by which employees having the same seniority date could be ranked for layoff purposes. Through the tedious step-by-step elimination process, the District correctly determined which certificated employees should receive preliminary layoff notices. This tracking is reflected in Exhibit 9 in evidence, with the following exceptions arising from bumping with respect to Employee No. 32, Bruce Hill. Evidence was presented at the hearing that Mr. Hill will be bumped by employee No. 127, Regina Palis, which, in turn, results in employee No. 76 Stacey Dedeaux now being placed in a "blue Box" indicating, "No Layoff-Precautionary." Since Hill is bumped by No. 127, Hill is no longer laid off due to the Science reduction. As a result, Employee No. 35 on Exhibit 9, page 19 (Wroblewski), is now "4 of 5-Science," not "5 of 5-Science." Therefore, the 5<sup>th</sup> Science teacher to be laid off becomes Employee No. 134 on Exhibit 9, Jennifer Chavez. Mr. Hill will, nevertheless, be laid off through this bumping process.

17. The District served preliminary layoff notices and Accusation packages on a number of certificated employees in order to reach the 126 FTEs identified in the layoff resolution.

18. No permanent or probationary employee with less seniority will be retained to render a service any respondent is certificated and competent to provide, except for the skipping of Mr. Woodward and Mr. Nee. Employee No. 110 (Bernard Woodward) and Employee No. 96 (Matthew Nee) were included among the employees who received preliminary layoff notices. Credible evidence established that the District is entitled to "skip" Mr. Woodward and Mr. Nee based upon the difficulty it has in recruiting and retaining teachers to teach in the District's SSA and the training and experience of Mr. Woodward and Mr. Nee. Mr. Woodward and Mr. Nee are entitled to be "skipped" from layoff.

19. The District also gave precautionary layoff notices to three temporary employees (Exh. 2 at Employee Nos. 133, 134 and 135). This was done out of an abundance of caution. The three temporary employees are not entitled to the provisions of section 44955 because this section only pertains to probationary and permanent employees, not temporary employees. An example of the precautionary layoff notice provided to Employee No. 133 is contained in Exhibit 15 at page 4, which clearly identifies Employee No. 133 "as a temporary employee." District Exhibit 15 establishes that Employee No. 133 is employed as a temporary employee. This employee's temporary status was not contested at the administrative hearing. Employee Nos. 134 and 135 did not request a hearing in this matter.

### *Respondent's Contentions*

20. It is contended that employees may only be skipped based upon action taken by the Board of Education. Education Code section 44955(d) does not support this contention and, in fact, permits the District, through its administration, to present evidence that individual employees should be "skipped" from layoff.

21. It is contended that two employees who received Masters Degrees subsequent to August 11, 2008 should be credited for their Masters Degrees on the tie-breaker resolution. Employee No. 112 (Derek Lantz) and Employee No. 28 (Robert Preddy, Jr.) received and filed their Masters Degrees with the District in October, 2008 and February 2009, respectively. Arguably, they should receive credit, but this criteria pertains to the order of layoff, not to the order of returning employees to the District. Having examined the list of employees who will be laid off who share a common seniority date of August 14, 2006 and August 11, 2008, both Mr. Lantz and Mr. Preddy will still be laid off whether or not they are given credit for their Masters Degrees.

## LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 were met as to those respondent certificated employees identified herein.

2. measure by which a school board's actions is to be judged is set forth in language in *Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal. App. 3d 796 at page 808. The court wrote:

“In determining whether the decision of a school board is reasonable as distinguished from fraudulent, arbitrary, or capricious, its action is measured by the standard set forth by reason and reasonable people, bearing in mind that such a standard may permit a difference of opinion on the same subject. The record reveals that the board resolution of March 13, 1975, was not an arbitrary decision arrived at through the exercise of mere caprice, but rather was a decision supported by a fair and substantial reason. It is true that the governing board hoped that when its final budget was adopted it would not be necessary to terminate all of the enumerated services. Although the governing board wanted to keep as many certificated employees as possible, the school district was facing financial uncertainties, and the board acted in an attempt to allow the district maximum flexibility in determining staffing for the ensuing school year in light of both available resources and needs.”

3. A school board's decision to reduce or discontinue particular kinds of services (PKS) need not be tied to any statistical computation, such as a reduction in the number of students. The number of terminations through PKS reductions depends totally upon the decision about how many services to reduce. A board may consider the school district's economic circumstances in making the determination to eliminate particular kinds of services. (*San Jose Teachers Association v. Allen* (1983) 144 Cal. App. 3d 627.)

A school board may “reduce services” by eliminating certain types of services or by reducing the number of district employees providing such services. The decision to reduce or discontinue a particular kind of service is not unfair or improper simply because a school board made a decision it was empowered to make. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal. App. 3d 167.)

4. Education Code section 44955, subdivisions (b) and (c), sets forth a general rule requiring school districts to retain senior employees over more junior employees and to retain permanent employees over temporary employees. Any exception to this general rule must be based on statute. For employees hired on the same date, Education Code section 44955, subdivision (d) provides:

“(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.”

