

BEFORE THE
BOARD OF EDUCATION
CHINO VALLEY UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force
Involving the Respondent's Listed in
Exhibit A.

OAH No. 2009031048

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 23 and 24, 2009, in Chino, California.

Kelly Minnehan, Fagen, Friedman & Fulfroost, represented the Board of Education of the Chino Valley Unified School District, ("district").

Jonathan Klar, Rothner, Segall & Greenstone, represented most of the respondents listed in Appendix A, except for those identified immediately below.

No appearance was made by or on behalf of respondents Sherry Alvarez, Tanya Arakala, Maria De Lourde Avila, David Bolton, Rebecca Campos, Judy Carlson, Sharon Couchis, Daniel Dain, Richard Dan, Sherry Hall, Marci Herrera, Kristi Hirst, Stacy Howarth, Michael Johnson, Sandra Kammer, Lynn Lawrence, Barbara Marquez, Felicia Mills-Faulkner, Kellie Pennino, Alma Perez, Kelly Reyes, Denise Rhode, Kerry Rupe, Andrea Saucedo, Adam Sjol, Samantha Smith, Roger Talley, John Thie, Laura VanderLeest, and Gail Watson.

Before the hearing, the accusation filed against Melinda Larzo was withdrawn and her layoff notice was rescinded.

The matter was submitted for decision on April 24, 2009.

FACTUAL FINDINGS

1. R. Keith Beeman, Associate Superintendent, made and filed the accusation in his official capacity. Norman Enfield, Ed.D. Director, Human Resources, testified on behalf of the district in this proceeding, explaining how layoff determinations were made.

2. Respondents are listed on Appendix A, attached hereto and by this reference incorporated herein. Each respondent is a certificated employee of the district.

3. On March 5, 2009, the district adopted Resolution No. 2008/2009-20 reducing particular kinds of services and directing the superintendent or his designee to give appropriate notices to certificated employees whose positions will be affected by the action. The resolution, Exhibit 1, sought the reduction in services of the following:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
Director	2.0
Coordinator	2.0
Principal (Elementary)	3.0
Assistant Principal (Elementary)	3.0
Elementary Teacher (K-6)	160.0
Home Economics Teacher (Secondary)	1.0
Social Studies Teacher (Secondary)	5.0
Spanish Teacher (Secondary)	1.0

The proposed reductions totaled 177 FTE positions.

4. Between March 6 and March 14, 2009, the district gave written notice to approximately 171 certificated employees, including respondents, of the recommendation that their services will not be required for the 2009-10 school year. The reasons for the recommendation were set forth in these preliminary layoff notices.

5. Most respondents filed timely requests for hearing to determine if there is cause for terminating their services for the 2009-10 school year, although several did not. An accusation was served on each respondent. All prehearing jurisdictional requirements have been met. Several respondents failed to file a notice of defense within five days of being served with the accusation packet. The district argued that these respondents were not permitted to participate in this hearing. After listening to respondents' offers of proof regarding several respondents' actual receipt of the accusation packets, and receiving evidence from the district that many respondents filed their notices first thing the following morning or very soon thereafter, and receiving the parties arguments on the issue, it was found that in the interest of fairness and because there was no prejudice to the district, these respondents would be allowed to participate in the hearing. Government Code section 11506, subdivision (c), provides, in pertinent part: "The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense. . . . 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. . . .*" (Italics added).

6. Before issuing the preliminary layoff notices, the district took into account all positively assured attrition.

7. On the district's seniority list, several respondents shared the same seniority date. The district established tie-breaking criteria in which points are assigned for experience and credentials and used those criteria to determine who would receive preliminary layoff notices.

Job-Sharing Employees

8. One of the most contested issues was the layoff of several teachers with many years of experience who had job-shared. All of those respondents were identified on the seniority list as probationary employees. The district argued that since these job-share employees had divided their schedules with their partners by days (i.e., one job-share partner worked Monday, Tuesday, and half of Wednesday and the other job-share partner worked the other half of Wednesday and Thursday, Friday), they were not entitled to permanent status because they had not served "at least 75 percent of the number of days of the regular schools of the district" so as to be deemed to have served a complete school year under Education Code section 44908. The district conceded that had these teachers structured their schedules so that each partner worked every day, they would have obtained permanent status under the Education Code.

