

BEFORE THE
GOVERNING BOARD
FULLERTON JOINT UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Anna Sanders, and other
certificated employees of the
Fullerton Joint Union High School District,

Respondents.

OAH Case No. 2011030241

PROPOSED DECISION

Mark Harman, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 19, 2011, in Fullerton, California.

Alexandria M. Davidson and Natasha B. Axelrod, Attorneys at Law, represented Edward D. Atkinson (Atkinson), Assistant Superintendent of Human Resources of the Fullerton Joint Union High School District (District).

Carlos R. Perez, Attorney at Law, represented Tatjana Antunovich, Eduardo Avendano, Danielle Carlisle, Soon-ya Gordon, Teresa Mormont, Ben Nguyen, Anna Sanders, and Christina Owens, collectively called Respondents.

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2011-2012 school year under Education Code¹ sections 44949 and 44955. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2011-2012 school year.

Prior to the hearing, the District rescinded its "Preliminary Notice Not To Reemploy" issued to Mary Kerr. At the hearing, the District stipulated to allow Anna Sanders and Christina Owens to participate as respondents in this proceeding.

Oral and documentary evidence was received at the hearing. The record was closed and the matter was submitted for decision on April 19, 2011.

¹ All further statutory references are to the Education Code.

FACTUAL FINDINGS

1. George J. Giokaris, Ed.D., is the Superintendent of the District. Assistant Superintendent Atkinson and his staff were responsible for the technical aspects of this reduction in force proceeding. Assistant Superintendent Atkinson filed the Accusation in his official capacity.

2. Respondents are certificated employees of the District.

3. On March 8, 2011, the Board of Trustees of the District (Board) adopted a Resolution entitled “Amendment to Resolution 2010/11 #49 Resolution of the Board of Trustees of the Fullerton Joint Union High School District of Orange County, California, Regarding a Reduction or Discontinuance of Particular Kinds of Service” (the Resolution), reducing or discontinuing the following services for the 2011-2012 school year:

<u>Subject Area</u>	<u>FTE² Reduction</u>
1 Agriculture teacher	1.00
1 Art teacher	1.00
1 Chinese teacher Assignment Instructional Coach	1.00
2 French teachers	0.40
1 Latin teacher	0.40
2 Math teachers	2.00
3 Opportunity teachers	3.00
2 Psychologists	2.00
1 Biology teacher	1.00
3 Spanish teachers	<u>2.60</u>
Total	14.40

4. Superintendent Giokaris thereafter provided a written “Preliminary Notice Not To Reemploy” (preliminary notice) to 17 certificated employees, including Respondents. The preliminary notice states that it had been recommended to the Board, and the Board had determined, to give a preliminary notice to each of these employees that their services would not be required for the 2011-2012 school year due to the Board’s decision to discontinue certain particular kinds of services. Each Respondent was served with a preliminary notice on or before March 15, 2011. The preliminary notice describes the particular kinds of services to be reduced pursuant to the Resolution, as set forth in factual finding number 3, *ante*. The preliminary notice also notifies each employee of his or her right to request a hearing to determine if there is cause for not reemploying him or her for the ensuing school year, and that

² Full-time equivalent position.

a written request for a hearing must be filed on or before March 16, 2011. The Respondents, with the exception of Christina Owens, filed timely their requests for a hearing in this matter.

5. On March 21, 2011, the District filed and served the Accusation and other required documents on Respondents, except for Christina Owens, who had not timely filed a request for hearing. Respondents, with the exception of Anna Sanders, thereafter timely filed notices of defense, seeking a determination of whether cause exists for not reemploying them for the 2011-2012 school year.

6. All prehearing jurisdictional requirements have been met.

7. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.

8. The Board took action to reduce or discontinue the services set forth in factual finding number 3 because of the uncertainty surrounding future funding and because the District is overstaffed in certain areas. 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.

9. The reduction of services set forth in factual finding number 3 is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

10. In determining the number of final layoff notices to issue, the District expects to take into account any retirements and resignations to reduce the number of actual layoff notices.

11. The Resolution includes criteria for breaking seniority ties for employees who share the same first date of paid service in a probationary position (seniority date); however, it was not necessary for the District to use the tie-breaking criteria to establish relative seniority among these employees, because of the variations in these employees' particular assignments and credentials, and the particular kinds of services being reduced. No Respondent raised an issue as to the validity of the tie-breaking criteria.

12. The District operates a variety of alternative or continuation education programs at one school site. This campus is divided into two high schools: La Sierra and La Vista. La Sierra High School (La Sierra) is an alternative high school serving the educational needs of high school age students and adults. There are several different programs offered at La Sierra. One of these is "Opportunities," which is designed to help students in grades 9-11, who, for a variety of reasons, including attendance and academic problems, have struggled and have not been successful in comprehensive junior high schools. The program's goals are to keep these students on track and moving forward, and eventually, for students to earn a high school diploma, either by re-entering a comprehensive high school or by completing graduation requirements through La Sierra High School. The "Opportunities" program offers a shortened

school day and instruction in small, self-contained classrooms, where core subjects are taught and individualized attention can be provided to students who have special needs. Teachers in these classrooms generally possess clear multiple subject credentials (CMS), which allows them to teach the core subjects in a self-contained classroom. Another alternative program is called Academics, Behavior Modification, and Counseling (ABC).

13. La Vista High School (La Vista) is a continuation high school. It also offers a variety of programs that include individualized attention or specially designed courses of study. For example, a credit acceleration program helps students to obtain the credits they will need for high school graduation, or other credentials. This program may involve a non-traditional means of teaching that allows students to achieve at their own pace and in their own way. Some La Vista programs do not lead to graduation, but may help students transition into a career or an occupation or another educational setting. The District concedes it has not made distinctions between what it calls “subsets” of the alternative program, although they are not all the same. For example, “Opportunities” is different from independent studies. Even ABC is seen as a different program than “Opportunities.”

14. Tatjana Antunovich (Antunovich) is a full-time teacher who has a seniority date of August 24, 2007. She possesses a clear single subject credential in health sciences and a CMS. Antunovich teaches ABC students for three periods at La Sierra and, for the past two years, she has taught health classes for two periods at La Vista. Her ABC classes are comprised of students who have been expelled from different comprehensive junior high schools; however, their expulsions have been suspended, and they are allowed to attend the ABC class for a period of time to give them an opportunity “to prove themselves.” She distinguishes these two different classes, so when she received her preliminary notice and saw that that the “Opportunities” program was being reduced by 3 FTE, she assumed that she would lose her three periods of ABC, but she did not believe she would be subject to lay off for the two periods of health classes. Antunovich does not consider herself a full-time “Opportunities” teacher; although the District’s seniority list identifies her assignment as “Opp:ABC” teacher, it does not identify her assignment as a health teacher.

15a. Danielle Carlisle (Carlisle) possesses a professional CMS and has a seniority date of September 12, 2006. She is in her fifth year of teaching at La Sierra, but her classes, comprised of ninth and tenth grade “Opportunities” students, are physically located on the Fullerton High School campus. Carlisle maintains that two certificated employees with less seniority are being retained to provide services that she is credentialed and competent to provide, and therefore, she should be allowed to “bump” into one of these positions. Janet Buzan (Buzan) provides services in the “learning laboratory” at La Vista. One of Buzan’s duties is to issue credits for subjects that La Vista does not teach. Carlisle maintains that she is senior to Buzan, because she believes Buzan served as an hourly employee in the District prior to the 2008-2009 school year, and only began teaching full-time with a first date of paid service in a probationary position in the fall of 2008. Laurie Ruhnke (Ruhnke) is another employee who teaches full-time in the Opportunities/ICE program. Ruhnke apparently was classified by

the District as an hourly employee, even though she was working full-time teaching English language development classes. Carlisle maintains that Ruhnke, like Buzan, has a seniority date in 2008, but the District established that it had a practice of hiring certificated employees, such as Ruhnke and Buzan, as hourly employees to teach in their alternative programs, and that this practice had been a error which was rectified in preparation for this layoff proceeding.

15b. Both Buzan and Ruhnke are long-time employees of the District. Buzan has worked in adult education positions and a variety of other positions since at least 1991. Since the District has not conducted a reduction in force proceeding since the early 1980's, the seniority list had to be carefully reviewed, and some of the information needed adjustment. Assistant Superintendent Atkinson testified that he spent a considerable amount of time in the fall of 2010 reviewing Buzan's and Ruhnke's extensive personnel files and evaluating their employment histories. As a result, he considered the nature of the services they provided, and determined that the District had misclassified them as hourly employees for many years. Atkinson concluded that both of these employees had been acting as certificated probationary employees for the majority of those years. Atkinson's review established that Buzan's first date of paid service in a probationary position is August 27, 1991, and Ruhnke's is August 28, 2000. Therefore, Carlisle has less seniority than Buzan or Ruhnke, and thus, Carlisle is unable to bump into their positions.

16. The District did not retain any certificated employee junior to Respondents Tatjana Antunovich, Eduardo Avendano, Danielle Carlisle, Soon-ya Gordon, Teresa Mormont, Ben Nguyen, Anna Sanders, or Christina Owens, to render a service which these Respondents are certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 6.

2. The services listed in factual finding number 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 7.

3. Cause exists under sections 44949 and 44955 for the reduction of the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 16.

4a. The Education Code appears to distinguish between opportunity schools and continuation schools, at least in some contexts. (See §§ 53, 41601, subd. (a) [for computing average daily attendance], 44865, subs. (e), (f), & (g) [for determining necessary teaching credential], & 51745). One of the purposes of the reduction in force procedure is to provide a

basis on which a certificated employee can assess the probability of nonretention or reemployment. The description or definition of services to be reduced in a reduction in force proceeding should be as specific as possible to achieve this purpose. (See Ozsogomonyan, *Teacher Layoffs in California: An Update* (1979) 30 Hastings L.J., 1727, 1740.)

The District argues that, even if the description is inadequate, this is a non-substantive procedural error that has not prejudiced anyone. Since the District determines the particular kinds of services it intends to reduce, it must be capable of providing Respondents an adequate description of these kinds of services, or else the whole process is defeated. Inadequate notice is not merely a procedural error.

4b. Antunovich has established that the District failed to specifically reduce or discontinue her two periods of health classes in this proceeding. The Resolution's description of "Opportunities" teachers is general, not specific. Atkinson testified that the description refers more to the umbrella of a school site, where particular services are performed, and not to a department or category of services performed at this site. The alternative school setting encompasses many different programs: there are even two different high schools with two very different sets of students operating at this site. Antunovich performs services for both of these high schools. The District adequately described services that Antunovich performs in the ABC program, but it plainly failed to provide Antunovich with reasonable notice that she was subject to layoff for the health courses she teaches at La Vista. Antunovich must be retained for .4 FTE to teach health classes, or for reassignment.

5. Cause exists to terminate the services of Respondents Tatjana Antunovich (0.60 FTE layoff), Eduardo Avendano, Danielle Carlisle, Soon-ya Gordon, Teresa Mormont, Ben Nguyen, Anna Sanders, and Christina Owens, by reason of factual finding numbers 1 through 16, and legal conclusion numbers 1 through 4.

ORDER

The Accusation is sustained with respect to Respondents Tatjana Antunovich (0.60 FTE layoff), Eduardo Avendano, Danielle Carlisle, Soon-ya Gordon, Teresa Mormont, Ben Nguyen, Anna Sanders, and Christina Owens, and the District may notify them that their services will not be needed during the 2011-2012 school year due to the reduction of particular kinds of services.

Dated: May ___, 2011

MARK HARMAN
Administrative Law Judge
Office of Administrative Hearings