

BEFORE THE
GOVERNING BOARD OF THE
PANAMA-BUENA VISTA UNION SCHOOL DISTRICT
COUNTY OF KERN, STATE OF CALIFORNIA

In The Matter Of The Lay Offs Of:

OAH No. 2009031368

BRITTNEY ALLDREDGE, et al.,

Respondents.

PROPOSED DECISION

This matter was heard by Mark E. Harman, Administrative Law Judge of the Office of Administrative Hearings, State of California, on April 27, 2009, in Bakersfield, California.

Christopher W. Hine, Attorney at Law, represented the Panama-Buena Vista Union School District (District). Paul A. Welchans, Attorney at Law, represented Brittney Alldredge, Jennifer Bezdek, David Bonilla, Melissa Delehoy, Devon Dooley, Sabrina Ferree, David Guillen, Jr., Aramee Hagemeyer, Karen Harris, Marcos Heredia, Staci King, Ashley Lewis, Heather Lewis, Maria Lule-Licea, Heather Madding, Melissa Martin, Javier Mena, Daisy Menjivar, Kathleen Meyer, April Raguindin, Erin Ramey, Amanda Scheidemantel, Denise Sims, Meredith Starr, Stephanie Steelman, Shelly Tiffin, Jennifer Unruh, and Mary Webb (collectively, Respondents).¹

The District decided to reduce or discontinue certain educational services and gave Respondents and other certificated District employees 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.

Oral and documentary evidence was received. The matter was submitted for decision on April 27, 2009.

FACTUAL FINDINGS

1. The District operates five junior high schools and 17 elementary schools with 850 teachers for 16,000 students. Kip Hearron is the Superintendent of the District, and filed the Accusation in his official capacity. Dr. John Birkhauser is the director of personnel. He and his staff were responsible for implementation of the technical aspects of the layoff.

2. Respondents are certificated employees of the District.

¹ Eight Respondents appeared personally at the hearing.

3. The Governing Board of the District (Governing Board) adopted Resolution No. 09-16 on March 10, 2009, reducing or eliminating the following services for the 2009-2010 school year:

| PARTICULAR KINDS OF SERVICES | NO. OF FULL TIME EQUIVALENT (FTE) POSITIONS |
|--|---|
| Self-Contained Classroom Instruction, Grades K-6 | 77 |
| Music Teacher | 5 |
| ELD Teacher | 7.4 |
| Categorical Program Specialist | 2 |
| Student Teacher Liaison | 1 |
| Elementary Assistant Principal | 1 |
| <u>Total Net FTE Reduction</u> | 93.4 |

4. On or before March 10, 2009, the Superintendent notified the Governing Board that he recommended that notice be provided to certificated employees of the District, including Respondents, that their services would not be required for the next school year because of the elimination or reduction of particular kinds of services.

5. On March 11, 2009, the District served a written “reduction in force” notice (RIF notice) on 82 certificated employees, including Respondents, that the Superintendent recommended that their services would not be required for the 2009-2010 school year due to the elimination or reduction of particular kinds of services.

6. Forty-eight Respondents requested a hearing to determine if there was cause for not reemploying them for the 2009-2010 school year. Approximately eight of these then withdrew their requests.

7. On April 7, 2009, the District issued the Accusation and served it on 40 Respondents. Approximately seven more Respondents withdrew their requests for a hearing. The other Respondents filed their notices of defense in a timely manner.

8. All prehearing jurisdictional requirements have been met.

9. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code (the Code) section 44955.²

10. The Governing Board took action to reduce the services set forth in factual finding number 3 primarily because of the uncertainty surrounding State funding. The decision to reduce or discontinue the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

11. The reduction or discontinuance of services set forth in factual finding number 3 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.

12. On March 10, 2009, the Governing Board adopted Resolution 09-17 which includes criteria for determining order of seniority of those employees with the same date of first paid service (tie-breaking criteria). These tie-breaking criteria included: credentialing; experience; extracurricular activities; training; special education needs; competence; and evaluations. The Governing Board's resolution adopting these tie-breaking criteria does not specify any order of importance to be given to the criteria. The District did not apply these criteria in order to terminate the services of any Respondent.

13. The District maintains a seniority list which contains employees' seniority dates (first date of paid service), current assignments, and credentials. The District used the seniority list to develop a proposed lay-off list of the least senior employees currently assigned to the various services being reduced. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The District then determined whether these employees held credentials in another area and were entitled to "bump" other employees.

14. The District specifically determined to retain some probationary employees who are eligible to teach special education, who hold single subject credentials, or who hold multiple subject credentials but are eligible to teach single subjects with Governing Board authorization as provided under Code section 44256.³ The District identified four of the

² All further statutory references are to the Education Code.

³ Under Code section 44256, subdivision (b), the Governing Board by resolution may authorize the holder of a multiple subject teaching credential "to teach any subject in departmentalized classes to a given class or group of students below grade 9, provided that the teacher has completed at least 12 semester units, or six upper division or graduate units, of coursework at an accredited institution in each subject to be taught."

latter type of employees, Golding, Berg, Lynott, and Buchholtz, who are all probationary teachers and are being retained because they are currently teaching core subjects with the Governing Board's authorization. Known as skipping, this is allowed as long as the District can justify that it has a "specific need for personnel to teach a specific course or course of study." (§ 44955, subd. (d)(1).) The District intends to lay off all of its probationary teachers with multiple subject credentials who teach in self-contained classrooms, with the exception of those individuals who also are eligible to teach in positions which the District historically has had difficulty filling with qualified individuals. Dr. Birkhauser opined that typically there is a shortage of qualified applicants seeking to fill positions in the areas of special education, single subjects like math, science, and English, speech pathologists, and nurses. Because they are so difficult to come by, the District must use various ways to secure these credentials.

Respondents' Contentions and other Relevant Evidence

15. Respondent Erin Ramey (Ramey) holds a clear multiple subject credential and is teaching fourth grade. The District's seniority list has assigned Ramey a seniority date of August 8, 2007, and designated her as a probationary employee. Ramey originally taught for the District between 1982 and 1987, before she had her first child. Thereafter, her first probationary contract with the District was for the 2007-2008 school year; however, she had been providing services as a substitute between 2002 and 2007. At the beginning of the 2006-2007 school year, Ramey was asked to teach Ms. Toelke's third grade class while Toelke was out on maternity leave. Toelke returned to her classroom around the Christmas break, and Ramey was then asked to be a substitute teacher for Andrea Froelich until the end of the school year. Ramey taught 171 days during the 2006-2007 school year. The District did not provide Ramey a written notice regarding her employment status at the time of these assignments. Moreover, Code section 44917, in pertinent part, states that "[a]ny person employed for one complete school year as a temporary employee shall, if reemployed for the following school year in a position requiring certification qualifications, be classified by the governing board as a probationary employee and the previous year's employment as a temporary employee shall be deemed one year's employment as a probationary employee for purposes of acquiring permanent status." The District conceded at the hearing that Ramey should be deemed a permanent employee. Ramey, therefore, is entitled to bump Maggie Harl (Harl), a probationary employee who holds a preliminary multiple subject credential and whom the District has retained to provide third grade teaching services.

16. Shelly Tiffin (Tiffin) holds a multiple subject credential and teaches first grade. She has a Master's degree and a CLAD certificate. The District assigned her a seniority date of August 8, 2007. Before beginning her classroom assignment that year, a District employee asked Tiffin to attend an SB 472 professional development course that was being newly-offered for second grade teachers, because Tiffin was anticipating teaching a first/second grade combination class. The District paid Tiffin \$500 for taking the course (the classes were held from June 18 through 22, 2007) and an additional \$500 for completion of "professional growth hours." The District "highly recommended" that Tiffin take the course, but it was not required. This course facilitated Tiffin's preparation for teaching her class.

17. Jennifer Unruh (Unruh) holds a multiple subject credential and teaches sixth grade. Before Unruh began teaching in the 2007-2008 academic year, the District's previous director of personnel, Paul White, asked if she was interested in taking an SB 472 course that consisted of multiple workshops. The District paid her \$500 for taking the course, and \$500 for the professional development component. She recalled being the only third grade teacher in the course who was assigned to teach at Seibert Elementary. Aramee Hagemeyer, a third grade teacher who has the same assigned seniority date as Unruh (August 8, 2007), also was paid by the District for taking a professional development course in the summer of 2007.

18. Jennifer Bezdek (Bezdek) began teaching fourth grade in the 2008-2009 school year. She has a multiple subject credential, and a District-assigned seniority date of August 6, 2008. The District paid her \$500 to take a professional development course in summer 2008, which Dr. Birkhauser had recommended. Bezdek said that \$500, or \$100 per day, was less than she received under her probationary contract with the District. Karen Harris (Harris), and Daisy Menjivar (Menjivar) are both probationary employees and have the same seniority date as Bezdek. They also took SB 472 professional development courses in the summer of 2008.

19. The District argues that the training these employees received and were paid to attend should not affect their seniority dates, since taking these workshops was optional, and the rate of pay the teachers received was in the nature of a stipend, less than the normal salary paid to these employees for their services as probationary teachers. The District maintains that these employees' contracts specify their first dates of paid service, and that every other probationary teacher who begins his or her employment at the beginning of an academic year is assigned the same seniority date.

20. The District did not retain any certificated employee junior to Respondents Brittney Alldredge, Jennifer Bezdek, David Bonilla, Melissa Delehoy, Devon Dooley, Sabrina Ferree, David Guillen, Jr., Aramee Hagemeyer, Karen Harris, Marcos Heredia, Staci King, Ashley Lewis, Heather Lewis, Maria Lule-Licea, Heather Madding, Melissa Martin, Javier Mena, Daisy Menjivar, Kathleen Meyer, April Raguindin, Amanda Scheidemantel, Denise Sims, Meredith Starr, Stephanie Steelman, Shelly Tiffin, Jennifer Unruh, and Mary Webb to render a service which these Respondents are certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 8.

2. The services listed in factual finding number 3 are particular kinds of services that could be reduced or discontinued under section 44955.

3. Cause exists for the District to reduce or discontinue the particular kinds of services listed in factual finding number 3, which cause relates solely to the welfare of the

District's schools and pupils within the meaning of section 44949, as set forth in factual finding numbers 1 through 11.

4. The District has adequately supported its justification for skipping certain probationary employees and dismissing others, to meet the needs of its education program.

5. Respondents Tiffin, Unruh, Hagemeyer, Bezdek, Harris, and Menjivar have not established that the District-assigned seniority dates for them are incorrect. The training the District offered to them was not mandatory. Although each teacher received a stipend from the District to attend these workshops and enhance their knowledge and skills, as well as to prepare for teaching in their classroom assignments, this was completely voluntary for them. In sum, the training sessions do not constitute paid service in a probationary position.

6. Cause does not exist to terminate the services of Respondent Erin Ramey, by reason of factual finding number 15. Ramey has established that, based on her classification as a permanent employee, she may bump Harl, a probationary employee.

7. Cause exists to terminate the services of Respondents, Brittney Alldredge, Jennifer Bezdek, David Bonilla, Melissa Delehoy, Devon Dooley, Sabrina Ferree, David Guillen, Jr., Aramee Hagemeyer, Karen Harris, Marcos Heredia, Staci King, Ashley Lewis, Heather Lewis, Maria Lule-Licea, Heather Madding, Melissa Martin, Javier Mena, Daisy Menjivar, Kathleen Meyer, April Raguindin, Amanda Scheidemantel, Denise Sims, Meredith Starr, Stephanie Steelman, Shelly Tiffin, Jennifer Unruh, and Mary Webb for the 2009-2010 school year due to the reduction of particular kinds of services, by reason of factual finding numbers 1 through 20, and legal conclusion numbers 1 through 6.

ORDER

The Accusation is sustained and the District may notify Respondents, Brittney Alldredge, Jennifer Bezdek, David Bonilla, Melissa Delehoy, Devon Dooley, Sabrina Ferree, David Guillen, Jr., Aramee Hagemeyer, Karen Harris, Marcos Heredia, Staci King, Ashley Lewis, Heather Lewis, Maria Lule-Licea, Heather Madding, Melissa Martin, Javier Mena, Daisy Menjivar, Kathleen Meyer, April Raguindin, Amanda Scheidemantel, Denise Sims, Meredith Starr, Stephanie Steelman, Shelly Tiffin, Jennifer Unruh, and Mary Webb, that their services will not be needed during the 2009-2010 school year due to the reduction of particular kinds of services.

Dated: May 7, 2009

MARK E. HARMAN
Administrative Law Judge
Office of Administrative Hearings