Many job-share teachers testified. Several others entered into a stipulation with the district. These job-share teachers would have re-structured their work schedules so as to work every day if they had known that not working every day would affect their tenure. In 2004 these teachers also received layoff notices and were made aware of their predicament. Yet, they did nothing about it other than talk to the district, their principals and their union representatives. Their union representative informed them that they were too few in number for the union to get involved in the issue. The district did nothing about their situation. Many were reassured when the 2004 layoff notices were rescinded before that hearing that they were "safe" from future layoff proceedings because of the number of years they had been employed by the district. Several of these teachers testified that on prior seniority lists and documents received from the district, their status was listed as permanent and thereafter was changed to probationary. The district offered no explanation for these changes.

The provisions for permanent status are contained in the Education Code and if they have been met the attainment of permanent status is automatic. No application need be made, nor is any affirmative action on the part of the school board necessary. Although the Education Code was written in terms of "days" and not "hours," nothing in the statutes indicates the legislature intended that permanent status should be denied where an equivalent percentage of hours has been served, even though the teacher has not conducted classes on every day of the week. (*Vittal v. Long Beach Unified School District* (1970) 8 Cal.App.3d 112, 119-120.) Those job-share respondents who served 75 percent of the number of hours of the school year for three consecutive years were entitled to permanent classification upon their contracting to teach a fourth year. It is hereby recommended that the district review the

personnel files of the job-share respondents, in light of this finding and determine if any of them has seniority that would permit them to retain their employment.

Coaching Staff

9. Four varsity coaches testified about the improvements made in their respective programs under their tutelage. As a result of their layoff notices, it will be difficult, if not impossible, for them to retain their coaching jobs given the change in their employment status.¹ While their testimony demonstrated they were dedicated coaches and had made great strides in their programs, the district's decision to reduce or discontinue a particular kind of service, including the impact a particular layoff may have on a sports programs, is a matter reserved to the district's discretion and is not subject to second-guessing. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

Anna Borba Elementary School

10. This school has one of the only baccalaureate programs in Southern California. 17 of the 27 teachers at this school are slated for layoffs. More senior teachers from other schools will "bump" junior teachers at Anna Borba. Respondents argued that the intensive and costly training² that Anna Borba teachers have undergone in order for the school to obtain its baccalaureate authorization should result in their being considered "highly qualified" so as to be exempt from layoffs. The district argued that it would be able to train the new teachers who "bump in" and that there is no "special qualifications" required of a teacher at Anna Borba beyond those credentials that would qualify any employee to teach at the school.

A preponderance of the evidence demonstrated that the school offers a truly unique program in Southern California and it may be true, as respondents argued, that as a cost-saving measure more funds will be expended in training 17 new teachers than is to be gained by this layoff. However, the district's decision to reduce or discontinue a particular kind of service is a matter reserved to the district's discretion and is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)³

¹ They will no longer be on-campus with students and will have to find other employment which may result in their being unable to coach.

² Training for each teacher can exceed tens of thousands of dollars for the courses, travel and lodging expenses. Many of the required courses take place out of state and out of the country.

³ Similarly, the district's decision to bump employees into positions at Don Lugo Elementary in light of the baccalaureate training those teachers had received, was also not subject to second-guessing.

Fun Club Employee

11. Respondents argued that Tracy Zoeltbmbk had improperly been granted tenure when she ceased teaching at the “Fun Club,” a before and after school program, and became a full time elementary school teacher. Much time was spent addressing this issue, including competing evidence being introduced regarding the language in the collective bargaining agreement. However, teacher lay-off hearings are not intended to address those types of issues and respondents produced no relevant evidence that Zoeltbmbk was improperly retained over a more junior employee.

Linda Tennies’ Layoff Notice

12. Respondent Linda Tennies alleged that she was entitled to bump into another position because of her credentials. However, the district pointed out that there is not “block teaching” at the junior high schools and Tennies does not possess the qualifications necessary to teach a single subject. Tennies testified that her supplemental English authorization, which would allow her to teach a single subject, is “pending.” She did not have her supplemental authorization as of March 15, 2009, the deadline for layoff notices to be served. The district properly considered all current credentials as of that date when determining which employees would receive notices. There was nothing arbitrary or capricious in the district establishing this cutoff date and no junior employee was retained by the district to perform services that Tennies was certificated and competent to render as of March 15, 2009.

Seniority Date for Respondent Darlene Boyle

13. Respondent Darlene Boyle had a hire date of August 27, 1996, and was a permanent employee at the time she took a one year leave of absence in 2000 to move to Michigan due to her husband’s employment. Boyle returned to the district within 39 months. Under Education Code section 44931, she was entitled to be restored to all the rights and benefits of a permanent employee, but for seniority purposes was not entitled to regain her original hiring date. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627.)

However, the district sent both Boyle and her principal documentation confirming that since Boyle had returned to the district within 39 months, she “retains her original date of hire which is August 27, 1996.” Thus, the district expressly waived its rights under *San Jose Teachers Association v. Allen, supra*, and Boyle’s seniority date should be returned to its original August 27, 1996, date as reflected in the district representations in these two documents. Respondent’s reliance on those representations and the importance of that date for her was evident by the steps she took when she returned to the district to determine what her seniority date now would be. It is hereby recommended that the district restore her seniority date to August 27, 1996, consistent with the district’s representations to her, and that the district review its determination about her layoff status based on her August 27, 1996, seniority date.

Newly Hired Respondents

14. Several respondents testified that they had tenure in prior districts and accepted employment at this district but were neither aware nor advised of the effect the move would have on their tenure. Respondent Rhonda Reid even made specific inquiries about her future employment with the district as she was concerned about job security. However, none of the respondents offered any evidence that the district had provided them with false or misleading information. Even Reid admitted that the HR person with whom she spoke answered Reid's question "to the best of her ability" and that "her intentions were true." Absent any evidence that the district intentionally misled these new hires into accepting employment with the district, their contention that they were entitled to a dif was non-persuasive. New employment typically carries with it the risk that one will be on the bottom of the seniority list and subject to the first round of layoffs.

Other Layoffs

15. The testimony of both the district and the remaining respondents not specifically referenced above demonstrated that no other certificated employee junior in seniority to any respondent is being retained by the district to perform services that any respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

2. A district may reduce services within the meaning of 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.)

3. 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.) Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.)

4. Cause exists because of the reduction of particular kinds of services pursuant to section 44955 to give notice to respondents that their services will not be required for the

2009-10 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of section 44949. The district identified the certificated employees providing the particular kinds of services that the Board of Trustees directed be reduced or discontinued. It is recommended that the Board of Trustees give respondents notice before May 15, 2009, that their services will not be required by the District for the school year 2009-2010.

5. Respondents' argument that the district's notices to the adult education teachers were improper was without merit. Respondents' reliance on *Karbach v. Board of Education of Lawndale School District* (1974) 35 Cal.App.3d 355 is misplaced. That case held that the Board could not amend its accusation during the hearing to include layoff reasons not listed in the layoff notices. Such did not occur in this proceeding. The district's use of the word "teacher" and not "teaching" in its resolution did not void the resolution or invalidate these proceedings and respondents cited to no relevant case law to support that argument. Here, the district properly cited to Sections 44949 and 44955 in the layoff notices and followed those sections' procedures in this hearing. Likewise, respondent's equal protection arguments were also without merit. Education is not a fundamental right and "strict scrutiny" is not warranted. (*Phylar v. Doe* (1982) 457 U.S 202, 223; *Darces v. Woods* (1984) 35 Cal.3d 871, 891.)

A preponderance of the evidence sustained the charges set forth in the accusation subject to the recommendations listed in the factual findings. This determination is based on all factual findings and on all legal conclusions.

RECOMMENDATION

It is recommended that the governing board give notice to the respondents whose names are set forth below, except for those respondents identified above in the Findings of Fact Nos. 8 and 13, 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: _____

