

BEFORE THE BOARD OF TRUSTEES
CLOVERDALE UNIFIED SCHOOL DISTRICT

In the Matter of the Accusation Against:

GRANT AZEVEDO, et al.

Respondents.

OAH No. 2010031630

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on April 21, 2010. The hearing was conducted by telephone conference.

Margaret M. Merchat, of School and College Legal Services of California, represented the Cloverdale Unified School District.

James F. DeMartini, Attorney at Law, represented respondents Grant Azevedo, Suzanne Charles-Engelke and Rebecca Voelkel, who were present, and respondents Janel Morris and Gina Roman, who were not present.

The matter was submitted for decision on April 21, 2010.

FACTUAL FINDINGS

1. Claudia Rosatti made and filed the accusation in her official capacity as Superintendent of the Cloverdale Unified School District.
2. Respondents Grant Azevedo, Suzanne Charles-Engelke, Janel Morris, Gina Roman and Rebecca Voelkel are permanent certificated employees of the district.
3. On March 3, 2010, the district's Board of Trustees adopted Resolution No. 210-08 reducing or discontinuing the following particular kinds of services for the 2010-2011 school year and directing the superintendent to initiate and pursue procedures necessary to not reemploy certificated employees in 18 full-time equivalent (FTE) positions:

<u>Services</u>	<u>FTE</u>
Teacher/Student Support Services	3.0
Elementary Grades K-6 Instructional Services	9.0

Title 1 Instructional Support Services (K-8)	1.0
Academic Counselor	.6
Physical Education for 4-6 prep.	1.0
High School Social Studies Instructional Services (2 periods)	.4
High School AVID Instructional Services (2 periods)	.4
Physical Education Instructional Services, gr. 7-12 (2 periods)	.4
Math Instructional Services, grades 7-12 (2 periods)	.4
Music Instructional Services, grades 5-6 (1 period)	.2
Teacher on Special Assignment	1.0
English Instructional Services, grades 9-12 (1 period)	.2
Sciences Instructional Services, grades 7-12 (2 periods)	<u>.4</u>
	18.0

4. Before March 15, 2010, Superintendent Rosatti gave written notice to respondents and other certificated employees of the recommendation that their services will not be required for the 2010-2011 school year. The reasons for the recommendation were set forth in these preliminary layoff notices.

5. Respondents and six other certificated employees filed timely requests for hearing to determine if there is cause for terminating their services for the 2010-2011 school year. An accusation was served on each respondent, and each of them filed a timely notice of defense. Prior to the hearing, the six other certificated employees withdrew their requests for hearing.

6. Respondents each hold a multiple subject teaching credential. Their relative order of seniority, from highest to lowest, is as follows: Grant Azevedo, Gina Roman, Rebecca Voelkel, Suzanne Charles-Engelke and Janel Morris.

7. The district inadvertently failed to give a preliminary layoff notice to third grade teacher Marcia Ashlee-Collins, so she will be retained for the 2010-2011 school year. Ashlee-Collins is a permanent employee with less seniority than the five respondents, all of whom are credentialed and competent to perform the services which she is being retained to perform.

8. After the district discovered its mistake, it took action to rescind the layoff notices by 1.0 FTE, the FTE corresponding to Ashlee-Collins's position. The district rescinded the .4 FTE layoff notice to Dan Dersham, an employee senior to respondents, and it rescinded the layoff notice to respondent Grant Azevedo by .6 FTE (leaving .4 FTE of his position subject to layoff). This remedial action placed respondents in the same position with respect to layoff that they would have been in had the district given a layoff notice to Ashlee-Collins.

9. Respondents contend that the district is precluded from laying any of them off because Education Code section 44955, subdivision (b), provides that “. . . the services of no

permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.” However, it would be unreasonable to interpret this language to preclude the layoff of all respondents (the domino effect) when only one junior employee is being retained to render services that respondents are certificated and competent to render. The district’s position that the improper retention of a junior employee saves only a corresponding number (FTE) of senior employees from layoff finds support in *Alexander v. Board of Trustees of the Delano Joint Union High School District* (1983) 139 Cal.App.3d 567. After noting that its opinion “in effect nullifies the Board’s decision to skip the junior teachers who possessed Spanish language skills but were not employed to teach classes in the formal bilingual program,” the court stated: “Because at least some of the persons skipped should have received the [layoff] notices, a *corresponding number* of the most senior of the employees who were not reemployed must have been improperly given notices.” (*Id.* at p. 576; emphasis added.)

Respondents point out that under the district’s “corresponding number” theory, a school district could defeat the seniority protections of the layoff statute to retain a preferred junior teacher by deliberately not noticing that teacher for layoff and noticing one additional senior teacher. Later, the district would be required to rescind the layoff notice of only that one senior teacher as “penance” for improperly skipping the junior teacher and could keep intact its layoff of other senior teachers. In such a case, where a school district acts in bad faith, the district should of course be precluded from laying off any senior teachers, whether by application of the domino theory or on the basis of the layoff being arbitrary and capricious. Here, there is no evidence that the district’s failure to give Ashlee-Collins a layoff notice was other than a mistake. Under these circumstances, the district is required to correct its mistake by rescinding the layoffs by 1.0 FTE of the most senior “certificated and competent” employees. The district has already taken this remedial action.

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. Although one certificated employee junior in seniority to respondents is being retained by the district to perform services that respondents are certificated and competent to render, the district has remedied its mistake by rescinding the layoffs by 1.0 FTE.
2. Cause exists because of the reduction or discontinuation of particular kinds of services pursuant to 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 section 44949.

ORDER

Notice may be given to respondents that their services will not be required for the 2010-2011 school year because of the reduction or discontinuation of particular kinds of services.

DATED: _____

NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings