

**BEFORE THE
GOVERNING BOARD
OF THE ARVIN UNION SCHOOL DISTRICT**

In the Matter of the Layoff of
CERTIFICATED EMPLOYEES OF THE
ARVIN SCHOOL DISTRICT,

Rosemary Borquez, Maria Duran, Michelle
Padilla, Shawna Rohatsch, and Vanessa
Valtierra,

Respondents.

OAH NO. 2009060666

(Please note: the correct case number in
this case is 2009060665, however, the
proposed decision was published with the
incorrect case number above)

PROPOSED DECISION

Humberto Flores, Administrative Law Judge, Office of Administrative Hearings,
State of California, heard this matter on July 16, 2009, in Bakersfield, California.

Peter Carton, Attorney at Law, represented the Arvin Unified School District.

Ernest Tuttle III, Attorney at Law, represented the respondents.

Evidence was received, and the matter was submitted for decision.

SUMMARY

The Governing Board (Board) of the Arvin Union School District (District) decided to reduce particular kinds of services provided by certificated personnel for the 2009-2010 school year for budgetary reasons. District staff carried out the Board's decision by using a selection process involving review of credentials, seniority, and skipping.

FACTUAL FINDINGS

1. Jerelle Kavanagh, Superintendent of the District, filed the Accusation in her official capacity.
2. Respondents are certificated employees of the District.

3. On June 4, 2009, the Board adopted Resolution No. 20:2008/2009, to discontinue or reduce the particular kinds of services as follows:

Elementary Counselor	1.0 FTE
Middle School Counselor	1.0 FTE
<u>Self-Contained Multiple Subject Classroom</u>	<u>4.0 FTE</u>
Total	6.0 FTE

4. The Board based Resolution 20:2008/2009 on its determination that the District's total revenue limit per unit of average daily attendance for fiscal year 2009/2010 has not increased by at least two percent. Based on this determination, the Board authorized a decrease in the number of certificated employees at the close of the present school year by a corresponding number of full-time equivalent positions as set forth in Factual Finding 3.

5. The Board also established tie-breaking criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. It provided that the order of termination would be based on the needs of the District and its students in accordance with the specific criteria set forth in the resolution. The tie-break resolution stated that the criteria were "not necessarily listed in the order of importance."

6. The Board directed the Superintendent to notify the employees affected by the Board's resolution. On or about June 5, 2009, the Superintendent notified certificated employees, including Respondents, in writing that it had been recommended their services would not be required for the next school year. The mailing included the reasons for the notification. Respondents made timely requests for hearing.

7. On June 5, 2009, Superintendent Kavanagh made and filed Accusations against each Respondent.

8. Notices of Defense were timely filed by Respondents. All prehearing jurisdictional requirements were met.

9. The reduction of the particular kinds of services set forth in Factual Finding 3, related to the welfare of the District and its pupils.

10. The District established through the testimony of its Business Office Administrator that its total revenue limit per unit of average daily attendance for fiscal year 2009/2010 has not increased by at least two percent. This was based on the Budget Act passed in February 2009.

11. The District maintains a Seniority List which contains employees' seniority dates (the first date of paid service in a probationary position), current assignments and locations, advanced degrees, credentials, and authorizations. The District used the Seniority List to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. In determining who would be laid off for the 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.

12. The seniority list (exhibit 7) specifies that Respondents Borquez, Valtierra and Duran share the same seniority date of August 4, 2008. These Respondents actually taught for the entire previous (2007/2008) school year in positions requiring certification. The Superintendent testified that they were not given seniority credit for the 2007/2008 school year because they had been hired under a temporary one-year contract, and were given a notice of non-reelection on June 30, 2008. They were rehired as probationary employees on August 4, 2008, the first day of the 2008/2009 school year. Superintendent Kavanagh testified that the District would apply the tie-breaking criteria to determine the relative seniority of Respondents Borquez, Duran and Valtierra.

13. There is no certificated employee that is junior to Respondents Padilla and Rohatsch that is being retained to perform services that Respondents Padilla and Rohatsch are certificated and competent to render.

LEGAL CONCLUSIONS

1. All notices and other requirements of Education Code sections 44949, 44955 and 44955.5 were met. Therefore, jurisdiction was established for this proceeding as to all Respondents.

2. Education Code section 44955.5 provides:

(a) During the time period between five days after the enactment of the Budget Act and August 15 of the fiscal year to which that Budget Act applies, if the governing board of a school district determines that its total revenue limit per unit of average daily attendance for the fiscal year of that Budget Act has not increased by at least 2 percent, and if in the opinion of the governing board it is therefore necessary to decrease the number of permanent employees in the district, the governing board may terminate the services of any permanent or probationary certificated employees of the district, including employees holding a position that requires an administrative or supervisory credential. The termination shall be pursuant to [Sections 44951](#) and [44955](#) but, notwithstanding anything to the contrary in [Sections 44951](#) and [44955](#), in accordance with a schedule of notice and hearing adopted by the governing board.

(b) This section is inoperative from July 1, 2002, to July 1, 2003, inclusive.

3. In this case, the Governing Board of the District determined that based on the Budget Act passed on February 20, 2009, the District determined that its total revenue limit per unit of average daily attendance has not increased by at least two percent, and, in the opinion of the Governing Board of the District, it is necessary to decrease the number of permanent employees in the District.

4. A District may reduce services within the meaning of section 44955, subdivision (b), 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.)

5. Respondent contended that the District cannot proceed with the layoffs because there was no budget in place at the time it gave notice to respondent of the layoff. Respondents’ contention is not persuasive. The District is properly made its determination based on the Budget Act passed on February 20, 2009, in that this Budget Act affects the 2009/2010 school year.

6. Cause was established as required by Education Code sections 44949, 44955 and 44955.5 to reduce the number of certificated employees due to the reduction of particular kinds of services. The Board’s decision to reduce the identified services of Respondents Michele Padilla and Shawna Rohatsch was neither arbitrary nor capricious. The decision relates solely to the welfare of the District’s schools and the pupils within the meaning of Education Code section 44949.

7. The District erred in determining the seniority dates of Respondents Rosemarie Borquez, Maria Duran and Vanessa Valtierra, as set forth in Factual Finding 12. Education Code section 44917 states in pertinent part: “Any person employed as a temporary employee for one complete school year shall, if reemployed for the following school year in a position requiring certification qualifications, shall be classified by the governing board as a employee and the previous year’s employment as a temporary employee, shall be deemed one year’s employment as a probationary employee for the purposes of acquiring permanent status.” Since Respondents Borquez, Valtierra and Duran worked for the entire 2007/2008 school year in temporary positions requiring credentials, and were hired a probationary teachers for the 2008/2009 school year, their pervious service should be credited toward seniority. Therefore, their seniority date should be changed to August 2, 2007. Based on this determination, Respondents Duran, Borquez and Valtierra are certificated and competent to render services currently performed by two less senior certificated employees who were not given layoff notices.

8. The District acted in an arbitrary manner in adopting its tie-break resolution because it gave no order or weight to each specific tie-break criterion, giving the District unfettered discretion, which is subject to abuse. Therefore, cause exists to invalidate the tie-break criteria.

9. Cause exists to dismiss the Accusations against Respondents Rosemarie Borquez, Maria Duran and Vanessa Valtierra because the District erred in determining their seniority dates; and because the District acted in an arbitrary manner in adopting its tie-break resolution.

ORDER

1. The Accusations against Respondents Rosemarie Borquez, Maria Duran and Vanessa Valtierra are dismissed.

2. Notice may be given to Respondents Michelle Padilla and Shawna Rohatsch, that their services will not be required for the 2009-2010 school year.

Dated: July 30, 2009

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings