

**BEFORE THE  
GOVERNING BOARD  
WHITTIER CITY SCHOOL DISTRICT**

In the Matter of the Layoffs of:

**THE CERTIFICATED EMPLOYEES  
LISTED IN ATTACHMENT 1,**

Respondents.

OAH No. 2011030718

**PROPOSED DECISION**

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 12, 2011, in Whittier. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

Aaron V. O'Donnell, Esq., Atkinson, Andelson, Loya, Ruud & Romo, represented the Whittier City School District (District).

Kent Morizawa, Esq., Reich, Adell & Cvitan, represented Respondents, except Kathryn Araiza, who was not present. Respondents are identified in Attachment 1.

FACTUAL FINDINGS

*Parties and Jurisdiction*

1. Dr. Ron Carruth, the District's Superintendent, made and filed the Accusations in his official capacity.
2. Respondents were at all times mentioned certificated District employees.
3. On February 15, 2011, the Governing Board of the District (Board) adopted Resolution No. R18, which proposed to reduce or discontinue the particular kinds of services encompassing 26.0 full-time equivalent (FTE) positions by the close of the 2010-2011 school year.
4. By no later than March 15, 2011, the Board and certificated employees of the District, including Respondents, were given preliminary notice that those certificated employees' services would not be required for the following school year, pursuant to Education Code sections 44949 and 44955.

5. Respondents timely requested a hearing to determine if there is cause for terminating their services, or the parties stipulated that they may appear in this matter. Each Respondent was thereafter served with an Accusation. Respondents timely filed Notices of Defense, or the parties stipulated that they did, which requested the instant hearing.

*The Decision to Reduce or Eliminate Particular Kinds of Services*

6. Resolution No. R18 specifically provides for the reduction or elimination of the following particular kinds of services:

- 2.0 FTE Middle School 6<sup>th</sup> Grade Multiple Subject Classroom Teaching Services
- 2.0 FTE Middle School Single Subject English Teaching Services
- 1.5 FTE Middle School Single Subject Social Science Teaching Services
- 1.5 FTE Middle School Single Subject Science Teaching Services
- 1.0 FTE Middle School Single Subject Art Teaching Services
- .5 FTE Middle School Single Subject Math Teaching Services
- 15.0 FTE Elementary Teaching Services
- .5 FTE Middle School Counseling Services
- 1.0 FTE Cotsen Coach Mill Elementary
- 1.0 FTE Cotsen Coach Phelan Elementary

26.0 FTEs Total

7. The decision to reduce or eliminate 26.0 FTEs was the result of financial difficulties experienced by the District.

8. Prior to sending out the preliminary notices mentioned above, the Board considered all known assured attrition.<sup>1</sup>

9. The Board also adopted Resolution No. R17, which established tie-breaking criteria to determine the relative seniority of certificated employees who first rendered paid service on the same date. The tie-breaking criteria was used in this matter to resolve ties in seniority amongst certificated personnel. The validity of the tie-breaking process is not subject to dispute.

*Overall Findings*

10. The reduction or elimination of the FTE positions in question will not reduce services below mandated levels.

---

<sup>1</sup> However, a school district is not required to account for circumstances that occur after March 15th when implementing layoff decisions. (*Lewin v. Board of Trustees* (1976) 62 Cal.App.3d 977, 982.)

11. The District maintains a seniority list containing employees' seniority dates, current assignments and locations, credentials and authorizations. Dr. Laurie Bruton, the District's Assistant Superintendent of Human Resources, and other District administrators, were responsible for compiling the seniority list. To assure the accuracy of the seniority list, certificated employees were notified in writing of the District's records regarding their employment history with the District, in order to allow them to confirm or challenge the accuracy of that information. The seniority list was updated based on new information obtained from certificated employees that was verified. It was established that the information on the seniority list is accurate, except for the following changes:

A. As between employees with the seniority date of August 25, 2006, Heidi Wilson (currently given seniority no. 265) was moved to seniority number 259.5 so she is placed after Respondent Kristy Rosander and before Respondent Rachel Troutman.

B. Judith Ledon (currently given seniority no. 266) was moved to seniority number 260.5 so she is placed after Respondent Troutman and before Leah Elmange.

C. These changes did not affect the order of layoff or the identity of those who shall be given a final layoff notice.

12. The District used the seniority list to implement and determine the proposed layoffs. The District then determined whether the least senior employees held other credentials entitling them to "bump" other employees. In determining who would be subject to layoff for each kind of particular service reduced, the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority.

13. The Board's decision to reduce or discontinue the above-described particular kinds of services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

14. The cause for reducing and/or eliminating the above-described particular kinds of services relates solely to the welfare of the schools in the District and its pupils.

15. No permanent certificated employee with less seniority will be retained to render a service that the Respondents are certificated and competent to render.

#### *Individual Respondents*

16. Xavier Diaz. The parties stipulated that his correct seniority date is August 27, 2010. Therefore, the parties stipulated that the Accusation against him shall be withdrawn.

17. Vanessa Jayme. Since she has a Masters Degree, which was not previously known to the District, she is entitled to greater priority treatment in the application of the District's tie-breaking criteria. Therefore, for employees with the same seniority date of

August 15, 2004, Respondent Jayme shall be regarded as having greater seniority to David MacKinnon and those that follow Mr. MacKinnon on the tie-breaker ranking form for that date (ex. 13, p. 3). However, this change in seniority will not prevent Respondent Jayme from receiving a final layoff notice.

18. Andrea Adame. Respondent Adame currently fills 1 FTE of a language arts assignment. She challenges the validity of a bump into her position by Nilda Huerta. Ms. Huerta is a full-time tenured teacher, but she has a fractional position, in that approximately 75 percent of her assignment is in language arts and 25 percent in social studies. Ms. Huerta's .25 social studies FTE is subject to layoff, but she is able to bump into .25 of Respondent Adame's language arts position since she is more senior. Therefore, the District proposes to layoff Respondent Adame by .25 FTE, reducing her to a part-time employee. The two employees teach at different sites. The District has a policy of not requiring teachers with regular assignments from teaching at more than one site, as opposed to itinerate teachers who are expected to travel to various sites. Respondent Adame argues the bump into .25 of her FTE position by Huerta is improper because it will require Ms. Huerta to teach at two different sites. Yet, it was not established that the District will assign Ms. Huerta to teach at two different facilities. Even so, Respondents cite to no Education Code provision making such a proposal invalid for purposes of bumping. This administrative forum has no jurisdiction to decide whether such an assignment would violate a collective bargaining agreement and/or be subject to a grievance. Therefore, no basis was established to disturb the bumping decisions made by the District in this regard.

*Patricia Cardiel*

19. The District gave Respondent Cardiel a seniority date of August 25, 2006, based on the written probationary contract she was given for the beginning of the 2006-2007 school year. Respondent Cardiel began service with the District as a substitute teacher from March through June of 2005, when she replaced a teacher who was on a maternity leave of absence. In May of 2005, she was given a letter by the District notifying her that she would be retained in the substitute pool for service during the 2005-2006 school year. Since the teacher in question did not return the next school year, Respondent Cardiel served in the same class room the entire 2005-2006 school year. At the time, Respondent Cardiel had an emergency credential. Respondent Cardiel testified that she was given a written contract for that school year, but she could not remember what it was, nor did she produce it at the hearing. She served the entire 2005-2006 school year in the same class room assignment, under the emergency permit. She was given her probationary contract effective at the beginning of the 2006-2007 school year.

20. Respondent Cardiel's testimony regarding her contract status for the 2005-2006 school year was not convincing. Her recollection of those events was halting and she had difficulty keeping track of the school years in question. In addition, her failure to have better information concerning her contract status for that school year is questionable, given that this was the fourth year in a row that she has been noticed for layoff. It is expected that with this issue being raised so many years in a row, Respondent Cardiel would have had time

to research her employment history with the District. Since the District presented a written notice that Respondent Cardiel would serve the 2005-2006 as a substitute, and she presented no other document or other convincing evidence to the contrary, it cannot be presumed that the District misclassified Respondent Cardiel based on her having less than a full credential for purposes of *Bakersfield Elementary Teachers Assn. v. Bakersfield City School District*.<sup>2</sup>

21. Respondent Cardiel also testified that she attended mandatory new curriculum training on a date in August of 2005 that she could not further specify. She was paid a stipend for attending. Since Respondent Cardiel did not establish that she was a probationary employee during this time period, her attendance at the training does not change her seniority date.

22. For the reasons described above, Respondent Cardiel did not establish a basis to adjust her seniority date.

### LEGAL CONCLUSIONS

1. The party asserting a claim or making charges in an administrative hearing generally has the burden of proof. (*Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155.) For example, in administrative hearings dealing with personnel matters, the burden of proof is ordinarily on the agency prosecuting the charges (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113); in personnel matters concerning the dismissal of a teacher for cause, the burden of proof is similarly on the discharging school district (*Gardner v. Commission on Prof. Competence* (1985) 164 Cal.App.3d 1035). As no other law or statute requires otherwise, the standard of proof in this case requires proof to a preponderance of the evidence. (Evid. Code, § 115.)

2. All notice and jurisdictional requirements of Education Code sections 44949 and 44955 were met. (Factual Findings 1-5.)

3. The services identified in Resolution No. R18 are particular kinds of services that can be reduced or discontinued pursuant to Education Code section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Services will not be reduced below mandated levels. Cause for the reduction or discontinuation of those particular services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949. (Factual Findings 1-15.)

---

<sup>2</sup> In *Bakersfield Elementary Teachers Assn. v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260, 1282-1283, the court held that it is improper for a school district to classify a teacher as temporary simply because she has less than a full credential. By default, teachers in such a situation, who were not properly qualified to be assigned permanent or substitute status, should be classified as probationary employees.

4. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. (Factual Findings 1-22.)

5. No junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render. (Factual Findings 1-22.)

#### ORDER

1. The Accusation against Respondent Xavier Diaz is dismissed. The District shall not give him a final layoff notice for the next school year.

2. The Accusations are sustained as against the remaining Respondents. The Board may give a final notice of layoff to those Respondents. Notice shall be given to those Respondents that their services will not be required for the 2011-2012 school year, and such notice shall be given in inverse order of seniority.

Dated: April 21, 2011

---

ERIC SAWYER  
Administrative Law Judge  
Office of Administrative Hearings

ATTACHMENT 1: LIST OF RESPONDENTS

1. Andrea Adame
2. Maria Alvarado
3. Kathryn Araiza
4. Patricia Cardiel
5. Rachel Chavez
6. Manuel Cornejo
7. Jana Fuentes
8. Janay Hamrick
9. Brian Hansen
10. Vanessa Jayme
11. Gloria Jimenez
12. Domani Kem
13. Elizabeth Martel
14. Arlene Martinez
15. Reagan Mikhail
16. Kevin Nielsen
17. Inez Robles
18. Kristy Rosander
19. Rachel Troutman
20. Alisa Zepeda
21. Xavier Diaz
22. Michelle Vincent