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

Appendix A

RESPONDENTS

Abel, Lorraine R.
Adams, Tracy
Ahrens, Michelle T.
Albers, Victoria
Alexander, Don R.
Alvarez, Sherry
Arakawa, Tanya E.
Arroyo, Sabrina J.
Arvizu, Grace M.
Atwell, Melissa A.
Avila, Maria de Lourdes
Baeza Jr., Art
Balich, Alecia A.
Ball, Steven
Banowetz, Ivy G.
Bartel, Mari
Bartolo, Monica M.
Bearden, Leonor I.
Beckman, Joanne H.
Bolton, David
Boonstra, Jodi E.
Botta, Valerie
Boyle, Darlene S.
Brown, Lisa
Brown, Shannon M.
Bub, Rebecca L.
Buck, Sarah
Butorac, Christine
Calabrese, Amber L.
Caloca, Roberta
Campos, Rebecca D.
Carlson, Jody C.
Chamberlain, Colleen D.
Churchill, Stacy L.
Conacher, Ian S.
Contreras, Carrie
Cormack, Leyla V.
Couchois, Sharon P.
Couron, Marisa J.
Cox, April L.
Crawford, Julie H.
Dain, Daniel L.
Dan, Richard M.
Daniels, Allison
Daniels, Shana L.

Dasher, Erin M.
Davis, Mary L.
Davis, Michelle L.
Davis, Nuria E.
Dennard, Eric J.
Donohue, Renee L.
Donovan, Cynthia D.
Elder, Cynthia L.
Feller, Emily
Flores-Cornejo, Sindy
Flum, Kristal L.
Ford, Walter
Friesen, Sandra R.
Gallegos, Elizabeth M.
Gonzales, Amanda L.
Goodwin, Janet L.
Green, Nathan E.
Grosso, Dana
Gutierrez, Tiffany
Hall, Sherry L.
Hamblin, Sheri A.
Han, Allison J.
Hansen, Sarah E.
Hellings, Heather S.
Herrera, Marci
Hidalgo-Moran, Cynthia
Higa, Christine M.
Hirst, Kristi M.
Howarth, Stacy
Ingram, Dyan N.
Ishii, Vivian T.
Johnson, Michael
Johnson, Shawna K.
Johnson, Traci M.
Jones, Janet I.
Jordan, Jolanda I.
Kammer, Sandra L.
King, Joanne
Kishiyama, Patricia A.
Koenig, Christy N.
Lagunas, Silvia
Lang, Karen A.
Larzo, Melinda S.
Lawrence, Lynn M.
Leong, Eileen R.
Lohoff, Tammy S.
Lomeli, Louise M.
Lopez, Leticia
Loveland, Kimberly A.
Luparello, Michelle M.

Macias, Tanya M.
Marceau, Paul
Marquez, Barbara J.
Martins, Christina A.
McKellip, Robert L.
Mello, Victoria L.
Miller, Angelin K.
Milligan, Janine F.
Mills-Forkner, Felicia
Milversted, Angela
Miner, Karen E.
Mora, Vivian W.
Mounce, Erin E.
Mounsey, Jeanette M.
Nelson, Robert W.
Orr, Jennifer R.
Pacheco, Erin
Patalano, Catherine A.
Pearl, Vicki A.
Pennino, Kellie M.
Perez, Alma
Pierce, Kassandra
Plante, Rebekah L.
Pope II, Charles
Prairie, Nora A.
Prindiville, Denise D.
Ragsdale, Tara
Randolph, Jennifer N.
Reading, Jennifer C.
Reid, Rhonda
Reyes, Kelly D.
Rhode, Denise I.
Rivera, Sherri A.
Rodriguez, Kimberly J.
Rupe, Kerry
Saeli, Liane G.
Saucedo, Andrea M.
Sellitto, Stephanie L.
Setterlund, John M.
Shipes, John L.
Shumaker, Sommer
Shumaker, Tyler D.
Simmons, Marie E.
Singleton, Annette M.
Sjol, Adam
Smart, Gregory
Smith, Donna L.
Smith, Samantha D.
Somerville, Carol D.
Staunton, Marcia J.

Talley, Roger
Tay, Gail C.
Tee, Carrie J.
Tennies, Linda
Thie Jr., John F.
Thigpen Jr., William
Thom, Roberta J.
Thomas, Jeannine J.
Thune, Andrea J.
Torres, Dawn M.
Tran, Paige Hong K.
Valenta, Cynthia
Valenzuela, Amy A.
Valleroy, Claudia
Vander Leest, Laura A.
Vazquez, Isela M.
Vazquez, Melissa
Watson, Gail
Welchez, Rachel C.
Whitmore, Robert
Wicker, Tina M.
Woods, Carrie
Ylagan, Rohanna H.
Young, Cynthia
Zitney, Elizabeth
Zuk, Kevin J.