Under subdivision (d)(1), the District may skip a junior teacher being retained for specified reasons. (*Bledsoe v. Biggs Unified School District* (2008) 170 Cal. App. 4<sup>th</sup> 127, 131.) Sufficient authorization is provided to skip Woodward (No. 110) and Nee (No. 96) from layoff based upon their training and experience related to their assignment at the District’s SSA.

5. Seniority determines the order of dismissals; between employees with the same first date of paid service, the order of termination is determined on the “basis of the needs of the district and its students.” Senior employees are given “bumping” rights and will not be terminated if junior employees are being retained to render services which the more senior employee is certificated and competent to render. (*Alexander v. Board of Trustees* (1983) 139 Cal. App. 3d 567.)

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 holds that position (*Lacy v. Richmond Unified School District* (1975) 13 Cal. 3d 469.)

6. As a result of the District’s lawful reduction of particular kinds of services, cause exists under Education Code section 44955 for the District to give notice to all respondents listed on Attachment A to this Proposed Decision who were previously served with preliminary layoff notices that their employment will be terminated at the close of the current school years and that their services will not be needed for the 2009-2010 school year.

7. The Factual Findings and the Legal Conclusions in this case are not a referendum on the wisdom of the choices made by the Val Verde Unified School District. There may well be many better choices. However, this is not the forum to determine “better choices.” This is

the forum to determine whether the District has identified appropriate particular kinds of services for reductions and discontinuances, and the resulting layoffs, and whether the District had established a valid method for deviating from strict application of seniority in deciding who to layoff. On the basis of the evidence presented, the District has met its burden. The reality, as all well know, is that conditions may change and some or all of the final decisions made by the District as a result of this Proposed Decision may change.

8. Teacher layoff hearings occur irregularly in California. Often years pass with no reduction in force (RIF) ever being filed by a school district or heard by the Office of Administrative Hearings. However, due to the way education in California is presently funded, school districts and their teachers are always a blip in the economy away from the draconian measures required by the Education Code. The school year 2008/2009 was very harsh and difficult for many Districts and teachers. The current year is beyond nightmarish. The reasons for the continued existence of the current inefficient and wasteful system are beyond the scope of this hearing. However, to the District and its teachers, the dislocation, anxiety and uncertainty create a climate that can be corrosive and cause wounds that can take years to heal.

9. Are the actions of this District arbitrary in this layoff proceeding? Of course they are. They are arbitrary in the same way that two competent surgeons might argue about the relative wisdom of an amputation. One might feel that an above-the-knee amputation was best. The other might opt for a below-the-knee procedure. The disagreement is not over the need for the operation, but over the exact method. The reference to amputation is not made casually. These layoffs are like an amputation. They are painful and traumatic and change the District in so many different ways. Although the District's actions are arbitrary, they are not "arbitrary or capricious" as this legal term of art is defined.

10. None of the proposed layoffs will reduce services below state mandated levels. This is not to say that the layoffs, if ultimately implemented, will result in the optimum delivery of services. These layoffs are simply the best that the District could do under extremely difficult and unpleasant circumstances. They reflect a reasonable decision making process. They are certainly not the only way to reduce a budget deficit nor do they necessarily represent the best way to reduce a deficit and continue to supply the best quality public education possible.

11. These decisions by a Board are particularly susceptible to second guessing because they represent choices between various competing versions of "bad." The choices here are between competing unpleasant scenarios in non-optimum circumstances. These aren't choices between good and bad. These are choices made in an uncertain situation with many variables in the equation and one overriding concern-where can we cut the budget deficit and do the least amount of damage. This is, after all, the pragmatic issue the Board and the District face.

12. The testimonial and documentary record in this case, as well as reasonable inferences drawn from them, strongly supports a finding that this District made every reasonable effort to minimize the harm done to its most valuable asset, its teachers. It exercised its discretion in good faith. Ultimately, the District must be accorded the deference to make

these “no win” decisions as long as they are made in good faith with the ultimate welfare of the students and the District’s needs in mind. The record in this case demonstrates that the District has done so.

13. Counsel for the respondent’s admonished the District in his remarks to the administrative court. He reminded the District to think carefully and be cautious because of the huge impact of the decision on the teachers, students and community. His words were wise, well intentioned and should be a cautionary reminder to any District that is contemplating teacher layoffs. With respect to the Val Verde Unified School District, it is clear that they have made these cuts with sensitivity and good faith effort. Unlike most litigation, the result in this case is that no one wins.

This conclusion is based on all Factual Findings and on all Legal Conclusions.

### ORDER

It is recommended that the Board give notice to all respondents identified in Attachment A to this Proposed Decision previously served with a preliminary layoff notice 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: \_\_\_\_\_

\_\_\_\_\_  
STEPHEN E. HJELT  
Administrative Law Judge  
Office of Administrative Hearings