

BEFORE THE
BOARD OF EDUCATION
TRACY UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

OAH No. 2011030113

CERTAIN CERTIFICATED EMPLOYEES
OF THE TRACY UNIFIED SCHOOL
DISTRICT,¹

Respondents.

PROPOSED DECISION

This matter was heard before Administrative Law Judge Dian M. Vorters, Office of Administrative Hearings, State of California, on April 7, 2011, in Tracy, California.

Marie A. Nakamura, Attorney at Law,² represented the Tracy Unified School District (District).

Thomas J. Driscoll, Attorney at Law,³ represented respondents with the exception of the following 16 certificated employees: Katie Barber, Sarah Cleaver, Anthony Crivello, Daniel Eckman, John Eddy, Mary Eyer, Rosie Fernandez, Vanessa Garcia, Shazana Gardner, Carlena Henderson, Jatinder Kandah, Jennifer Kassel, Derek Krug, Taylor Laveroni, Lucia Luis, and James Tiffany. (see Exhibit 12 – First Amended Notice of Defense.)

During lengthy negotiations prior to the commencement of the hearing, the District and Mr. Driscoll, on behalf of respondents he represents, entered into a written “Stipulation Between The Parties” (Stipulation).⁴ At hearing, the Stipulation and exhibits were admitted

¹ List of Certificated Employees of the Tracy Unified School District who the Superintendent served with a Layoff Notice on March 14, 2011. (Attachment A.)

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³ Thomas J. Driscoll, Attorney at Law, Driscoll & Associates, 801 South Ham Lane, Suite H, Lodi, California 95242.

⁴ Anthony Crivello, Mary Eyer, Rosie Fernandez, Vanessa Garcia, and James Tiffany are not represented by Mr. Driscoll, but are affected by the stipulation.

in evidence. The Stipulation is marked for identification as Exhibit 13, is attached to this Proposed Decision, and is incorporated herein. The matter was submitted for decision and the record was closed on April 7, 2010.

FACTUAL FINDINGS

1. James Franco is the Superintendent of the Tracy Unified School District. He performed his duties solely in his official capacity.
2. Before February 22, 2011, the Superintendent determined that funding for the 2011-2012 school year would be reduced, thereby necessitating the reduction or elimination of certain particular kinds of services. The Superintendent recommended to the Board that certain particular kinds of services be reduced or eliminated, affecting employees occupying 76.9 full-time equivalent (FTE) positions. The Superintendent's resolution to eliminate and reduce teaching services was made solely for the welfare of students.
3. On February 22, 2011, the Board adopted Resolution No. 10-19, providing for the reduction or elimination of particular kinds of services, resulting in the reduction or elimination of 76.9 certificated positions.
4. On March 2, 2011, the Board adopted Resolution No. 10-23, which provided for the removal of certificated positions from Resolution No. 10-19. The second resolution reduced the number of certificated positions subject to reduction or elimination by 11.7 FTE. As a result of the Board's passage of these two resolutions, a total of 65.2 FTE certificated positions were identified for elimination or reduction.
5. On March 14, 2011, the Superintendent served on persons affected by the reduction and elimination of particular kinds of services a "Recommendation That Services Will Not Be Required" for the ensuing 2011-2012 school year (Layoff Notice or Notice). The Notice stated that the Superintendent had recommended to the Board that notice be given to respondents pursuant to Education Code sections 44949 and 44955, that their services would not be required for the ensuing school year. The Notice advised that the Board had passed Resolutions reducing or discontinuing particular kinds of services in order to reduce certificated staff, and included copies of the Resolutions identifying the particular kinds of services to be reduced or eliminated.
6. Respondents timely requested a hearing to determine if there was cause for not re-employing them for the ensuing school year.
7. The Superintendent made and filed Accusations against each of the employees who requested a hearing. The Accusations, required accompanying documents, and blank Notices of Defense were timely served on those employees.

8. Respondents timely filed Notices of Defense to the Accusations.

9. At hearing, the District and those respondents represented by Mr. Driscoll, entered into the Stipulation attached hereto. The Stipulation provides that: 1) While the District makes no admissions of wrongdoing regarding rehire and classification of teachers listed as temporary for the 2010-2011 school year; certain respondents identified in the Stipulation are afforded rehire rights for 39 months as laid off permanent employees, 2) Layoff Notices issued to certain respondents identified in the Stipulation are rescinded, and 3) Layoff Notices issued to certain respondents identified in the Stipulation are partially rescinded.

10. The Stipulation grants rehire rights for 39 months to the following employees:

Ban, Chinda	Jimenez, Megan
Castellon, Arminda	Johnson, Jennifer
Cordisco, Monica	Lee, MaySue
Garcia, Rocio	Nielsen, Heather
Graves, Dina	Nunes, Laura
Gumpert, Rochelle	Orino, Tina
Hess, Janice	Rosales, Desi
Hudelson, Amber	Ryan, Myesha
Huff, Bridget	Thomas, Marci
Hula, Amanda	Webb, Justine

11. The Stipulation rescinds the Layoff Notices issued to the following employees:

Berendt, Corrine	Krusi, Brook (to History)
Bolding, Doreen	Luis, Lucia
Cooper, Alyssa	Morgan, Shadee
Crivello, Anthony	Morse, Lori
Evans, Laura	Quintero, Robert
Eyer, Mary	Reynolds, Thomas
Garcia, Vanessa	Stiborek, Linda
Hillstead, Erika	Tiffany, James
Kelly, Karen (bumped to science)	Tillman, Pamela
Khoonsirivong, Jacqueline (to Biology)	

12. The Stipulation partially rescinds the Layoff Notices issued to the following employees:

Fernandez, Rosie	.6 FTE Rescission
Johnson, Debra	.6 FTE Rescission
Keehn, Marie	.6 FTE Rescission
Pozar, Maria	.6 FTE Rescission
Rains, Elisa	.8 FTE Rescission

LEGAL CONCLUSIONS

Applicable Laws

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. The anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under section 44955. As stated in *San Jose Teachers Assn v. Allen* (1983) 144 Cal.App.3d 627, 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.” The District must be solvent to provide educational services and cost savings are necessary to resolve its financial crisis. The Superintendent’s decision to reduce particular kinds of services was a proper exercise of his discretion.

3. The services identified in Board Resolutions 10-19 and 10-23, are particular kinds of services that could be reduced or discontinued under Education Code section 44955. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the District’s schools and pupils within the meaning of section 44949.

4. 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.)

5. The Notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Board’s Resolutions and in the Notices, adequately describes particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

6. Cause exists under Education Code sections 44949 and 44955 to provide final Notice to respondents not identified in the Stipulation for rescission, that their services will not be required in the 2011-2012 school year because of the reduction and elimination of particular kinds of services.

RECOMMENDATION

1. Notice shall be given to respondents not identified in the Stipulation for rescission, that their services will not be required in the 2011-2012 school year because of the reduction and elimination of particular kinds of services.

2. Pursuant to the Stipulation, the District shall afford to the following certificated employees, rehire rights for 39 months as laid off permanent employees and reflect the same on its seniority list:

Ban, Chinda	Jimenez, Megan
Castellon, Arminda	Johnson, Jennifer
Cordisco, Monica	Lee, MaySue
Garcia, Rocio	Nielsen, Heather
Graves, Dina	Nunes, Laura
Gumpert, Rochelle	Orino, Tina
Hess, Janice	Rosales, Desi
Hudelson, Amber	Ryan, Myesha
Huff, Bridget	Thomas, Marci
Hula, Amanda	Webb, Justine

3. Pursuant to the Stipulation, the District shall rescind Layoff Notices issued to the following certificated employees:

Berendt, Corrine	Krusi, Brook (bumped to History)
Bolding, Doreen	Luis, Lucia
Cooper, Alyssa	Morgan, Shadee
Crivello, Anthony	Morse, Lori
Evans, Laura	Quintero, Robert
Eyer, Mary	Reynolds, Thomas
Garcia, Vanessa	Stiborek, Linda
Hillstead, Erika	Tiffany, James
Kelly, Karen (bumped to science)	Tillman, Pamela
Khoonsirivong, Jacqueline (bumped to Biology)	

4. Pursuant to the Stipulation, the District shall partially rescind Layoff Notices issued to the following certificated employees:

Fernandez, Rosie	.6 FTE Rescission
Johnson, Debra	.6 FTE Rescission
Keehn, Marie	.6 FTE Rescission
Pozar, Maria	.6 FTE Rescission
Rains, Elisa	.8 FTE Rescission

DATED: April 18, 2011

DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings

ATTACHMENT A
TRACY UNIFIED SCHOOL DISTRICT
EMPLOYEES SERVED WITH A LAYOFF NOTICE

PERMANENT

Anders	Christina
Axford	Laurie
Ball	Demetrius
Barber	Katie
Berendt	Corinne
Bolding	Doreen
Cavallaro	Pamela
Cheng	Tiffany
Clark	William
Cleaver	Sarah
Cooper	Alyssa
Crivello	Anthony
Eckman	Daniel
Evans	Laura
Fernandez	Rosie
Garcia	Vanessa
Godinez	William
Gonzalez	Eleazar
Gregory	Justin
Haidet	Theresa
Hillstead	Erika
Hunter Ii	John
Jarvis	Cheryl
Johnson	Debra
Kassel	Jennifer
Keehn	Marie
Kelly	Karen
Khoonsirivong	Jacqueline
Krusi	Brooke
Morgan	Shadee
Morse	Lori
Nunez	Angelique
Quintero	Robert
Rains	Elisa
Rhodes	Deborah
Rivas	Maria
Ruiz	Ruperto

Stiborek	Linda
Tiffany	James
Tillman	Pamela
Toepfer	Jill
Walker	Westley

PROBATIONARY

Alano Lind	Estellie
Anderson	Scott
Callender	Doreen
Henderson	Carlana
Kandah	Jatinder
Laveroni	Taylor
Luis	Lucia
Pozsar	Maria
Reynolds	Thomas
Thacker	Susan
Yu	Joan

TEMPORARY

Ban	Chinda
Castellon	Arminda
Cordisco	Monica
Eddy	John
Garcia	Rocio
Graves	Dina
Gumpert	Rochelle
Hess	Janice
Hudelson	Amber
Huff	Bridget
Hula	Amanda
Jimenez	Megan
Johnson	Jennifer
Lee	Maysue
Nielsen	Heather
Nunes	Laura
Orino	Tina
Rosales	Desi
Ryan	Myesha
Thomas	Marci
Webb	Justine