

**BEFORE THE GOVERNING BOARD OF
THE LYNWOOD UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

OAH No. 2010020633

Certificated Employees of the Lynwood
Unified School District,

Respondents.

PROPOSED DECISION

Chris Ruiz, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH), heard this matter on April 14-15, 2010, in Lynwood California.

Darren C. Kameya and Mark K. Kitabayashi, Esqs., represented the Lynwood Unified School District (District).

Glenn Rothner and Kathleen M. Erskine, Esqs., represented all Respondents (as listed in exhibit A), with the exception of David Oronoz (Oronoz), who represented himself for a portion of the hearing.

The District served a Notice of Layoff on 197 teachers. Of those, 157 teachers filed a Notice of Defense and requested a hearing. The Respondent teachers are listed, in order of seniority, in exhibit 9B, which is hereby incorporated by reference as if fully set forth herein.

On April 15, 2010, the parties moved for a continuance and requested that they be allowed to file an agreed upon updated "seniority" list and updated "bump" list, and closing briefs. That motion was granted and the matter was continued until those documents were received and reviewed.

The following documents were thereafter received by OAH, marked as indicated, and received into evidence: final seniority list (exhibit 9B), final "bump" chart (exhibit 11B), a list of 122 Respondents' names who remain at issue (exhibit 15), an updated tie breaking analysis chart (exhibit 10B), and five pages of documents submitted by teacher Sylvia Cabrales (exhibit M). Also received and marked for identification were Respondents' Closing Brief (exhibit L), District's Closing Brief (exhibit 16), and Oronoz's Closing Brief (exhibit N). The matter was submitted on April 27, 2010.

Accordingly, and pursuant to Education Code section 44949, subdivision (e), the dates mandated by the Legislature, and set forth in Education Code section 44949, subdivision (c)(3), are extended by a period of time equal to the continuance.

FACTUAL FINDINGS

1. Donald Balfour, Assistant Superintendent of the District, acting in his official capacity, caused all pleadings, notices and other papers to be filed and served upon each Respondent pursuant to the provisions of Education Code sections 44949 and 44955. All pre-hearing jurisdictional requirements were met.

2. Respondents are employed by the District as permanent, probationary, intern, pre-intern, emergency permitted, waiver, and/or temporary certificated employees of the District.

3. On February 23, 2010, pursuant to Education Code sections 44949 and 44955, the Governing Board of the District (Board) issued a Resolution (agenda report #9.9) which approved the recommendation by the Superintendent that notice be given to Respondents that their services will not be required for the ensuing school year and stating the reasons for that recommendation. On March 9, 2010, the Board issued a Supplemental Resolution (agenda #9.8) which added 3.72 positions to be eliminated.

4. On February 23, 2010, the Board issued a Resolution (agenda report #9.10) which adopted tie-breaking criteria.

5. On March 12, 2010, Respondents were given written notice of the recommendation that notice be given to them, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the ensuing school year and stating the reasons for that recommendation.

6. It was established that cause exists, within the meaning of Education Code sections 44949 and 44955, for not reemploying Respondents for the ensuing school year for all of the reasons set forth below. The District has decided that particular kinds of services of the District will be reduced or eliminated no later than the beginning of the 2010-2011 school year. Specifically, the District decided to eliminate 187.72 Full-Time Equivalent (FTE) positions in 33 separate categories. The specific categories and number of positions for each category are identified in exhibits 5 and 7, which are hereby incorporated by reference as if fully set forth herein.

7. The Board decided that it is necessary to decrease the number of certificated employees as a result of the reduction in services. These services are “particular kinds of services” that may be reduced or discontinued within the meaning of Education Code section 44955. The Board’s decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious, but rather, constituted a proper exercise of discretion. The Board

is faced with a budget shortfall whereby the District will incur a \$50 million deficit within three years if it does not take action.

8. The reduction or discontinuation of these particular kinds of services is related to the welfare of the District and its pupils. Due to the reduction or discontinuation of particular kinds of services, it is necessary to decrease the number of certificated employees of the District as determined by the Board. This reduction is necessary because of budgetary issues.

9. The Board properly considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees as of March 13, 2010. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App. 3d 627 at 636).

10. The District properly created its seniority list by determining the first date of paid service of each certificated employee and properly utilized reasonable “tie-breaker” criteria when necessary. The District “skipped” over teachers who hold a full credential to serve in special education assignments. Respondents did not challenge these “skips.”

11. At the conclusion of the hearing, many issues had still not been resolved. Thereafter, the District withdrew the “Notice of Recommendation That Services Will Be Terminated” and dismissed the Accusation as to a number of Respondents. Those Respondents will be discussed below. The 122 Respondents whose positions remain at issue are identified in exhibit 15, which is hereby incorporated by reference as if fully set forth herein.

Tie Breaker Criteria

12. The District utilized reasonable tie-breaker criteria. The District gave four points per credential for clear teaching or service credentials, two points per credential for preliminary teaching or service credentials, and one point for BCLAD authorization. If ties were still not broken, the District then utilized a method whereby the last three numbers of an employee’s credential were used, the higher numbers receiving greater weight. When the initial criteria were applied, they only resulted in breaking the tie in 4 of 44 cases. Thus, in 40 ties, the last three numbers were used to break the tie. Respondents contend this establishes that the tie-breaker criteria is arbitrary. However, the fact that few of the teachers have the additional qualifications that the District deems valuable does not establish that the criteria are arbitrary. In almost all of these type of cases, there are ties that are not broken, and the various districts utilize some type of “lottery” or “coin-flip” to resolve the issue.

Respondents Arostigue, Angulo, Palma, and Guagenti

13. The District acknowledges Patrica Angulo (Angulo) and Lisa Guagenti (Guagenti) should have received a layoff notice, but did not. In order to remedy the situation, the District reasonably applied the “Corresponding Number Rule” (CNR) and also

agreed to retain Christina Arostigue (Arostigue) and Amber Palma (Palma), the most senior teachers in Argulo's and Guagenti's teaching categories. The District's act of retaining Arostigue and Palma is proper. Where one or more junior employee is inadvertently omitted from the layoff process, the accepted remedy is to apply the CNR and retain a similar number of the most senior teachers because those are the only teachers who would have been retained if the junior teachers had been properly given notice of layoff. (*Alexander v. Delano Joint Union High School Dist.* (1983) 139 Cal.App.3d 567, 573.)

Other Teachers

14. After the hearing, the District rescinded its notice of layoff and dismissed the Accusation as to Sylvia Cabrales, Ethel Wade, Benjamin Martinez (Martinez), Patricia Wyatt, and Lorraine Abbass (Abbass).

15. None of the teachers described in Findings 13-14 are listed in exhibit 15, which is a list of the remaining 122 teacher Respondents at issue.

Respondent Bridgette Polk

16. In the District's closing brief, it recognized that Martinez and Abbass had the right to bump into "Regular Education Economics" classes. It was only established that there were two available positions to "bump" into. Thus, Bridgette Polk, the more junior of the three does not have a position to bump into, even though she also holds a similar degree to Abbass and Martinez.

Respondent Viraseni Wu

17. Viraseni Wu is the only nurse employed by the District. The District proposes to eliminate her position and to utilize outside vendors to meet its obligations under the law. There is no legal requirement that the District employ a school nurse, nor was it established that the District will be unable to meet its legal obligations by utilizing outside vendors. As such, the layoff is proper.

Respondent Ruth Rodriguez

18. Ruth Rodriguez testified that she has taken enough classes to qualify for an intern credential to teach special education, a "skipped" category. However, she did not establish that she presently possesses said credential. As such, she can not be skipped.

Respondent Linda Mae George

19. Linda Mae George (George) contended that she should be retained to bump into the position held by Gabriela Camacho (Camacho), a teacher on special assignment (TOSA), namely activities director. However, Camacho is being laid off from her activities

director position and she is “bumping” into another position. Thus, there is no position for George to “bump” into.

Respondent Tran Nguyen

20. Tran Nguyen (Nguyen) holds a Clear Single Subject Chemistry credential. It was not established that his credential authorizes him to teach middle school science, a position Nguyen desires to “bump” into.

Respondent David Oronoz

21. David Oronoz (Oronoz) wrote a grant proposal for federal funding that was awarded to the District for the 2008-2009 and 2010-2011 school years. Oronoz is a school counselor. He contended that his release would jeopardize the grant. However, Oronoz did not establish that the grant money can not be used to pay other counselors. Additionally, the District is allowed to determine how it will meet its legal obligations in the upcoming year. The instant layoff proceeding is not the proper venue to challenge the District’s plan to meet said obligations next year.

The Regional Occupational Program (ROP)

22. Much evidence was presented on what type of credential(s) and/or experience is required to teach an ROP course. These are courses that prepare students to enter a particular field, such as automotive repair or the culinary field. It was established that a teacher needs to possess one of the following: a vocational trade and industry credential; a standard secondary industrial arts credential and industrial arts occupational subjects 8.1 credential; a general secondary credential (related subject area major); or a single subject credential (industrial and technology education major or minor). In addition to possessing one of these credentials, the teacher must also have satisfied one of the following options: (option 1) 1500 hours related paid or unpaid work experience . . . within the last three years or 3000 hours within the last five years; (option 2) minimum 180 hours of related subject-specific training in the occupational area within the last three years or 360 hours within the last five years; or (option 3) successful teaching in the occupational area within the last three years plus a minimum of 90 hours of additional training of certification.

Respondent Dorothy Jones

23. Dorothy Jones (Jones) possesses a Clear Single Subject credential in Home Economics. However, Jones did not establish that she can satisfy option 1, 2, or 3 as discussed directly above. Thus, she may not “bump” Joel Herrera (Herrera #1), who teaches “Culinary Arts”, an ROP class.

Respondent George Luna

24. George Luna (Luna) is a vocational education automotive teacher. He is being bumped by Joel L. Herrera (Herrera #2), a more senior teacher, who also holds a vocational

education automotive credential. Luna contended that the District did not determine if Herrera has satisfied option 1, 2, or 3, before considering Herrera for the ROP class Luna presently teaches. Luna established through exhibit 12 that he has satisfied at least one of the required options. On the other hand, Herrera is presently a secondary counselor whose position is being eliminated. When considering whether Herrera #2 could bump Luna, the District only considered his credential, and not whether Herrera also satisfied option 1, 2, or 3, as the District did in Jones' situation. As it was established that with any credential, a teacher must still satisfy either option 1, 2, or 3, so too must the District establish Herrera is competent and qualified to "bump" Luna. The District did not establish that Herrera #2 is competent and qualified to "bump" Luna because it did not establish that Herrera #2 has satisfied one of the three required options.

Respondent Natarajan Srinivasan

25. Natarajan Srinivasan did not testify, nor were the exhibits he offered admitted into evidence. Thus, it was not established that his Clear Designated Subjects Full Time Vocational Education Teaching credential in the subject of Accounting Occupations, Computer Applications renders him competent and qualified to teach the ROP Banking course presently taught by a more junior teacher.

Other Findings

26. As to all other arguments and contentions, they were not established with sufficient evidence or legal authority.

CONCLUSIONS OF LAW

1. Jurisdiction for these proceedings exists pursuant to Education Code sections 44949 and 44955.

2. Each of the services set forth in Findings 5 and 6 is a particular kind of service which may be reduced or discontinued in accordance with applicable statutes and case law.

3. The District's decision to reduce or discontinue the services is neither arbitrary nor capricious, but rather a proper exercise of the District's discretion.

4. Cause exists to reduce the District's teaching positions as described above and to give notice to the affected teachers pursuant to Education Code section 44955. (*Campbell v. Abbot* (1978) 76 Cal.App.3d 796; *Degener v. Governing Board* (1977) 67 Cal.App.3d 689). Based on the above Findings, including the preamble to this Proposed Decision, the names of the affected teachers, those as to whom final notices of layoff may be given, are as follows:

All Respondent teachers listed in exhibit 15, with the exception of George Luna as to whom the Accusation is dismissed.

ORDER

Because of the reductions of services, the District may give notice to the teachers identified in Legal Conclusion No. 4 that their services will not be required for the 2010-2011 school year.

Dated: May ____, 2010.

CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings