

BEFORE THE
BOARD OF EDUCATION
OF THE
MORONGO UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2009030536

Respondents listed in Appendix A.

PROPOSED DECISION

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Twentynine Palms, California on April 14, 2009.

William A. Diedrich, Atkinson, Andelson, Loya, Ruud & Romo, APLC, represented the Morongo Unified School District.

Dana S. Martinez, Holguim, Garfield & Martinez, represented the respondents listed in Appendix A.

The matter was submitted on April 14, 2009.

FACTUAL FINDINGS

1. Doug Weller, Assistant Superintendent, Human Resources of the Morongo Unified School District, made and filed the accusation dated March 10, 2009, in his official capacity as the designee of James Majchrzak, Superintendent.

2. Respondents¹ are certificated district employees.

¹ The District initially identified 35 certificated employees as respondents, 18 of whom, Heather Bawdon, Nicole Boyles, Kathryn Butterfield, Alejandra Cabrera-Rojas, Christopher Cook, Jordan Davis, Jessica Dellinger, Kaia Goodell, Jeremy Hartley, Rebekah Hobson, Alan Kern, Katherine Palanuik, Nancy Ruiz, Lydia Sawyer, Ashley Smith, Sharon Stanberry, Denise Tennison, and Regina Wallace, did not request and thus waived their right to a hearing. At the hearing, one employee, Jennifer Battis, withdrew her request for a hearing and the District dismissed another employee, Douglas Webster. Accordingly, 15 respondents remain in this proceeding and are listed in Appendix A.

3. On March 10, 2009, in accordance with Education Code sections 44949 and 44955, the Superintendent notified the Board of Education of the Morongo Unified School District in writing of his recommendation to reduce or discontinue particular kinds of services for the upcoming school year. The Superintendent stated the reasons for the recommendation. The recommendation that respondents be terminated from employment was not related to their competency as teachers.

4. On March 3, 2009, the Board adopted Resolution No. 09-13, determining that it would be necessary to reduce or discontinue particular kinds of services at the end of the current school year. The Board determined that the particular kinds of services that must be reduced for the 2009-2010 school year were the following full time equivalent (FTE) positions:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
High School Spanish	0.8
High School ELL	0.2
High School Life Science	1.0
High School Physical Education	1.0
High School Visual Arts	1.0
Junior High School English	1.0
Junior High School Math	1.0
Middle School Math	1.0
High School Math	2.0
High School English	2.0
High School Business	1.2
High School Success	0.8
TOA Math	1.0
TOA Secondary English	1.0
TOA Elementary English/LA	1.0
TOA Elementary Literature Coach	2.0
Secondary Curriculum Program Specialist	1.0
Elementary Assistant Principal	1.0
Counselors	3.0
Elementary Teachers	26.0

The proposed reductions totaled 49 FTE positions.

5. The Board further determined in Resolution No. 09-13 that it would be necessary to retain certificated employees who possess special training and competency that other certificated employees with more seniority might not possess, to wit: Possession of a valid credential in the relevant subject matter area and for special positions, such as AVID and Leadership, the relevant training in those areas.

6. The Board directed the Superintendent or his designee to determine which employees' services would not be required for the 2009-2010 school year as a result of the reduction of the foregoing particular kinds of services. The Board further directed the Superintendent or his designee to send appropriate notices to all certificated employees of the district who would be laid off as a result of the reduction of these particular kinds of services.

7. On or before March 15, 2009, the district timely served on respondents a written notice that the Superintendent had recommended that their services would not be required for the upcoming school year. The notice set forth the reasons for the recommendation. The notice advised respondents of their right to a hearing, that each respondent had to deliver a request for a hearing in writing to the person sending the notice by the date specified in the notice, a date which, in each case, was more than seven days after the notice was served, and that the failure to request a hearing would constitute a waiver of the right to a hearing. Along with the written notice, the district timely served on respondents the accusation and required accompanying documents.

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

8. Respondents timely filed written requests for hearing and notices of defense to determine if there was cause for not reemploying them for the upcoming school year. All pre-hearing jurisdictional requirements were met.

9. Respondents are probationary or permanent certificated employees of the district.

10. The services the Board addressed in Resolution No. 09-13 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 and constituted a proper exercise of discretion.

11. The reduction or discontinuation of particular kinds of services related to the welfare of the district and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the district as determined by the Board.

12. The Board considered attrition, including resignations, retirements and requests for transfer, in determining the actual number of necessary layoff notices to be delivered to its employees. No evidence was presented that any known positively assured attrition was not considered.

13. No certificated employee junior to any respondent was retained to perform any services which any respondent was certificated and competent to render.

14. The district hired 45 new teachers for the 2008-2009 school year. The new (i.e., to the district) teachers with prior teaching experience (26 in number) were told to

report for work on August 20, 2008. Those without prior teaching experience (the remaining 19) were told to report on August 14, 2008, in order to attend a four-day new teacher orientation. The district's policy for the 2008-2009 school year deviated from that in place in earlier years, when all new hires, including both those with and without prior teaching experience, were instructed to attend the four-day new hire orientation. It appears that the district changed its policy after the teachers' local union (Morongo Teachers' Association) formally requested that teachers working the extra four days be paid an appropriate per diem amount. In response to that request, the district agreed, in settlement of the dispute, to pay teachers who attended the orientation per diem retroactively for the preceding three years. It may be that the district was motivated by financial considerations in reaching its decision not to require (or even permit) new teachers with prior teaching experience to attend the four-day orientation for the 2008-2009 school year.

Of the 26 new district teachers for the current school year with prior teaching experience, eight are respondents in this proceeding: Kojo McCallum, Tara Piagentini, Monica Denogean, Melissa Norquist, Lindsey Owens, Pauline Braginton, Christine Carnes, and Jennifer Dahlberg.

15. The eight new hires for 2008-2009 who had prior teaching experience all received a new hire packet, which included among its contents a letter informing them that August 20, 2008 was their start date. The packet also contained, however, a school calendar which indicated that their start date would be August 14, 2008. At least two of the eight contacted the district to inquire about the apparent discrepancy; they were told that their start date was August 20, 2008. Some of the eight made special arrangements, based on the school calendar, to be able to report for work on August 14, 2008. They all eventually received a second, clarifying letter, confirming August 20, 2008, as their start date. None of the eight were paid for any work they may have performed before August 20, 2008.² None believed or knew with regard to these matters that an issue existed that they might or should report to their union. It was their belief that the district's directive that they report for work on August 20, 2008, was correct and proper.

16. Respondents contended that the district's policy of not requiring new teachers with prior teaching experience to attend the new teacher orientation violates certain provisions of the Education Code, as well as the collective bargaining agreement.³ However, these challenges to the district's policy are beyond the scope of this proceeding, which is limited, in the context of the eight teachers in question, to a determination whether the district properly determined their seniority date to be August 20, 2008. Since August 20,

² At least one, Lindsey Owens, went to her school before August 20 to set up her classroom and otherwise prepare for the upcoming year. Owens did not claim, however, that she was or should have been paid for that additional time she (commendably) spent at her school prior to her formal start date.

³ Respondents proffered the 2007-2008 collective bargaining agreement (marked for identification as Exhibit A). The district objected, on relevance grounds. The administrative law judge deferred ruling on the admissibility of the document, but now sustains the objection. Two other documents (marked as Exhibits B and C) are, however, received over the district's objection.

2008, was indisputably the first date of paid service in a probationary position for each of these eight teachers, that is their proper seniority date.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

2. 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.)

3. Pursuant to Education Code section 44845, “Every probationary or permanent employee employed after June 30, 1947, shall be deemed to have been employed on the date upon which he first rendered paid service in a probationary position.”

4. A preponderance of the evidence sustained the charges set forth in the accusation. Cause exists under Education Code sections 44949 and 44955 for the district to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof. Cause exists to reduce the number of certificated employees of the district due to the reduction and discontinuation of particular kinds of services. The district identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued. It is recommended that the Board give respondents notice before May 15, 2009, that their services are no longer required by the district.

ADVISORY DETERMINATION

The following advisory determination is made:

The accusations served on respondents are sustained. Notice shall be given to such respondents before May 15, 2009, that their services will not be required because of the reduction or discontinuation of particular services as indicated.

DATED: _____

DONALD P. COLE
Administrative Law Judge
Office of Administrative Hearings

Appendix A

1. Beatty, Kimberly A
2. Braginton, Pauline
3. Carnes, Christine M
4. Dahlberg, Jennifer C
5. Denogean, Monica
6. Hughes, Ryalin K
7. Leming, Lauren D
8. McCallum, Kojo L
9. McMinn, Jocelyn G
10. Norquist, Melissa K
11. Owens, Lindsey A
12. Petersen, Amy L
13. Piagentini, Tara M
14. Rodriguez, Sylvia E
15. Tsuhako, Autumn