

BEFORE THE
BOARD OF TRUSTEES OF THE
ANAHEIM UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations Re:

OAH No. 2009031200

The Reduction in Force of 49 Full-Time
Equivalent Positions,
Respondents.

PROPOSED DECISION

This matter was heard by Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 20, 2009, in Anaheim, California.

Stutz Artiano Shinoff & Holtz, by Jack M. Sleeth, Jr. and Jeanne Blumenfield, Attorneys at Law, represented the Anaheim Union High School District (District).

Reich, Adell & Cvitan, by Carlos Perez, Attorney at Law, represented the Respondent teachers listed as numbers 1 through 46 on Attachment "A" attached hereto. The 46 Respondent teachers were present at the hearing except for William Hoffman, Laura Karels, and Clinton Perales.

No appearance was made by or on behalf of Respondents Phillip Hohensee, Lena Shupper, and Zachary Tilson, who are listed as numbers 47 through 49 on Attachment "A."

Oral and documentary evidence was received, and argument was heard. The record was closed and the matter was submitted on April 20, 2009. Thereafter, by agreement of the parties, on April 22, 2009, the parties submitted a Joint Stipulation to the Administrative Law Judge which amended the District's seniority list (Exhibit 7) as to Respondents Corey Hauge, Kenneth Hokuf, and Alejandro Ramirez. The record was reopened and the Joint Stipulation dated April 22, 2009, was marked and admitted in evidence as Exhibit B. Thereafter, the record was closed and the matter was resubmitted on April 22, 2009.

SUMMARY OF PROPOSED DECISION

The Board of Trustees (Governing Board) of the District determined to reduce particular kinds of services provided by teachers and other certificated employees for budgetary reasons. The decision was not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

District staff carried out the Governing Board’s decision by using a selection process involving review of seniority. The selection process was in accordance with the requirements of the Education Code.

FACTUAL FINDINGS

1. Joseph M. Farley, Ed.D., is the Superintendent of the District and his actions were taken in that official capacity.
2. Russell Lee-Sung is the Assistant Superintendent for Human Resources of the District and his actions were taken in that official capacity.
3. Respondents are certificated employees of the District.
4. Board Resolution No. 2008/09-HR-1, adopted on March 5, 2009, proposed a layoff of 77 full-time equivalent (FTE) certificated employees due to the reduction or elimination of the following particular kinds of services:

<u>Service</u>	<u>FTE</u>
Director of Human Resources	1
Assistant Superintendent	1
Counselors	2
Class Size Reduction (CSR)	45
Credit Recovery	6
Special Education	15
French Program @ one site	1
BTSA Program Specialist	1
P.E.	4
Work Experience	1
 Total FTE Reduction	 77

5. The Governing Board directed the Superintendent or his designated representative to send appropriate notices to all employees whose positions would be affected by virtue of the Board's action.
6. Tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date are established by the following: Article 9.12 of the teachers’ Collective Bargaining Agreement (Exhibit 2); Board Policy 6316.01 (Exhibit 3); and the Memorandum of Understanding (MOU) between the Governing Board and the teachers’ association (Exhibits 4 and 9). In total, these documents provide that the order of termination shall be based on the needs of the District and its students in accordance with the criteria stated therein.

7. Assistant Superintendent Lee-Sung is the primary person responsible for implementing the layoff pursuant to Board Resolution No. 2008/09-HR-1.

8. Before March 15, 2009, the District served 71 certificated employees a written notice that it had been recommended that notice be given to them, pursuant to Education Code sections 44949 and 44955,¹ that their services would not be required for the next school year.

9. Respondents are the 49 certificated employees who timely requested a hearing, in writing, to determine if there is cause for not reemploying them for the ensuing school year.

10. Assistant Superintendent Lee-Sung made and filed Accusations against Respondents. The Accusation with required accompanying documents were timely served on Respondents.

11. The District received notices of defense from all but two of the Respondents. Respondents Ruth Espino and Clinton Perales did not file a notice of defense; however these two respondents were represented at the hearing by Reich, Adell & Cvitan without objection from the District.

12. All prehearing jurisdictional requirements have been met.

13. The services set forth in Factual Finding 4 are particular kinds of services (PKS) which may be reduced or discontinued within the meaning of section 44955.

14. The Governing Board took action to reduce or discontinue the services set forth in Factual Finding 4 due to the District's fiscal crisis and need to reduce services to balance its budget for the welfare of students. The State's budget crisis and unprecedented budget cuts have impacted the District's ability to meet its financial obligations for the next school year. The District started the current school year with a \$17 million reduction in budget, and then had to make additional mid-year budget cuts totaling \$7.9 million.

