

BEFORE THE
BOARD OF TRUSTEES
COACHELLA VALLEY UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force
Involving the Respondents Listed in
Exhibit A.

OAH No. 2014030189

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 15, 2014, in Thermal, California.

Melanie Petersen and Kelley Anne Owens, Fagan, Friedman & Fulfroost, represented the Board of Trustees of the Coachella Valley Unified School District (district).

Jon Vanderpool, Smith, Steiner, Vanderpool & Wax, represented all but one of the respondents listed in Exhibit A.

William Kim appeared and represented himself.

Before the hearing, the accusation filed against Richard Ortiz was withdrawn and his layoff notice was rescinded.

The matter was submitted on April 15, 2014.

FACTUAL FINDINGS

1. Greg Fromm, Assistant Superintendent, Administrative Services, made and filed the accusation in his official capacity.
2. Respondents are listed in Exhibit A, attached hereto. Each respondent is a certificated employee of the district.
3. On February 27, 2014, the district adopted Resolution No. 2014-40, reducing particular kinds of services and directing the superintendent to give appropriate notices to certificated employees whose positions were affected by the action. The resolution called for the reduction of 51.0 Full Time Equivalent position (FTEs). The FTEs eliminated were Art

(2.0), Driver's Education (2.0), Language Arts/English (29.0), Physical Education (2.0), Social Science (8.0), and Spanish (8.0).

4. On February 27, 2014, the district adopted Resolution No. 2014-39 that established tie-breaking criteria to determine the order of termination for those employees who shared the same seniority dates.

5. On March 11, 2014, the district adopted Resolution No. 2014-46, reducing an additional 4.0 FTEs, identified as "Teacher on Special Assignment K-12 Technology Teachers Training Teachers (T3)." The superintendent was directed to give appropriate notices to the affected certificated employees.

6. The district identified certificated employees for layoff and gave written notice to them that their services would not be required for the 2014-2015 school year. The resolutions were attached to the layoff notices. The district took into account all positively assured attrition when determining who would receive layoff notices. The layoffs will not reduce any of the district's offerings in code mandated courses below the level required by law.

7. Respondents filed timely requests for hearing to determine if there was cause for terminating their services. An accusation was served on each respondent. All prehearing jurisdictional requirements were met.

8. Assistant Superintendent Fromm testified that the primary reason for the reduction was the reconfiguring of periods in the high schools. One high school will be going from four to six periods and another from five to six periods. Because the district's contract with the teacher's union provides each teacher with one preparation period per day, fewer teachers are needed when more periods are offered. Assistant Superintendent Fromm was asked about several respondents recommended for termination, and except for the respondents identified in Factual Finding Nos. 9 and 10, the evidence did not establish that the district acted impermissibly.

The August 19, 2013, New Teacher Orientation

9. A divisive issue in this proceeding was the district's decision to use an August 19, 2013, new teacher training as a seniority date. Teachers who attended the training were given August 19, 2013, as their seniority date. Those who did not attend were given August 20, 2013, the first day of school, as their seniority date. While normally this would have been an appropriate way to determine seniority, the way it was handled in this case made the selection of August 19, 2013, as a seniority date arbitrary and capricious.

The district stipulated that the August 19, 2013, training was not mandatory. The evidence established that many teachers who did not attend the August 19, 2013 training had been employed in the district for several years. Some were previously certificated employees

who had been laid off in the past. Others had worked in the district as long-term substitutes or as temporary employees. When those respondents inquired about the training, they were told that they did not need to attend because they were not “new teachers” in the district. At no time did the district ever advise those respondents that attending the training would affect their seniority. Moreover, those who did attend were originally paid a \$50 stipend, which was not equivalent to a day’s pay.

Assistant Superintendent Fromm testified that the district used the August 19, 2013, training as a seniority date because of an agreement the district had with the union. However, on cross-examination, he agreed that he was unaware of a writing memorializing this union agreement, he did not know the parties to the agreement, the agreement was reached in 2008, and he could not explain whether a 2008 agreement was meant to apply to a 2013 training. In short, Assistant Superintendent Fromm’s testimony regarding the rationale for using the August 19, 2013, date was unconvincing.

Several respondents who did not attend the August 19, 2013, training testified. Bianca Guerrero began teaching in the district as a substitute teacher in 2006. She became a full-time teacher in 2007. She worked in the district until 2010 when she was terminated during the 2010 reduction in force proceeding. Ms. Guerrero continued working in the district on a temporary contract from 2010 to the present, and is on track to clear her credential this year. She received a flyer about the August 19, 2013, training and asked her immediate supervisor, the principal at her school site, about it. The principal advised her that the training was not mandatory. As a result, on August 19, 2013, Ms. Guerrero remained at her site to continue setting up her classroom for the first day of school, which began the next day. Ms. Guerrero testified that if anyone had informed her that her seniority would have been negatively affected by not attending the training, she would have gone, especially since she had been the subject of the reduction in force action in 2010.

Iselda Macias-Aguilera began working as a substitute teacher in the district in 2004. She worked in the district on a temporary contract until the 2009-2010 school year, when she was terminated during the 2010 reduction in force proceeding. Ms. Macias-Aguilera continued working in the district on a temporary contract from 2010 to the present, and is on track to clear her credential this year. She received information about the August 19, 2013, training on July 20, 2013, when she was at Human Resources to sign her contract to teach during the 2013-14 school year. Ms. Macias-Aguilera asked if she needed to attend the training and was told by the Human Resources staff that it was not mandatory and that she did not need to attend. Had Ms. Macias-Aguilera been informed that her seniority would have been negatively affected by not attending the training, she would have gone, especially since she had been the subject of the reduction in force action in 2010.

The most disconcerting testimony came from Stephanie Price. She testified that when she received information about the training, she planned to attend and she confirmed her attendance. However, that school year she was assigned to a new school site and her principal scheduled a staff meeting for August 19, 2013. When she told him about the new teacher training, he informed her that he had already notified the district that she would not

be attending the training because of the site meeting he was holding. As Ms. Price correctly pointed out, had she gone to the training, and not to the site meeting, she would not be a respondent in this hearing. The fact that Ms. Price's principal cancelled her attendance at the training and that the district then used that training as a seniority date was very troubling.

While a seniority date is typically "the first date of paid service with the district," in this case the district only paid attendees a \$50 stipend. Although counsel argued that attendees were later retroactively paid for attending, there was no evidence introduced to support that assertion. Moreover, the use of the August 19, 2013, date was arbitrary and capricious. The training was not mandatory, district employees notified these respondents that they did not need to attend, and one principal actually canceled a respondent's confirmed attendance at the training because of a site meeting he scheduled. These respondents, who were not "new district employees," were misled about the significance of attending the training. This was not a case where respondents chose not to attend; this was a case where they were misled, to their detriment, from attending. The facts presented here made the use of the August 19, 2013, seniority date arbitrary and capricious, something that a district is proscribed from doing in these proceedings.

The notices served on Bianca Guerrero, Iselda Macias-Aguilera, Stephanie Price, Veronica Guterrez, Maureen King, and Juliet Rodriguez, shall be rescinded.

Other Respondents' Testimony

10. Maribel Aguilar testified that the resolution called for the reduction of 8.0 social science FTEs but she is the tenth social science teacher to receive a notice. A preponderance of the evidence demonstrated that she properly received notice because of bumping.

11. Ariada Flores testified that she is completing her English credential and would like an opportunity to submit that documentation to the district when her coursework is completed. A preponderance of the evidence demonstrated that Ms. Flores properly received notice because of her Spanish credential. Ms. Flores is encouraged to continue with her course of studies and file proof of completing her English course of studies with the district.

12. Elaine Lethcoe began teaching in the district in 2004. She had a break in service between 2011 and 2013 and attended the August 19, 2013, new teacher training. Ms. Lethcoe did not receive any credit for her prior service even though the district has extended that courtesy to other employees in the past. Ms. Lethcoe introduced a letter from a previous employee corroborating Ms. Lethcoe's claim. While a nice gesture, nothing requires the district to extend that courtesy to Ms. Lethcoe. A preponderance of the evidence demonstrated that Ms. Lethcoe properly received notice.

13. Betty Schwartz prepared a document outlining the disparate impact the reductions will have at the sites. Her document demonstrated the negative impact the reductions will have on the master schedule at Coachella Valley High School. While her

testimony and document were quite compelling, a preponderance of the evidence demonstrated that Ms. Schwartz properly received notice.

14. Sarah Chavez testified that Assistant Superintendent Fromm's testimony was at odds with district publications the teachers have been receiving, which have advised them that the reductions were due to the fact that the district was experiencing a financial deficit. Ms. Chavez simply wanted the truth to be told about why the reductions were necessary. While her testimony was heartfelt and her frustration understandable, a preponderance of the evidence demonstrated that Ms. Chavez properly received notice and that the district did not abuse its discretion.

Respondents' Notice of Defense and the District's Response Thereto

15. Respondents raised several issues in their Notice of Defense to which the district filed a response.¹

Erica Agee asserted that her seniority date should be August 17, 2011, as she attended a mandatory paid training on that date and "will attempt to provide documentation" of that training. No such documentation was provided. Additionally, the district provided evidence that Ms. Agee did not attend the training until September 20, 2011, and even if her seniority date was changed, it would not result in her notice being rescinded. Consequently, Ms. Agee was properly notified of potential layoff.

Katherine Chou asserted that her seniority date should be August 19, 2011, as she attended a mandatory paid training on that date. The district's records, however, demonstrated that Ms. Chou did not sign out of the training, did not indicate how many hours she attended the training, and that even if her seniority date was changed, it would not result in her notice being rescinded. Her failure to sign out or submit documentation of the hours she attended was pro forma, not substantive, and insufficient evidence to demonstrate that she did not attend the training. However, a change in her seniority date will not result in her notice being rescinded in any event. A preponderance of the evidence established that Ms. Chou's seniority date should be changed but that this change will not affect her layoff status.

Araida Flores asserted that her seniority date should be the 2004-2005 school year because she worked that entire school year as a long-term substitute. The district asserted that the code sections and case law permit a teacher to receive only one year's credit as a probationary employee. Ms. Flores received one year's credit during the 2005-2006 school year. Consequently, her seniority date is correct.

¹ The district's reply indicates that "attached documentation provides more detail," but no documents were attached thereto.

Several employees less senior than David Mackey were retained. However, Mr. Mackey failed to obtain his CLAD, which will result in him being mis-assigned should he remain in his current position.

Luis Angel Martinez asserted that his seniority date should be August 31, 2006, not November 7, 2006, and that he worked the preceding year. However, he worked as an instructional aide, a classified position, during the beginning of the 2006-2007 school year before working as a substitute teacher, and he received credit for that one year during the 2006-2007 school year. Furthermore, even if his seniority date was changed, it would not result in his notice being rescinded.

Orlando Nava asserted that his seniority date should be October 1, 2007, not August 13, 2008, because he worked more than 75 percent of that year as a long-term substitute. The district asserted that Mr. Nava can tack on only one year immediately preceding his full time teaching assignment, and the evidence indicated that he did not have his credential while substituting during the 2007-2008 school year. However, the code section requiring 75 percent substitute work does not speak to credentialing. No evidence to refute Mr. Nava's contention that he worked 75 percent of the 2007-2008 school year was introduced. As such, Mr. Nava's seniority date should be revised to October 1, 2007. Thereafter, Mr. Nava's layoff notice should be rescinded if he has more seniority than any other certificated employees junior to him who were retained.

Other Layoffs

16. No other certificated employee junior to any respondent was retained by the district to perform services that any respondent was certificated and competent to render other than those referenced in Factual Finding Nos. 9 and 15.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955.

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

3. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) Junior teachers may be

given retention priority over senior teachers only if the junior teachers possess superior skills or capabilities that their more senior counterparts lack. (*Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.)

4. A district's decision to reduce or discontinue a particular kind of service is a matter reserved to a district's discretion and is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

5. A district's decision to reduce a particular kind of service must not be fraudulent, arbitrary or capricious. (*San Jose Teachers Association v. Allen* (1983) 144 Cal. App. 3d 627, 637.)

6. Education Code section 44918 provides that an employee who works at least 75 percent of the school year as a substitute teacher and who is re-employed the following year as a probationary employee, shall be credited with one year as a probationary employee.

7. Because of the reduction of particular kinds of services, cause exists, pursuant to section 44955, to give notice to many respondents listed in Exhibit A that their services will not be required for the 2014-2015 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of section 44949. The district has identified the certificated employees providing the particular kinds of services that the Board of Trustees directed be reduced or discontinued. A preponderance of the evidence sustained the charges set forth in the accusation, subject to the recommendations listed in Factual Finding Nos. 9 and 15.

RECOMMENDATIONS

The notices served on Bianca Guerrero, Iselda Macias-Aguilera, Stephanie Price, Veronica Guterrez, Maureen King, and Juliet Rodriguez shall be rescinded.

As to the teachers named on Exhibit A other than Guerrero, Macias-Aguilera, Price, Guterrez, King, and Rodriguez, the Board of Trustees may give notice that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2014-15 school year.

The district shall change Katherine Chou's seniority date to August 19, 2011.

//

//

//

Mr. Nava's seniority date shall be changed to October 1, 2007. Thereafter, Mr. Nava's layoff notice shall be rescinded if he has more seniority than any other certificated employee(s) junior to him who was/were retained.

DATED: May 6, 2014

_____/s/_____
MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

Exhibit A

1	Agee, Erica
2	Aguilar, Maribel
3	Alano, John
4	Alvarez, Miriam
5	Arias, Alexis
6	Armstrong, Robert
7	Buck, Angela
8	Cardenas, Luis
9	Carlin, Shaun
10	Chavez, Esmeralda
11	Chavez, Sarah K.
12	Chou, Katherine
13	Coleman, Rene
14	Contreras, Annie
15	Davila, Rebecca
16	Del Castillo, Nicholas
17	Dykes, Leonard
18	Eskridge, Jennifer
19	Fischer, Scott S.
20	Flores, Araida
21	Forrest, Scott
22	Gialich, Danielle
23	Guardado, Mario
24	Guerrero, Bianca
25	Guitierrez, Veronica
26	Kim, William
27	King, Maureen
28	Kirkland, Ashlea
29	Lantz, Alba
30	Lethcoe, Elaine
31	Lopez, Brenda
32	Lucero, Jason
33	Macias-Aguilera, Iselda
34	Mackey, David
35	Marquez, Patrick
36	Martinez, Luis Angel
37	Martinez, Richard
38	Miletic, Renee Marie
39	Morales, Francisco

40	Nava, Orlando
41	Negron, Erik
42	Ostlund, Gina
43	Perez, Monica
44	Pinedo, Alison
45	Price, Stephanie
46	Rodriguez, Juliet
47	Rodriguez, Mayra Lizette
48	Sanchez, Socorro
49	Santana, Adam
50	Schwartz, Betsy
51	Smit, Sybil
52	St. Clair, Casey
53	Valenzuela, Yuridia
54	Vega, Jessica