

BEFORE THE
BOARD OF EDUCATION OF THE
REDONDO BEACH UNIFIED SCHOOL DISTRICT

In the Matter of the Accusation Against

STEPHANIE BENAS, et al.,

Respondents.

OAH Case No. 2010030302

PROPOSED DECISION

This matter was heard by Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, on April 8, 2010, in Redondo Beach, California.

Rutan & Tucker, LLP, by David C. Larsen, represented the Redondo Beach Unified School District (District).

Reich, Adell & Cvitan, by Kent Morizawa, represented Stephanie Benas, Emily Butler, Eileen Chapman, Kristen Ely, Tanaz Farzad, Rebeca Fuehrer, Michele Garcia, Stephanie Graverson, Kari Hammerschmitt, Trava Herra, Christopher Nelson, Joni Pearl, Ambra Silva, and Luis Urquidi (collectively, Respondents). All Respondents, except for Rebeca Fuehrer, were present at the hearing.

At the start of the hearing, the District and Respondents, by and through their respective counsel, stipulated as follows: (1) the factual allegations contained in paragraphs 1 through 4 of the Accusation are established; and (2) the Accusation is dismissed against respondents Trava Herra and Rebeca Fuehrer.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision on April 8, 2010.

FACTUAL FINDINGS

1. Nancy Billinger, Assistant Superintendent, Human Resources, filed the Accusation in her official capacity as designee of the Superintendent of the District.
2. Respondents are certificated employees of the District.

3. On March 9, 2010, the Governing Board of the District, by adoption of Resolution R:09:10:24 (Resolution), determined to reduce or discontinue particular kinds of certificated services for the 2010-2011 school year, as follows:

<u>Service</u>	<u>FTE¹ Reduction</u>
<u>Administration</u>	
Principal	1.0
Assistant Principal	1.0
<u>Student Services</u>	
School Counselor (High School)	1.0
<u>Course Offering</u>	
Secondary - Industrial Arts & Technology	2.0
Secondary - English	1.4
Secondary - Math	.8
Teacher on Special Assignment - EL K-6 including K-3 (CSR)	1.0 24.0

4. The Governing Board, in the Resolution, directed the Superintendent or his designee to give written notice, prior to March 15, 2010, to the certificated employees who may be laid off in order to reduce the number of certificated positions as proposed in the Resolution.

5. The Governing Board, in the Resolution, also adopted a Tiebreaker Criteria and Point System to determine the order of termination of employees who first rendered paid service to the District on the same date, based solely on the needs of the District and its students. Certificated employees who receive a preliminary notice of layoff and who share the same seniority date are ranked by total points, which are assigned as follows:

Criterion (a). One point if compliant with the requirements of NCLB Highly Qualified Teacher.

Criterion (b). Two points for a BCLAD or BCC, or one point for an English Language (EL) or equivalent certificate.

Criterion (c). One point for each credential authorization for service in a subject (multiple subject credential shall be considered a single credential) not being taught.

¹ FTE stands for full-time equivalent position.

Criterion (d). One point for an earned Master's degree.

Criterion (e). One point for an earned Doctoral degree.

Criterion (f). One point for each service in a co-curricular assignment in the 2008-2009 and 2009-2010 school year for which a contractual stipend is provided.

If two or more employees share the same point total, then the employee with the most years of teaching experience recognized by the District for salary schedule placement and advancement shall control. If criterion (a) through (f), and years of teaching experience do not break a tie, then the District shall hold a lottery to break the tie.

6. Respondents are elementary school teachers affected by the Governing Board's determination to reduce or discontinue 24.0 FTE positions in kindergarten through sixth grade, including the elimination of the class size reduction (CSR) program in kindergarten through third grade.

7. Pursuant to the Resolution, the Superintendent's designee, by March 15, 2010, provided written notice to Respondents that it was the Superintendent's recommendation that they be notified that their services will not be required for the 2010-2011 school year. The notice stated the reasons for the recommendation, and informed Respondents of their right to a hearing.

8. Respondents timely requested a hearing, in writing, to determine if there is cause for not reemploying them for the ensuing school year. On March 17, 2010, the District issued the Accusation and thereafter served it on Respondents.

9. All prehearing jurisdictional requirements have been met.

10. By stipulation, the Accusation is dismissed against respondents Trava Herra and Rebeca Fuehrer. Their respective employment status with the District is not at issue in this layoff proceeding.

11. The services set forth in Factual Finding 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.²

² All further statutory references are to the Education Code.

12. The Governing Board took action to reduce or discontinue the services set forth in Factual Finding 3 because of the State budget crisis and the District's need to reduce or discontinue services in order to maintain a balanced budget and provide essential services. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion. Respondents contend that the District might save jobs by reducing its budget reserves. This contention is not persuasive, as the determination of the amount of reserves is a matter committed to the discretion of the Governing Board. (*California School Employees Assn. v. Pasadena Unified School District* (1977) 71 Cal.App.3d 318, 322.) There was no evidence that the Governing Board acted in an arbitrary manner or abused its discretion in matters related to its reserves.

13. The reduction of services set forth in Factual Finding 3 is related to the welfare of the District and its students, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

14. The District properly considered all known attrition, resignations, and retirements in determining the actual number of necessary layoff notices to be delivered to its employees prior to March 15, 2010. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 636.)

15. The District properly created its seniority list by determining the first day of paid service of each certificated employee and properly utilized reasonable tiebreaker criteria when necessary.

16. Respondents were identified as employees subject to layoff without the District having to utilize the tiebreaker criteria and point system discussed in Factual Finding 5. Consequently, Respondents' disagreement with the criteria or their contention that the criteria are unfair do not affect their status in this layoff proceeding. In any event, it was established the tiebreaker criteria and point system were properly developed based on the needs of the District and its students. The District did use the tiebreaker criteria and point system to develop a rehire list of Respondents sharing a seniority date of September 2, 2008 (Exhibit 7A), which the District would use in the event it is able to rehire elementary school teachers.

17. No certificated employee junior to any Respondent was retained to render a service which any Respondent is certificated and competent to render.

18. All other arguments presented by Respondents were not persuasive and/or not established by the evidence. The District followed the required procedures and did not act in an arbitrary or capricious manner.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of Factual Findings 1-9.

2. The District must be solvent to provide educational services, and cost savings are necessary to resolve its budget shortfall. The Governing Board's decision was a proper exercise of its discretion. Financial considerations are an appropriate basis for a reduction in services under section 44955. As stated in *San Jose Teachers Association, supra*, 144 Cal.App.3d at 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 set forth in Factual Finding 3 are particular kinds of services within the meaning of section 44955, by reason of Factual Findings 3 and 11. Specifically, elementary school classroom teaching is a particular kind of service under section 44955. (*Calif. Teachers Assn. v. Board of Trustees of Goleta Union School Dist.* (1982) 132 Cal.App.3d 32, 36; *San Jose Teachers Assn., supra*, 144 Cal.App.3d at 637.)

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 3, which cause relates solely to the welfare of the District's schools and students, by reason of Factual Findings 1-18.

5. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services, by reason of Factual Findings 1-18 and Legal Conclusions 1-4. The District may give notice to Respondents, except for Trava Herra and Rebeca Fuehrer, that their services will not be required for the 2010-2011 school year. The Accusation shall be dismissed as to Respondents Herra and Fuehrer.

ORDER

1. The District may notify the following Respondents that their services will not be required for the 2010-2011 school year due to the reduction of particular kinds of services:

- (1) Stephanie Benas
- (2) Emily Butler
- (3) Eileen Chapman
- (4) Kristen Ely
- (5) Tanaz Farzad
- (6) Michele Garcia
- (7) Stephanie Graverson

- (8) Kari Hammerschmitt
- (9) Christopher Nelson
- (10) Joni Pearl
- (11) Ambra Silva
- (12) Luis Urquidi

2. The Accusation is dismissed against respondents Trava Herra and Rebeca Fuehrer.

DATED: April ____, 2010

ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings