

BEFORE THE GOVERNING BOARD OF THE
MOORPARK UNIFIED SCHOOL DISTRICT

In the Matter of the Layoffs of:

ELENA AGUIRRE and other Certificated
Employees of the Moorpark Unified School
District,

Respondents.

OAH No.: L2009030643

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Moorpark, California, on April 20, 2009.

Aaron O'Donnell, Attorney at Law, represented the Complainant.

Paul D. Powers and Jeffrey J. Stinnett, Attorneys at Law, represented all Respondents.

Oral and documentary evidence and evidence by way of stipulation and official notice was received.

At the request of the Respondents the record was held open to allow the parties to file closing briefs on or before April 24, 2009. On April 24, 2009 Respondent's brief was received and marked and filed as Exhibit A. Complainant did not file a brief on or before April 24, 2009. The matter was deemed submitted on April 24, 2009.

The Administrative Law Judge now finds, concludes and orders as follows:

SUMMARY

The Governing Board (Board) of the Moorpark Unified School District (District) decided to reduce or discontinue particular kinds of services provided by certificated personnel for the 2009/2010 school year for budgetary reasons. The decision was not related to the competency and dedication of the teachers whose services were proposed to be reduced or eliminated. District staff carried out the Board's decision by using a selection

process involving review of credentials and seniority, “bumping,” and breaking ties between employees with the same first dates of paid service. The selection process complied with Education Code requirements.

FACTUAL FINDINGS

Parties

1. Complainant Ellen Smith filed the accusation¹ in this proceeding in her official capacity as Superintendent of the District.

2. The following persons, the Respondent’s herein, are certificated employees of the District:

- | | |
|------------------------------------|---------------------------|
| 1. Aguirre, Elena | 37. James, Genevieve |
| 2. Allen, Judy | 38. Keatts, Henry |
| 3. Barr, Jennifer | 39. Knight, Anthony |
| 4. Beatty, Karen | 40. Kreider, Tamira |
| 5. Birckhead, Patricia | 41. LaBelle, Melissa |
| 6. Block, Wendy | 42. Lasky, Benjamin |
| 7. Boysen, Terry | 43. LeTourneau, Ramona |
| 8. Brock, Anida | 44. Losinski, Patricia |
| 9. Brummond, Ann-Marie | 45. Lusche, Stacey |
| 10. Brusko, Leigh | 46. Mangers, Scott |
| 11. Cambalik Kelly | 47. McKee, Dawn |
| 12. Chevalier, Ellen | 48. Mockenhaupt, Donna |
| 13. Christian, Lorna | 49. Monroe, Leaf |
| 14. Claessens, Jill | 50. Navarro, Rebecca |
| 15. Cohen, Kathryn (Precautionary) | 51. Ocegueda, Adrianna |
| 16. Daringer, Staci | 52. Pratt, Tiffany |
| 17. Deegan, Patti | 53. Quartararo, Jason |
| 18. Dexter, Theresa | 54. Ragan, Sandra |
| 19. Dickerman, Karisha | 55. Rivera, Anita |
| 20. Easley, Scott | 56. Salen, William |
| 21. Epstein, Michelle | 57. Schroeder, Kelsay |
| 22. Escobar, Arlys | 58. Schulte, Mary |
| 23. Ferry, Diane | 59. Severns, Olivia |
| 24. Finnerty, William | 60. Smith-Heffernan, Dana |

¹ The term “accusation” refers to a pleading utilized under the Administrative Procedure Act, Government Code section 11503. Respondents are not “accused” in the every-day sense of that word, unless it can be said they are accused of not having enough seniority to retain their positions with the District in the face of a resolution to reduce positions.

<u>TYPE OF PROGRAM</u>	<u>FTE (Full-Time Equivalent)</u>
Counselors	10.7 FTE
Counselor-Social Work/At-Risk	1.0 FTE
Elementary Teachers (K-5)	52.0 FTE
Elementary Reading Teachers	3.75 FTE
Elementary Resource Teachers	5.0 FTE
High School Assistant Principals	4.0 FTE
High School Biological Science Teachers	2.0 FTE
High School English Teachers	4.0 FTE
High School Math Teachers	5.0 FTE
High School Physical Education Teachers	3.0 FTE
High School Social Science Teachers	3.0 FTE
High School Spanish Teacher	1.0 FTE
Middle School Assistant Principals	2.0 FTE
Middle School Physical Education Teacher	1.0 FTE
Middle School Science Teacher	1.0 FTE
School Psychologists	2.0 FTE
School Site and District Program Coordinators	<u>6.0 FTE</u>
Total	106.45 FTE

The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under Education Code section 44955.

5. With regard to services provided by the District, on February 10, 2009, the Board adopted Resolution No. 2008-2009-15 to determine the order of layoff for those certificated employees with the same date of first paid probationary service.

6. The decision by the Board to reduce or discontinue services was neither arbitrary nor capricious, but rather was a proper exercise of the District's discretion given the budgetary constraints, other factors considered by the Board, and the manner in which the decision to reduce or discontinue services was reached.

7. The reduction and discontinuation of services is related to the welfare of the District and its pupils, and has become necessary to decrease the number of certificated employees as determined by the Board.

Notice and Process

8. On March 10, 2009, pursuant to Education Code sections 44949 and 44955, the Governing Board directed that notice be given to Respondents that their services will not be required for the ensuing school year, and stating the reasons therefore.

9. Between March 11 and March 13, 2009, within the deadline set forth in Education Code section 44949, the Respondents were provided written notice by personal service or registered mail of the recommendation that Respondents receive notice pursuant to Education Code sections 44949 and 44955 that their services will not be required for the ensuing school year, and stating the reasons therefore.

10. Each Respondent timely requested a hearing. Thereafter, an accusation was served upon each of the Respondents, and the Respondents filed notices of defense, which were timely, or accepted by the District without objection.

Findings Re: Certain Respondents

11. Kathryn Cohen and Lise Ullman serve only pursuant to a temporary contract and have been listed as “Precautionary Respondents”. Ms. Cohen and Ms. Ullman received precautionary notice and process and each did timely request a hearing. The services that each provides will not continue in the 2009/2010 school year.

12. Penny Harrah, Helene Guillen, Wendy Block, Becky Stewart, William Salen, Karisha Dickerman, Leaf Monroe, Tiffany Pratt, Anita Brock and Donna Mockenhaupt all testified as to their respective qualifications. Each of said Respondents did establish that he or she is highly qualified, competent and credentialed to teach their respective current assignment. However, none of the said Respondents established that any other certificated employee with less seniority than each Respondent is being retained to render a service which each Respondent is certificated and competent to render.

Seniority

13. The District maintains a Seniority List which contains employees’ seniority dates (the first date of paid service) current assignments and locations, credentials, authorizations and employment status (permanent, probationary or temporary). In January, 2009, the District did send a “verification” letter to each certificated employee of the District with regard to their current credentials. The District did receive some responses thereto and did, when warranted, make changes to the Seniority List. The evidence established that the Seniority List utilized in the layoff process is accurate as to the information contained therein. No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render.

LEGAL CONCLUSIONS

1. All notices and other requirements of Education Code sections 44949 and 44955 were met. Therefore, jurisdiction was established for this proceeding as to all Respondents by reason of Findings 8, 9 and 10.

2. Cause was established required by Education Code section 44955 to reduce the number of certificated employees due to the reduction or discontinuation of particular kinds of services by reason of Findings 3, 4 and 5. The Board's decision to reduce or eliminate the identified services set forth in Finding 4 was neither arbitrary nor capricious in that the decision relates solely to the welfare of the District's schools and the pupils within the meaning of Education Code section 44949, by reason of Findings 6 and 7.

3. Kathryn Cohen and Lise Ullman, temporary employees as referenced in Finding 11, do not have a right to a hearing pursuant to Education Code sections 44949 and 44955 because they are temporary employees.

4. No permanent or probationary employee with less seniority is being retained to render a service for which Respondents are certificated and competent by reason of Finding 13.

5. Cause exists to give notice to Respondents that their services will not be required for the 2009/2010 school year by reason of the whole of the Findings herein.

ORDER

Notice may be given to Respondents that their services will not be required for the 2009/2010 school year.

Dated: _____

RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:rfm