

BEFORE THE
GOVERNING BOARD
OF THE
MORONGO UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force
Involving the Respondent's Identified in
Exhibit A.

OAH No. 2010030635

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 15, 2010, in Twentynine Palms, California.

Mark Thompson, Atkinson, Andelson, Loya, Ruud & Romo, represented Morongo Unified School District.

Dana Martinez, Attorney at Law, represented 16 of the respondents identified in Appendix A, as well as the three employees listed in Appendix B who received precautionary layoff notices.

Karla Buchanan appeared and represented herself.

Jocelyn McMinn appeared and represented herself.

No appearance was made by or on behalf of respondents Heather Bawdon, Jessica Bellenfant, Tanya Charles, Jessica Dellinger, Caitlin Eash, Pamela Graham, Jessica Hadley, Robert Harrigan, Chelcee Hughes, Jill Mitsch, Cecelia Nicholson, Lindsay Owens, Katherine Palunuik, Dana Queener, Regina Schwab, Ashley Smith, Sharon Stanberry, and Denise Tennison, who did not request a hearing.

No appearance was made by or on behalf of respondents Sherri Gonzalez and Rachel Newby, who requested a hearing.

The matter was submitted on April 15, 2010.

FACTUAL FINDINGS

1. Douglas Weller made and filed the accusation in his official capacity as the Assistant Superintendent, Human Resources of the Morongo Unified School District (the district).
2. Respondents are identified in Appendices A and B, which are attached hereto and incorporated by reference. Each respondent is a certificated employee of the district. The respondents listed in Exhibit A are those employees whom the district proposes laying off and the respondents listed in Exhibit B are those employees to whom the district issued precautionary layoff notices.
3. On February 16, 2010, the district's governing board adopted Resolution No. 10-11, which reduced particular kinds of services and directed the superintendent to give appropriate notices to those certificated employees whose positions would be affected by the action. The resolution specified that 42 full-time equivalent (FTE) positions were to be reduced.
4. On and before March 1, 2010, Assistant Superintendent Douglas Weller gave written notice to 38 certificated employees of the recommendation that their services would not be required for the 2010-11 school year and he gave written precautionary layoff notices to three employees that their services might not be required for the 2010-11 school year. The reasons for the recommendation were set forth in these preliminary layoff notices.
5. An accusation was served on each respondent. All prehearing jurisdictional requirements were met.
6. Before issuing the preliminary layoff notices, the district took into account all positively assured attrition. The district must issue final layoff notices before May 15, and when it does so, the district will take into account any additional attrition that has occurred. After that, any further attrition will allow the district to rehire laid off employees. Documents introduced at hearing contained the names of 17 employees who had retired or resigned, most of whom were unaccounted for when the governing board passed Resolution No. 10-11. Respondents argued that the governing board's failure to consider these vacancies caused by the retirement of these individuals before issuing the March 15 notices disrupted respondents' lives and invalidated the entire layoff proceeding. However, the evidence did not establish that the attrition that now exists was "positively assured" as of March 15, 2010. Moreover, respondents failed to demonstrate prejudice because the district has acknowledged that it will continue to consider those retirements and resignations in this reduction in force proceeding, and that it will recall and rehire respondents in accordance with their seniority rights.
7. The layoffs will not reduce any of the district's offerings in any courses below the level required by law.

8. The district defined “competency” pursuant to Education Code section 44955, subdivision (b), for the purposes of bumping as: “(1) possession of a valid credential in the relevant subject matter area; (2) for secondary math and science position the ability to bump the whole F.T.E. assignment.” The evidence did not establish that the district’s competency criteria were arbitrary or capricious. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 637.)

9. The district established tie-breaking criteria to determine the order of termination for those employees who shared the same seniority dates.

10. The district also created a bump analysis to determine which qualified senior employee could bump into a position being held by a junior employee.

11. Respondents argued that there were sufficient funds in the budget to retain all the respondents. However, insufficient evidence on this was introduced at hearing, and the decision to reduce or discontinue a particular kind of service is matter reserved to the district’s discretion and is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.) A school district has wide discretion in setting its budget and a layoff decision will be upheld unless it was fraudulent or so palpably unreasonable and arbitrary as to indicate an abuse of discretion as a matter of law. (*California Sch. Employees Assn. v. Pasadena Unified Sch. Dist.* (1977) 71 Cal.App.3d 318, 322.)

12. Education Code section 44955, subdivisions (b) and (c), set forth a general rule requiring school districts to retain senior employees over more junior employees and to retain permanent employees over temporary employees. Any exception to this general rule must be based on statute.

13. A school district’s decision to reduce a particular kind of service must not be fraudulent, arbitrary or capricious. For employees hired on the same date, Education Code section 44955, subdivision (d) provides:

“(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.”

14. Under subdivision (d)(1), the district may skip a junior teacher over a more senior teacher for specified reasons. (*Bledsoe v. Biggs Unified School District* (2008) 170 Cal.App.4th 127, 131.) Junior teachers may be given retention priority over senior teachers only if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.)

15. Respondent Heather Sterling possesses an English credential and a BCLAD credential. She teaches a reading intervention program, Language!, and is being bumped by a more senior employee¹ with an English credential and AB 2913 authorization² who teaches social science at the continuation school. The district alleged that the more senior employee had the competency to bump Sterling because the senior employee possessed an English credential; however, Assistant Superintendent Weller admitted during his testimony that the district requires teachers to complete a language reading intervention training course in order to teach the reading intervention program. The parties stipulated that Sterling had the requisite training to teach the reading intervention program, but that the more senior teacher did not. The district argued that the more senior teacher could obtain the training in the future and/or while teaching the course, because Sterling began teaching reading intervention before she had completed the training. However, the district offered no evidence to support that position and its assertion was contradicted by Weller's testimony. Without that critical evidence, it was established that Sterling is currently a junior employee who possesses special competence as a result of her training and who should be retained over the senior employee who currently lacks such competence. (*Alexander v. Delano Joint Union High School District* (1983) 139 Cal.App.3d 567.) It is recommended that the district rescind Sterling's layoff notice, dismiss the accusation, and reinstate her to her employment.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

2. A district may reduce services within the meaning of section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' 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.)

3. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the

¹ Identified as Employee #113 on the seniority list.

² AB 2913 is a 40-hour program that allows English teachers to teach English learners.

senior employee may displace or “bump” a junior employee who is currently filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469, 473-474.) Junior teachers may be given retention priority over senior teachers only if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.)

4. Because of the reduction of particular kinds of services, cause exists pursuant to Education Code section 44955 to give notice to respondents that their services will not be required for the 2010-2011 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949. The district has properly identified the certificated employees who are providing the particular kinds of services that the governing board directed be reduced or discontinued. It is recommended that the governing board give all respondents other than Heather Sterling notice before May 15, 2009, that their services will not be required by the District for the school year 2010-11.

5. A preponderance of the evidence sustained the charges set forth in the accusation, subject to the recommendations listed in the factual findings. This determination is based on all factual findings and on all legal conclusions.

RECOMMENDATION

It is recommended that the governing board give notice to the respondents whose names are set forth below except for Heather Sterling (identified in the Factual Finding 15) that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2010-2011 school year.

DATED: _____

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

Appendix A

| | LAST NAME | FIRST NAME |
|----|----------------|-------------|
| 1 | BARONE-JACKSON | MICHELLE L |
| 2 | BAWDON | HEATHER N |
| 3 | BEATY | KIMBERLY A |
| 4 | BELLENFANT | JESSICA F |
| 5 | BOYLES | NICOLE M |
| 6 | BRAGINTON | PAULINE |
| 7 | BUCHANAN | KARLA A |
| 8 | CARNES | CHRISTINE M |
| 9 | CHARLES | TANYA A |
| 10 | DAHLBERG | JENNIFER C |
| 11 | DELLINGER | JESSICA M |
| 12 | DENOGEAN | MONICA |
| 13 | EASH | CAITLIN R |
| 14 | GONZALEZ | SHERRI A |
| 15 | GRAHAM | PAMELA J |
| 16 | HADLEY | JESSICA A |
| 17 | HARRIGAN | ROBERT G |
| 18 | HENRY | SUSAN M |
| 19 | HOVEY | TOM A |

| | LAST NAME | FIRST NAME |
|----|-----------|-------------|
| 20 | HUGHES | CHELCEE K |
| 21 | JONES | PHILLIP D |
| 22 | McCALLUM | KOJO L |
| 23 | McMINN | JOCELYN G |
| 24 | MITSCH | JILL M |
| 25 | NEWBY | RACHEL D |
| 26 | NICHOLSON | CECELIA |
| 27 | NORQUIST | MELISSA K |
| 28 | OWENS | LINDSEY A |
| 29 | PALANUIK | KATHERINE K |
| 30 | QUEENER | DANA B |
| 31 | SCHWAB | REGINA M |
| 32 | SMITH | ASHLEY M |
| 33 | STANBERRY | SHARON I |
| | | |
| 35 | TENNISON | DENISE R |
| 36 | VILLAMERO | LEANNE K |
| 37 | WALTERS | DOUGLAS A |
| 38 | WILKINSON | ZACHARY |

Appendix B

| | LAST NAME | FIRST NAME |
|---|-------------|------------|
| 1 | ANNALA | JOHN A. |
| 2 | HOWES | STEVEN E. |
| 3 | VONGPRATEEP | K. PEARL |