

BEFORE THE
GOVERNING BOARD
ADELANTO ELEMENTARY SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

RESPONDENTS LISTED IN
EXHIBIT "A"

OAH No. 2013040001

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in Adelanto, California, on April 16, 2013.

Melanie A. Peterson, Esq. and Kelley Owens, Esq., Fagen Friedman & Fulfrost LLP, represented Edward Dardenne-Ankringa, Assistant Superintendent - Human Resources, Adelanto Elementary School District.

Carlos Perez, Esq., Reich, Adell & Cvitan, represented Respondents listed in Exhibit "A".

The matter was submitted on April 16, 2013.

SUMMARY OF PROPOSED DECISION

The Board of Education of the Adelanto Elementary School District determined to reduce or discontinue particular kinds of services provided by teachers for budgetary reasons. The decision was not related to the competency or dedication of the individuals whose services are proposed to be reduced or eliminated.

Adelanto Elementary School District staff carried out the Board of Education's decision by using a selection process involving review of credentials and seniority, "bumping," and breaking ties between/among employees having the same first dates of paid service. The selection process was in accordance with the requirements of the Education Code.

FACTUAL FINDINGS

1. Respondents listed on Exhibit “A” (Respondents) are certificated employees of the Adelanto Elementary School District (District).

2. Lily Matos DeBlieux, the District’s Superintendent (Superintendent), notified the District’s Governing Board (Board) of her recommendation that the District reduce or discontinue particular kinds of services for the 2013-2014 school year.

3. On March 6, 2013, the Board adopted Resolution No. 12-13-26 reducing or eliminating particular kinds of services for the ensuing school year. The Board directed the Superintendent or designated representative to send notices to all employees possibly affected by the reduction or elimination of particular kinds of services.

Resolution No. 12-13-26 states, in pertinent part:

Recommended Reduction in 2013-2014 programs/services for the Adelanto School District

The Superintendent recommends that the Board of Trustess adopt a resolution to reduce the programs and services for 2013-2014 school year as follows:

<u>Services</u>	<u>Number of Full-time Equivalent Positions</u>
1. Elementary Teaching	16.0 FTE
Total Full-time Equivalent Reduction	16.0 FTE

The proposed reductions totaled 16.0 full-time equivalent (FTE) positions.

4. On March 11, 2013, Edward Dardenne-Ankring, the District’s Assistant Superintendent of Human Resources (Assistant Superintendent), served permanent and probationary certificated Respondents with “Resolution of Intention to Dismiss Certificated Employees Particular Kinds of Service”, “Notice of Recommendation that Services Will Be Terminated (Education Code §§44949,44955), blank “Respondent’s Combined Request for Hearing and Notice of Defense”, Statement to Respondent, Accusation, and relevant sections of the Education Code and Government Code.

Each Respondent submitted a timely Request for Hearing/Notice of Defense to determine if there was cause for not re-employing him or her for the ensuing school year.

5. On April 2, 2013, the District served Respondents with a Notice of Hearing setting the hearing for April 16, 2013, in accordance with Government Code section 11509.

6. All prehearing jurisdictional requirements were satisfied.

7. Sheila Howlett (Howlett), the District's Credential Personnel Assistant, was responsible for implementing the technical aspects of the layoff. She developed a seniority list for probationary or permanent certificated staff that included, among other matters, the name of the certificated employee, first date of paid service in a probationary position, assignment, credentials and status.

The seniority date was based on the first date of paid service rendered in a probationary position.¹ A teacher hired as a probationary employee who worked as a substitute or temporary employee for at least 75 percent of the school days during the previous year and who had performed the duties normally required of a certificated employee of the District was deemed to have served a complete school year as a probationary employee if that individual was employed as a probationary employee in the following school year. The individual was entitled to have that earlier year counted as a year of probationary service. The prior year was "tacked" on for seniority purposes but only one year could be tacked.²

Howlett used the seniority list to develop a proposed order of layoff list to determine the least senior employees currently assigned in the service being reduced. Then, the District determined whether the least senior employees held credentials in another area that would entitle them to "bump" other junior employees. In determining who would be laid off for the service reduced, Howlett counted the number of reductions and determined the impact on incumbent staff in inverse order of seniority. Then, she checked the credentials of affected individuals and whether they could "bump" other employees.

The evidence established the procedure that the District followed to assure the accuracy of the District's seniority list. District employees checked the database to confirm the information contained in the seniority list.³ The District provided the seniority list to the Adelanto District Teachers' Association (ADTA) and to their members. The District asked for feedback to determine if there were any corrections or modifications and received none. The District used the seniority list to determine to whom notices should be sent.

8. Respondents Luz Gomez and George Fresta each sought modification of the seniority date on file with the District based on a prior temporary contract or contracts that each had with the District. There was no evidence that a modification of the seniority date of any Respondent named in this Factual Finding impacted whether the employee should have received a layoff notice even though it may have had an impact for the purpose of re-

¹ Education Code section 44845

² Education Code section 44918

³ Exhibit B

employment. This proceeding was not the forum to determine the proper seniority date for re-hire.

9. The District determined that three senior employees included among the PKS being reduced were able to “bump” more junior employees.

Catherine Tury (Tury)⁴ is a permanent teacher whose seniority date is August 13, 2008, and who holds a Multiple Subject credential. For the 2012-2013 school year, she is assigned to teach a kindergarten/first grade class. She is subject to the layoff based on the PKS being reduced. However, Tury is able to “bump” Chandra Thornton (Thornton)⁵, a probationary teacher whose seniority date is February 21, 2012, and who holds a Multiple Subject credential. Thornton is assigned to teach Language Arts and English Language Development in the middle school for the current school year. Tury is more senior, holds the same credential as Tury and therefore is able to perform the services provided by Thornton. Tury “bumped” Thornton. Thornton received a layoff notice and Tury did not.

Jonathan Wilson (Wilson)⁶ is a permanent teacher whose seniority date is August 13, 2008, and who holds a Multiple Subject credential. For the 2012-2013 school year, he is assigned to teach sixth grade. He is subject to layoff based on the PKS being reduced. However, Wilson is able to “bump” Tracy Moore (Moore)⁷, who is a probationary teacher and whose seniority date is February 21, 2012. Moore holds a Multiple Subject credential, and is assigned to teach Geography in the middle school for the current school year. Wilson is more senior, holds the same credential as Moore and therefore is able to perform the services provided by Moore. Wilson “bumped” Moore. Moore received a layoff notice and Wilson did not.

Amanda Anderson (Anderson)⁸ is a permanent teacher whose seniority date is October 8, 2008, and holds a Multiple Subject credential. For the 2012-2013 school year, she is assigned to teach second grade. She is subject to layoff based on the PKS being reduced. However, Anderson is able to “bump” Francisco Lopez (Lopez)⁹, who is a probationary teacher whose seniority date is October 16, 2012 and holds a Multiple Subject credential. Lopez is assigned to teach History/Science in the middle school for the current school year. Anderson is more senior, holds the same credential as Lopez and therefore is

⁴ Catherine Tury is listed on the seniority list as reference number 298.

⁵ Chandra Thornton is listed on the seniority list as reference number 319.

⁶ Jonathan Wilson is listed on the seniority list as reference number 299.

⁷ Tracy Moore is listed on the seniority list as reference number 320.

⁸ Amanda Anderson is listed on the seniority list as reference number 300.

⁹ Francisco Lopez is listed on the seniority list as reference number 343.

able to perform the services provided by Lopez. Lopez “bumped” Anderson. Lopez received a layoff notice and Anderson did not.

10. The District and the ADTA, through Article 23 of the collective bargaining agreement, have agreed to Tie-Breaking Criteria to be used to establish the order of seniority among the District’s certificated employees who have the same credential and who share the same first date of paid service in a probationary position in the event of a layoff.¹⁰

There were District certificated employees who had the same seniority date. However, the District determined that it was not necessary to apply the Tie-Breaking Criteria for purposes of layoff.

11. The District considered all positively assured attrition in determining the actual number of final layoff notices to be delivered to its certificated employees.

12. The services that the Board proposed to reduce were “particular kinds of services” that can be reduced or discontinued within the meaning of Education Code section 44955. The Board’s decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious but constituted a proper exercise of discretion.

13. The Board’s reduction or discontinuance of particular kinds of services related to the welfare of the District and its pupils. The reduction or discontinuance of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Board.

14. No certificated employee junior to any Respondent was retained to perform any services that any Respondent was certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in these sections are satisfied.

2. 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 vs. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

¹⁰ Exhibit A-3

3. Cause exists under Education Code sections 44949 and 44955 for the Adelanto Elementary School District to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuance of particular kinds of services is related solely to the welfare of the schools and the pupils thereof.

4. The services of no permanent employee may be terminated while any probationary employee, or any employee with less seniority, is retained to render a service that the permanent employee is certificated and competent to render. Junior employees may be given retention priority over senior employees only if they possess special skills or capabilities that their more senior counterparts lack. Under the statutory scheme, a senior employee whose position is discontinued has the right to transfer to a continuing position he is certificated and competent to fill, and in so doing may displace or “bump” a junior employee. (*Poppers v. Tamalpais Union High School Dist.* (1986) 184 Cal.App.3d 399, 405.)

5. No employee with less seniority than any Respondent is being retained to perform a service that any Respondent is certificated and competent to render.

6. All arguments not addressed herein are not supported by the evidence and/or the law and therefore rejected.

ORDER

1. The Accusation served on Respondents listed on Exhibit “A” is sustained. The Adelanto Elementary School District shall give notice to Respondents before May 15, 2013 that their services will not be required for the 2013-2014 school year because of the reduction or discontinuance of particular kinds of services.

2. Notice shall be given in inverse order of seniority.

DATED: May 2, 2013

VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings