

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

In the Matter of the Employment Status of:

KUUIPO BENSON, et al.,

Respondents.

OAH No. 2012030608

PROPOSED DECISION

Robert Walker, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter in Beaumont, California, on April 25, 2012.

Sharon J. Ormond, Attorney at Law,¹ represented the complainant, the superintendent of the Beaumont Unified School District.

The employees who were served with a Preliminary Layoff Notice and who requested a hearing are listed in exhibit A as the respondents.

Carlos R. Perez, Attorney at Law,² represented those respondents who are listed in exhibit B.

Oscar De la Cruz requested a hearing but rescinded his request for a hearing.

No appearance was made by or on behalf of Lisa Tiernan.

The matter was submitted on April 25, 2012.

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DEFAULT

As to Lisa Tiernan, on proof of compliance with Government Code sections 11505 and 11509, this matter proceeded as a default pursuant to section 11520.

FACTUAL FINDINGS

General Findings Concerning Statutory Requirements

1. Education Code sections 44949 and 44955³ provide for two notices to be given in connection with terminating certificated employees. The first notice, which will be referred to as the Preliminary Layoff Notice, is given by the superintendent. It is given to the governing board and to the employees the superintendent recommends for layoff. The Preliminary Layoff Notice gives the board and the employees notice that the superintendent recommends that those employees be laid off. The superintendent must give the Preliminary Layoff Notice no later than March 15. There is no requirement that a governing board take any action in March. But while it is unnecessary, governing boards usually adopt a resolution ratifying the superintendent's recommendations.

2. The second notice is a notice of a governing board's decision to terminate an employee. That notice is provided for in Section 44955 and must be given before May 15. That notice advises a teacher that the district will not require his or her services for the ensuing school year. That notice will be referred to as a Termination Notice.

3. In this case, not later than March 15, 2012, the superintendent notified the governing board and the respondents that he recommended that the respondents not be retained for the ensuing school year.

4. The Preliminary Layoff Notice stated the reasons for the recommendation. The recommendation was not related to respondents' competency.

5. A Preliminary Layoff Notice was delivered to each respondent, either by personal delivery or by depositing the notice in the United States mail, registered, postage prepaid, and addressed to respondent's last known address.

6. The Preliminary Layoff Notice advised each respondent as follows: He or she had a right to a hearing. In order to obtain a hearing, he or she had to deliver a request for a hearing in writing to the person sending the notice. The request had to be delivered by a specified date, which was a date that was not less than seven days after the notice was

³ All references to the Code are to the Education Code unless otherwise specified.

served.⁴ And the failure to request a hearing would constitute a waiver of the right to a hearing.

7. Respondents either timely filed written requests for a hearing or obtained a waiver of their failure to file. An accusation was timely served on respondents. Respondents were given notice that, if they were going to request a hearing, they were required to file a notice of defense within five days after being served with the accusation.⁵ Respondents either filed timely notices of defense or obtained a waiver of their failure to file. All prehearing jurisdictional requirements were either met or waived.

8. The governing board of the district resolved to reduce or discontinue particular kinds of services. Within the meaning of Section 44955, the services are “particular kinds of services” that can be reduced or discontinued. The decision to reduce or discontinue these services was not arbitrary or capricious but constituted a proper exercise of discretion.

Services the District Intends to Reduce or Discontinue

9. The governing board of the district determined that, because particular kinds of services are to be reduced or discontinued, it is necessary to decrease the number of permanent or probationary employees in the district.

10. The particular kinds of services the governing board of the district resolved to reduce or discontinue are:

K-5 Classroom Teachers	22.0	F.T.E.
6th Grade Core Teaching Services	3.0	F.T.E.
Middle School English/Language Arts Teaching Services	2.0	F.T.E.
Middle School Mathematics Teaching Services	2.0	F.T.E.
High School Mathematics Teaching Services	2.0	F.T.E.

⁴ Employees must be given at least seven days in which to file a request for a hearing. Education Code section 44949, subdivision (b), provides that the final date for filing a request for a hearing “shall not be less than seven days after the date on which the notice is served upon the employee.”

⁵ Pursuant to Government Section 11506, a party on whom an accusation is served must file a notice of defense in order to obtain a hearing. Education Code section 44949, subdivision (c)(1), provides that, in teacher termination cases, the notice of defense must be filed within five days after service of the accusation.

Middle School Dual Immersion Science Teaching Services	.2	F.T.E.
High School English/Language Arts Teaching Service	2.0	F.T.E.
High School Health Teaching Services	.2	F.T.E.
High School Science (Biology) Teaching Services	.2	F.T.E.
High School Social Studies/Social Science Teaching Services	2.0	F.T.E.
High School Spanish Teaching Services	.4	F.T.E.
High School Child Development Teaching Services	.2	F.T.E.
High School Construction Teaching Services	.2	F.T.E.
High School Industrial Technology (CAD) Teaching Services	.2	F.T.E.
High School Introduction to Technology Teaching Services	.2	F.T.E.
High School Comp. Info. Systems (CIS) Teaching Services	.2	F.T.E.
High School Advanced Technology Teaching Services	.2	F.T.E.
High School Work Experience Teaching Services	.2	F.T.E.
Secondary Physical Education Teaching Services	1.5	F.T.E.
School Counseling	3.0	F.T.E.
TOTAL CERTIFICATED POSITIONS	41.9	F.T.E.

Notices to be Rescinded

11. The district stipulated that, if none of the proposed layoffs were disallowed, the district would rescind the Preliminary Layoff Notices served on Catalina Quintero and David Vanderpool. None of the proposed layoffs are being disallowed.

Use of Tie-Breaking Criteria Based on the Current Needs of the District and Students

12. Pursuant to Section 44955, subdivision (b), the governing board of the district adopted criteria for determining the order of termination as among employees who first rendered paid service on the same day. Section 44955, subdivision (b), requires a district to adopt such criteria and provides that the criteria are to be based on “needs of the district and the students”

13. The district’s tie-breaking criteria are as follows:

WHEREAS, Education Code section 44955, subsection (b), related to certificated layoffs, provides in relevant part, “[a]s

between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of need of the district and the students thereof.”

WHEREAS, Education Code section 44846, related to reemployment following the termination of services, provides in relevant part, “As between two or more employees who first rendered paid service to the district on the same date, and who, following the termination of services, have a statutory preference to reappointment in the order of original employment, the governing board shall determine the order of reemployment solely on the basis of the needs of the district and the students thereof.”

NOW, THEREFORE, BE IT RESOLVED that based upon the needs of the District and the students thereof, in the event of a certificated layoff and/or reappointment of laid off certificated staff, the following criteria, listed in priority order, shall be applied, one step at a time until the tie is broken, to resolve ties in seniority between certificated employees.

1. Highly Qualified status in the area of the current assignment pursuant to the No Child Left Behind Act of 2001. Employees presently in assignments not requiring HQ status will be treated as HQ for purposes of tiebreak.
2. Possession of a clear or preliminary authorization to teach English Language Learners, in order of priority:
 - a. Bilingual Cross Cultural Language and Academic Development (BCLAD), Bilingual Certificate of Competence (BCC), or Bilingual Specialist Credential (BCS) certification;
 - b. Cross Cultural Language and Academic Development (CLAD), SB 1969 or SB 395 Certificate;
 - c. Language Development Specialist Certificate (LDS);
 - d. Supplemental Authorization for English as a Second Language;
 - e. Specially Designated Academic Instruction in English (SDAIE).
3. Credential status in the area of the current assignment, in order of priority:
 - a. Clear Professional, Life, General, Standard Secondary, etc.;
 - b. Preliminary;
 - c. Intern;
 - d. Provisional;

- e. Short-term Staff Permit (STSP);
- f. Provisional Intern Permit (PIP);
- g. Designated Subject Career Technical Education credential;
- h. Waiver.
- 4. Possession of a Clear or Preliminary Single Subject or Services Credential in the following areas, in order of priority:
 - a. Mathematics;
 - b. Foundational Mathematics;
 - c. Science;
 - d. Speech and Language Pathology;
 - e. Special Education;
 - f. Foreign Language;
 - g. English;
 - h. Physical Education;
 - i. Fine Arts;
 - j. Multiple Subject;
 - k. Social Studies/Social Science.
- 5. Possession of a Subject Matter Authorization (as opposed to a Supplemental Authorization), in order of preference, will be regarded as having greater seniority for purposes of determining seniority order:
 - a. Mathematics;
 - b. Physics;
 - c. Chemistry;
 - d. Geosciences;
 - e. Biological Sciences;
 - f. Special Education-Autism Spectrum Disorders;
 - g. English;
 - h. Fine Arts;
 - i. Social Sciences/Social Studies;
 - j. Business/Computer Education;
 - k. Physical Education.
- 6. Total number of Clear or Preliminary Credentials in different subject areas;
- 7. Total number of Subject Matter Authorizations (as opposed to Supplemental Authorizations) in different subject areas;
- 8. Possession of an SB 472 English/Language Arts (ELA) Training Certificate;
- 9. Number of years of credentialed teaching experience in a public school setting prior to employment with the District;
- 10. Possession of an earned Doctorate Degree, earliest date prevails;

11. Possession of an earned Masters Degree, earliest date prevails;
12. Total number of credits/units beyond a Bachelor's degree on file with the District by February 15, 2012;
13. If ties cannot be broken by using the above criteria, then order of seniority shall be determined by a random drawing among employees in the individual tie.
Such criteria shall be applied to rank the order of individuals for purposes of layoff and reemployment, subject to exceptions allowed by law.

14. Any issues that were raised concerning the district's application of the tie-breaking criteria were resolved by a stipulation that is noted below at Finding 20.

District's Intention to Deviate from Seniority (Skipping)

15. Pursuant to Section 44955, subdivision (d)(1), a district may deviate from terminating employees in the order of seniority, i.e., a district may *skip* over teachers with a particular qualification and terminate more senior teachers who do not possess that qualification. In order to skip, a district must demonstrate a specific need for personnel to teach a specific course or course of study or for personnel with a specialization in personnel services or nursing. If the need concerns a course or course of study, the district may skip a junior employee only if employees with more seniority do not possess the special training and experience necessary to teach the course and only if the junior employee does possess that special training and experience.

16. Pursuant to Section 44955, subdivision (d)(1), the governing board of the district resolved to deviate from terminating employees in the order of seniority, i.e., the board resolved to skip over teachers with a particular qualification and terminate more senior teachers who do not possess that qualification. A district may skip a junior employee only if employees with more seniority do not possess the special training and experience necessary to teach a specific course or course of study (specific course).

17. The board resolved as follows:

WHEREAS, this Board has determined that due to a significant population of English language learners with specialized educational needs, a specific and compelling need exists to employ and retain teachers who possess special training and/or and experience to teach dual immersion classes; and

WHEREAS, this Board has determined that with increasingly more limited staff and the need to provide maximum flexibility in staffing, a specific and compelling need exists to employ and

retain teachers who are teaching dual/split assignments requiring multiple single subject credentials in core subject areas; and

WHEREAS, Education Code section 44955(d) authorizes this Board to deviate from terminating a certificated employee in order of seniority for the above reason, if necessary; and

WHEREAS, the needs of the District and the students thereof cannot be adequately served by laying off teachers who are teaching dual/split assignments requiring multiple single subject credentials in core subject areas, or teachers who possess special training and/or and experience necessary to teach dual immersion classes

18. The respondents did not raise any issues as to the district's decisions regarding skipping.

Right to be Retained According to Seniority and Qualifications – Date of Hire

19. Job security is not inherent in seniority. The Legislature chose to provide teachers with limited job security according to their seniority.

20. The district stipulated that it will make certain changes in its seniority list. These changes have no effect on which employees will be laid off and which ones will be retained this year. The changes are as follows:

Alison Moore will be deleted from the list.

The seniority date for Tammi Medlen and Elizabeth Newmeyer will be changed to August 11, 2008.

Within the group of teachers who share a seniority date of August 15, 2008, application of the tie-breaking criteria causes them to be deemed to be ranked for seniority as follows: Number 1 is Oscar De la Cruz, and number 1 is deemed to be ranked the highest. Number 2 is David Vanderpool. Number 3 is Catalina Quintero. Number 4 is Michael Williams.

Right to be Retained According to Seniority and Qualifications – (Bumping)

21. The second paragraph of section 44955, subdivision (c), does not add to teachers' seniority rights. It does, however, make it clear that governing boards must make assignments in such a way as to protect seniority rights. Employees must be retained to render any service their *seniority* and qualifications entitle them to render. Thus, if a senior teacher whose regular assignment is being eliminated is certificated and competent to teach a junior teacher's courses, the district must retain the senior teacher and reassign him or her to

render that service. This is commonly referred to as bumping. The district must either reassign or terminate the junior employee.

22. The board adopted competency standards as follows:

“[C]ompetency” as described in Education Code section 44955(b) for the purposes of bumping shall necessarily include: (1) possession of a valid clear or preliminary credential in the relevant subject matter area; (2) “highly qualified” status under the No Child Left Behind Act; (3) appropriate full (not emergency) EL authorization (if required by the position); (4) to bump into dual/split assignment positions requiring multiple single subject credentials in core subject areas, possession of all required single subject credentials; (5) to bump a single subject credential holder in a core subject area, possession of the required single subject credential; and (6) any training and experience necessary to meet the job requirements of specialized positions (such as Dual Immersion, TOSA, ASB, and AVID).

[B]umping shall only be allowed in cases where the senior employee possesses all credentials necessary to assume the whole assignment of the junior employee.

23. It is found that the district’s bumping decisions appropriately placed teachers according to their seniority and qualifications.

Mandated Services

24. State and federal laws mandate that certain services be provided at or above mandated levels. There was no evidence that the district is reducing those services below mandated levels.

Summary of Findings Regarding Retention of Employees

25. Pursuant to the district’s stipulation, the district shall rescind the Preliminary Layoff Notices served on the respondents listed in Finding 11.

26. With regard to respondents who are permanent employees, the district will not be retaining any probationary employee to render a service that such a respondent is certificated and competent to render.

27. With regard to respondents who are permanent employees, the district will not be retaining any employee with less seniority than such a respondent has to render a service that the respondent is certificated and competent to render.⁶

28. With regard to respondents who are either permanent or probationary employees, the district will not be retaining any employee with less seniority than such a respondent has to render a service that the respondent's qualifications entitle him or her to render.⁷

LEGAL CONCLUSIONS

General Conclusions

1. Jurisdiction in this matter exists under Sections 44949 and 44955. All notice and jurisdictional requirements contained in those sections were satisfied.

2. Within the terms of Sections 44949 and 44955, the district has cause to reduce or discontinue particular kinds of services and to give Termination Notices to certain respondents. The cause relates solely to the welfare of the schools and the pupils.

Cause Exists to Terminate Certain Respondents

3. Cause does not exist to terminate the respondents identified in Finding 11.

4. With that exception, cause exists to give notice to the respondents that their services will not be required for the ensuing school year.

⁶ Section 44955, subdivision (b), provides seniority protection for a permanent employee in terms of the services *the employee is* “*certificated and competent to render.*”

⁷ Section 44955, subdivision (c), provides seniority protection for both permanent and probationary employees in terms of the services *an employee's* “*qualifications entitle [him or her] to render.*”

ORDER

1. Pursuant to stipulation, the district shall rescind the Preliminary Layoff Notices served on Catalina Quintero and David Vanderpool. The district shall not give Termination Notices to them. As to those respondents, the accusation is dismissed.
2. The district may give Termination Notices to the remaining respondents.

Dated: May 3, 2012

ROBERT WALKER
Administrative Law Judge
Office of Administrative Hearings

EXHIBIT A

RESPONDENTS

BEAUMONT UNIFIED SCHOOL DISTRICT

2012

1. Kuuipo Benson
2. Danielle Crayne
3. Amy Franklin
4. Gregory Hammond
5. Rachelle Herlihy
6. Genelle Kenyon
7. Yolanda Lopez
8. Meghan Lusk
9. Jennifer Martin
10. Monica Mayer
11. Lynda McGill
12. Matthew McIntosh
13. Tammi Medlen
14. Elizabeth Newmeyer
15. Catalina Quintero
16. Cecilia Rodriguez
17. Lisa Tiernan
18. David Vanderpool
19. Bradley Vargyas
20. Michael Williams

EXHIBIT B
RESPONDENTS REPRESENTED BY MR. PEREZ
BEAUMONT UNIFIED SCHOOL DISTRICT
2012

RESPONDENTS WHO ARE REPRESENTED BY MR. PEREZ

Kuupo Benson
Danielle Crayne
Amy Franklin
Gregory Hammond
Rachelle Herlihy
Genelle Kenyon
Yolanda Lopez
Meghan Lusk
Jennifer Martin
Monica Mayer
Lynda McGill
Matthew McIntosh
Tammi Medlen
Elizabeth Newmeyer
Catalina Quintero
Cecilia Rodriguez
David Vanderpool
Bradley Vargyas
Michael Williams

BEAUMONT UNIFIED SCHOOL DISTRICT

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