15. The reduction of services set forth in Factual Finding 4 is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board. The Board's decision to reduce the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

16. The District properly created its seniority list by determining the first day of paid service of each certificated employee and properly utilized reasonable "tie-breaker" criteria when necessary. There were a few situations where ties could not be broken under the tie-breaker criteria. The District has not yet taken action to break the ties. If necessary, the District will use a coin toss to break the ties, with representatives of the teachers' union present.

¹ All further references are to the Education Code, unless otherwise indicated.

17. The District properly considered all known attrition, resignations, and retirements in determining the actual number of necessary layoff notices to be delivered. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 636.)

18. The decision to reduce services was not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

19. The parties, pursuant to the Joint Stipulation, agreed to amend the District's seniority list (Exhibit 7) as follows:

A. The first date of paid service of Respondent Corey Hauge (#1115) is changed from September 5, 2005, to February 7, 2005.

B. The first date of paid service of Respondent Kenneth Hokuf (#1204) is changed from September 5, 2006, to October 11, 2007.²

C. The first date of paid service of Respondent Alejandro Ramirez (#1366) is changed from October 31, 2007, to October 1, 2007.

No argument was made that these changes in seniority dates would change the layoff status of these three Respondents.

20. Dale Miller (#1368) disputes his seniority date of November 13, 2007. As he argued in last year's layoff proceeding³, Respondent Miller contends his seniority date should be September 4, 2007. On that date, he was hired by the District as a long-term substitute to teach health science. He became a probationary employee ("Prob-0") on November 13, 2007. The delay between September 4 and November 13 had to do with resolving an issue regarding his credential. Respondent Miller does not dispute the finding from last year's layoff hearing that he did not work more than 75 percent of the school year in the substitute position. Under section 44918, a substitute teacher who serves less than 75 percent of the school year is not entitled to the same rights as a full time teacher hired as a probationary employee. Thus, Respondent Miller has not established sufficient service under his contract as a substitute teacher to qualify for an earlier seniority date.

21. Thomas Edward Link (#1360) was assigned a seniority date of September 6, 2007. He contends that his seniority date should be September 4, 2007. Although school started on his campus on September 6, 2007, Respondent Link was on campus attending training and completing paperwork on September 4 and 5. Respondent Link does not recall

² The Tie-Breaker Worksheet (Exhibit 10) shows the corrected seniority dates for Respondents Hauge and Ramirez, consistent with the Joint Stipulation. However, the Worksheet shows Respondent Hokuf's seniority date as October 11, 2006, instead of October 11, 2007, as stated in the Joint Stipulation.

³ See OAH Case Number L2008030466.

whether he was paid by the District for attending training on September 4 or 5. Under section 44845, a probationary or permanent employee is deemed to have been employed "on the date upon which he first rendered paid service in a probationary position." Respondent Link is not entitled to change his seniority date because he failed to establish he was "paid" to attend the District's in-service training on September 4, 2007.

22. Kerri Fenton (#1105) was assigned a seniority date of September 6, 2005, which she does not dispute. Respondent Fenton is a physical education teacher at Cypress High School. Respondent Fenton teaches with a physical education credential, but has built a specialized program in dance at her school. She believes the elimination of her position will result in the elimination of the dance program. Respondent Fenton knows of only two other dance teachers in the District. Respondent Fenton acknowledged that no other teacher is being retained who has less seniority than her.

23. (A) David Dell Perkins (#1286) is currently the head football coach at Magnolia High School. He also has a full-time teaching assignment as a physical education (P.E.) instructor. He teaches P.E. for four periods a day and sixth period is for football. Respondent Perkins contends that, under section 44955, subdivision (d)(1), he should be allowed to retain his position because he can show there is a "specific need" for his services as head football coach. Respondent Perkins, who has 34 years experience as a football coach, was hired to resurrect Magnolia's football program, which he has done. Respondent Perkins has no coaching staff, and there are no other employees at his school who can serve in his position. Respondent Perkins' reliance on section 44955, subdivision (d)(1), is misplaced, as that provision applies to school districts and allows school district's to deviate from terminating employees in order of seniority. The statute does not apply to an employee seeking to avoid layoff.

(B) Respondent Perkins also contends that, if his current position as football coach is eliminated, he is competent and certificated to move into a position at his school to supervise students sent to "on-campus suspension." He testified that this position at his school is currently filled by a long-term substitute. Respondent Perkins has been at four different high schools where he was in charge of on-campus suspensions, and has eight years of experience in that area. Respondent Perkins was informed that the on-campus suspension position only requires a teaching credential, which he has. Respondent Perkins has a seniority date of March 1, 2007. No evidence was presented that his level of seniority would entitle him to move into the on-campus suspension position.

24. Denise Dare (#1188) was assigned a seniority date of September 5, 2006. She does not dispute that date. Respondent Dare contends she was identified for layoff because of incorrect information regarding her credential. Respondent Dare reviewed the first seniority list that came out on February 17, 2009, and discovered that she was incorrectly designated as having a "preliminary" single-subject credential. On February 23, 2009, which was the deadline for submitting updated information to the District, Respondent Dare provided the District with updated information showing her "clear" single-subject credential. Respondent Dare's principal told her that she had received a layoff notice because she did not have a

"clear" credential. Respondent Dare received confirmation from Assistant Superintendent Lee-Sung that she had a clear credential as of March 12, 2007. Respondent Dare is tied with several other employees having a seniority date of September 5, 2006. After tie-breaking criteria is applied, Respondent Dare is still subject to layoff, but ranked second in terms of her re-employment rank and tie-breaking rank. Her status in this layoff proceeding is not based solely on her credential information.

25. The parties stipulated that Respondent Roberta Dieter (#1391) is a permanent employee for the 2008-2009 school year. There is no dispute as to her seniority date of October 15, 2008. The change in her classification from probationary to permanent does not affect her status as a certificated employee slated for layoff.

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

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of Factual Findings 1-12.

2. The District must be solvent to provide educational services, and cost savings are necessary to resolve its financial crisis. The Governing Board's decision was a proper exercise of its discretion. The anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under section 44955. As stated in *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under that section, and, "in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction."

3. The services listed in Factual Finding 4 are determined to be particular kinds of services within the meaning of section 44955, by reason of Factual Findings 4 and 13.

4. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue the particular kinds of services set forth in Factual Finding 4, which cause relates solely to the welfare of the District's schools and pupils, by reason of Factual Findings 1-26.

5. Cause exists to reduce the number of certificated employees of the District due to the reduction of particular kinds of services. The District's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and relates solely to the welfare of the District's schools and pupils within the meaning of section 44949. (See Factual Findings 1 through 26.) The District may give final notices to Respondents as set forth in the Order below.

ORDER

The District may give notices to the 49 employees listed on Attachment "A" attached hereto that their services will not be required for the 2009-2010 school year because of the reduction of particular kinds of services.

DATED: May ____, 2009

ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings

ATTACHMENT "A"

LIST OF RESPONDENTS

OAH Case No. 2009031200

Hearing Date: April 20, 2009

Respondents Represented by Reich, Adell & Cvitan

- | | |
|-------------------------|--------------------------------|
| 1. Artis, Kimberly | 24. Karels, Laura M. |
| 2. Chavez, Blanca | 25. Kennedy, Jennifer |
| 3. Chung, Helen | 26. Link, Thomas |
| 4. Cortes, Brian | 27. Long Garrett |
| 5. Curchley, Lara | 28. MacCaskey, Jessica |
| 6. Dare, Denise | 29. Miller, Dale |
| 7. Decker, Lisa | 30. Monera, April Z. |
| 8. Dieter, Roberta L. | 31. Muniz, Jennifer |
| 9. Dunn, Molly | 32. Ornelas, Tammy |
| 10. Espino, Ruth | 33. Parent, Wendy L. |
| 11. Fagan, Brenda K. | 34. Parks, Larry |
| 12. Fenton, Kerri | 35. Perales, Clint |
| 13. Fickbohm, Robert | 36. Perkins, David |
| 14. George, Deborah M. | 37. Quintero-Vasquez, Angelica |
| 15. Gonzalez, Laura | 38. Ramirez, Alejandro |
| 16. Gragnano, Ethan | 39. Rubio, Gabriela |
| 17. Hauge, Corey | 40. Suratt, Rod |
| 18. Hernandez, Monique | 41. Sutter, Ashley |
| 19. Hoffman, Amber | 42. Stegall-Chant, Pamela |
| 20. Hoffman, William B. | 43. Valenzuela, Sarah |
| 21. Hokuf, Kenneth | 44. Woods, Sarah K. |
| 22. Ishino, Chason | 45. Williams, Cynthia |
| 23. Jimenez, Jessica | 46. Sanchez, Carissa |

Respondents Not Represented by Reich, Adell & Cvitan

- 47. Hohensee, Phillip
- 48. Shupper, Lena
- 49. Tilson, Zachary