

BEFORE THE
BOARD OF EDUCATION
OF THE
HESPERIA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Layoff/Accusation
Against:

185 CERTIFICATED EMPLOYEES,

Respondents.

OAH No. 2009020340

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge, at Hesperia, California on April 24, 2009.

Tristan G. Pelayes, Esq. and Alice E. Waters, Esq. of Wagner & Pelayes, represented the Hesperia Unified School District (the district).

One hundred eighty-eight (188) certificated employees were originally served with Reduction in Force Notices. Subsequently, the district rescinded the Notices served on three of the certificated employees. Consequently, 185 certificated employees remain as respondents in this matter.

Carlos Perez, Esq. represented all of the respondents who appeared at the hearing.

Oral and documentary evidence was received and the matter was submitted on April 24, 2009.

FACTUAL FINDINGS

1. On February 9, 2009, the Superintendent of the district recommended, with regard to the ensuing school year, that the Board of Education of the district (the board) reduce or eliminate particular kinds of services (PKS) provided by the district for the 2009-2010 school year.

2. On February 23, 2009, the board adopted Resolution number 2008/09-35, determining that it would be necessary to reduce or discontinue PKS at the end of the current

school year. The board determined that the PKS that must be reduced for the 2009-2010 school year were the following full time equivalent (FTE) positions:

<u>PKS</u>	<u>FTE</u>
Elementary Physical Education Teachers	3
Elementary Classroom Teachers	153
Middle School Math/Science Core	1
Middle School English	3
Middle School Social Science	2
Middle School Cadet Corp	0.5
High School Work Experience	1
High School Piano	1
High School CAHSEE Prep	1
High School SOS/Careers/Senior Portfolio/Orientation	1
High School English	5
High School Social Science	3
High School Science	1
High School Spanish	1
High School Business	2
High School Art	1
High School Night Program	2
Total FTE positions to be reduced or eliminated	<hr/> 181.5

The parties do not dispute the fact that the services listed above are PKS, which may be reduced or discontinued within the meaning of Education Code section 44955.

3. The district's recommendation and the board's decision to reduce or discontinue the services listed in Finding 2, above, were neither arbitrary nor capricious; rather, the recommendation and decision were based on the projected, \$12-\$14 million dollar, budget deficit. Thus the board's decision represents a proper exercise of its discretion.

4. The reduction and discontinuation of services 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 board.

5. The Superintendent designated the respondents, permanent or probationary teachers employed by the district, by creating a seniority list, first selecting teachers to be laid off in the inverse of the order in which they were employed, then assigning and reassigning employment in such a manner that all employees to be retained will be retained so as to render any service which their seniority and qualifications entitle them to render.

6. The district does not employ any temporary certificated employees.

7. Prior to March 15, 2009, all respondents affected by the layoffs received written notice notifying them that pursuant to Education Code sections 44949 and 44955, their services “will not be required for the ensuing 2009-10 school year.” (Exh. 7A.)

8. On February 24, 2009, the Superintendent of the district made and filed an accusation in his official capacity.

9. Prior to March 15, 2009, all respondents were served with board resolution number 2008/09-35, a Notice of Accusation, the Accusation, a Notice of Defense, a Notice of Hearing, and copies of Education Code sections 44949 and 44955 and Government Code sections 11506, 11507.5, 11507.6, 11507.7, and 11520. Additionally, the “Notice of Accusation” advised respondents as follows: **“You are notified that unless a written request for a hearing, signed by you or on your behalf, is delivered to said Board of Education on or before March 31, 2009, the Board may proceed on the Accusation without a hearing.”** (Exh. 7B, emphasis in original.)

10. 185 respondents timely submitted their notices of defense requesting a hearing to determine if cause exists for not re-employing them for the ensuing year.

11. Each respondent who requested a hearing and filed a Notice of Defense was properly noticed of the date, time and place of the instant hearing.

12. All prehearing jurisdictional requirements were met.

13. Respondents are certificated permanent or probationary employees of the district.

14. During the hearing the district withdrew the accusation as it concerned respondent Kerrie Lewis.

15. The following concerns were raised during the hearing:

a. Certain respondents did not receive seniority credit for attending the “New Teachers Academy” (NTA) training which was conducted the summer before they commenced teaching pursuant to their employment contracts;

b. One respondent, Melanie Gonzalez, believes that her seniority date should be changed from January 8, 2007 to August 9, 2006 because she began teaching as a long-term substitute for the district on August 9, 2006; and,

c. One respondent, Angela McDougal, contended that her seniority date should be changed from September 18, 2007 to September 1, 2005 because her first date of paid service as a probationary teacher for the district was on September 1, 2005.

16. In connection with these concerns, the uncontroverted testimony and documentary evidence established the following:

a. The district commonly conducts NTA training for newly hired teachers during the summer, prior to the start of the normal school year. The training is considered mandatory and every effort is made by the district to have the new hires attend the summer NTA training. However, teachers who missed the training were allowed to take the training at a later date and the fact that they were unable to attend the summer training did not preclude them from commencing work with the district. Teachers who attended the summer training were paid an extra stipend, above and beyond what was agreed to in their respective contracts, for their attendance. The fact that teachers who missed the summer training were allowed to take it at some other time, and the fact that the teachers were paid outside their contracts for the training lead to the conclusion that the district acted properly in not counting the date the teachers attended the NTA training for purposes of establishing seniority (i.e. the date of attendance was not the teachers' first date of paid services under their employment contracts).

b. Melanie Gonzalez (respondent Gonzalez) began teaching as a long-term substitute for the district on August 9, 2006. Respondent Gonzalez began the school year teaching in a fourth grade classroom for a teacher who was on maternity leave. Respondent Gonzalez taught the fourth grade class as a long-term substitute until December of 2006 when she was offered a full-time position with the district. Respondent Gonzalez accepted the offer of employment and commenced employment as a probationary employee in January of 2007. Although the teacher for whom respondent Gonzalez had originally been substituting returned to the district in January of 2007, that teacher was assigned to a different classroom, and respondent Gonzalez continued teaching in the same position where she had begun teaching as a long-term substitute. The Assistant Superintendent of Personnel Services testified that the district's custom and practice is that "substitute service counts [toward seniority] if the teacher is hired into the position in which they were 'subing.'" Consequently, respondent Gonzalez is correct, she should be credited for her substitute service and her seniority date should be changed to August 9, 2006. Although this modification does not allow respondent Gonzalez to escape the impact of these lay off proceedings, the modification may affect her position on a subsequent rehire/reinstatement list.

c. Angela McDougal (respondent McDougal) began working in a probationary position as a first grade teacher for the district on September 1, 2005. She continued working as a probationary employee until she resigned her position on June 28, 2007. Respondent McDougal then returned as a substitute teacher in August of 2007, and was eventually rehired as a probationary employee on September 18, 2007. For seniority purposes, the date of rehire controls, and the district properly listed September 18, 2007 as respondent's seniority date.

17. The services of no permanent employee are being terminated while any probationary employee, or any permanent employee with less seniority, is being retained to render services which such permanent employee is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the instant proceedings exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections have been provided, as required.

2. The services listed in Factual Finding 2 are PKS that can be reduced or discontinued under 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.

3. Based on the Factual Findings, considered in their entirety, cause exists to reduce the number of certificated employees of the District by 181.5 FTE positions, due to the budget crisis described in Factual Finding 3.

4. Cause to reduce or discontinue services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

5. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

6. As set forth in Finding 14, the accusation was withdrawn as concerns respondent Kerrie Lewis and shall be dismissed as to her.

7. Based on the modification set forth in Finding 14 and Legal Conclusion 6, above, cause exists to notify the remaining 184 respondents that their services will not be needed during the 2009-2010 school year due to reduction or discontinuance of PKS.

ADVISORY DETERMINATION

WHEREFORE, THE FOLLOWING ADVISORY DETERMINATION is hereby made:

1. The Accusation is sustained, in part. The district shall notify the 184 respondents listed in Appendix A that their services will not be needed during the 2009-2010 school year due to lack of funds and the resulting need to reduce or discontinue PKS.
2. The Accusation is dismissed as to respondent Kerrie Lewis and the district may not notify her that her services will not be needed during the 2009-2010 school year.

DATED: April ____, 2009

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings

APPENDIX

A

1. Afsari, Sahar
3. Angelini, Deborah
5. Ayers-Welch, Christine
7. Bales, Matthew
9. Barbour, Deborah
11. Barnes, Stacy
13. Barrales, Arturo, Jr.
15. Beare, BreAnna
17. Bentz, Lorena
19. Bertsche Jennifer
21. Booth II, Willis
23. Boyd, Sharon
25. Buehl, Laura
27. Burks, Amanda
29. Caballeros, Barbara
31. Carengo, Trevor
33. Cervantes, Silvia
35. Chatterji, Surojeet
37. Childress, Heather
39. Clark, Katherine
41. Cole, Tara
43. Cota, Alan
45. Cutler, Michele
47. Davis, Nathaniel
49. DeMo, Jennifer
51. Desselle, Raechel
53. Downard, Kinsi
55. Farnham, Kelley
57. Follansbee, Brittney
59. Fries, Carolyn
61. Giles, Sarah
63. Gomez, Carol
65. Goode, Dustin
67. Gore, Robert
69. Griffin, Allison
71. Guillen, Brenda
73. Hammons, Andrew
75. Harding, Dori
77. Herbert, Summer
79. Hernandez Arocha, Yanira
81. Hoehnke, Nina
83. Holden, Brian
85. Jackson, Kristie
2. Alcala, Dana
4. Ashlock, Kristy
6. Baer, Patricia
8. Barber, Angela
10. Barnes, Michelle
12. Barnhardt, Jamie
14. Barrington, Lucinda
16. Bell Benjamin
18. Bermudez, Yadira
20. Blaker, Aaron
22. Bourque, Nicole
24. Brandow, Brent
26. Burdi, Dean
28. Butts, Melanie
30. Canady, Dennis
32. Carlstrom, Marc
34. Chacon, Lucia
36. Chavez, Lisa
38. Chouinard, Jennifer
40. Clements, Jennifer
42. Concepcion, Marissa
44. Courtney, Pia
46. Davis, Jennifer
48. DeCoursey, Jodie
50. Derrick, Amber
52. DeStefano, Katherine
54. Duenas, Minelia
56. Farrell, Leticia
58. Foraker, Tabitha
60. Garibay, Shannon
62. Glenn, Christina
64. Gonzalez, Melanie
66. Goodrich, Anita
68. Gray, Timothy
70. Griffin, Mary
72. Hale, Sarah
74. Hammons, Holly
76. Heikes, Krystal
78. Hernandez, Stephanie
80. Hodges, Jason
82. Hoffman, Rebecca
84. Howard-Stoddard, Lora
86. Johnen, Cindi

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|------|----------------------------|------|------------------------|
| 87. | Johnson, Katherine | 88. | Johnson, Terri |
| 89. | Joho, Jason | 90. | Kensley, Michelle |
| 91. | Kirk, Carrie | 92. | Kruger, Jillian |
| 93. | Kuznicki, Bruce | 94. | Lawson, Megan |
| 95. | Lee, Laurie | 96. | Lopez, Wendy |
| 97. | Lubatti, Virginia | 98. | Ludi, Gabriel |
| 99. | Lueken, Krissy | 100. | Macy, Jessica |
| 101. | Marino, Lisa | 102. | Marquez, Virginia |
| 103. | McDougal, Angela | 104. | McLean, Patrick |
| 105. | Mendoza, Leticia | 106. | Mendoza, Silvia |
| 107. | Menge, Christine | 108. | Mercado, Kristina |
| 109. | Merenda, Stephanie | 110. | Messersmith, Mark |
| 111. | Mestas, Jennifer | 112. | Meukow, Stephen |
| 113. | Michalski, Matt | 114. | Miller, Ryan |
| 115. | Moc, Jennifer | 116. | Monroe, Marisa |
| 117. | Montes, Amanda | 118. | Montgomery, Tommy |
| 119. | Monzillo, Sydney | 120. | Morrison, Claudia |
| 121. | Mumey, Chance | 122. | Munyan, Russell |
| 123. | Murdock, Kari | 124. | Nale, Jeffrey |
| 125. | Navarro, Veronica | 126. | Ness, Kelly |
| 127. | Occhino, Rebecca | 128. | Olsen, Christine (50%) |
| 129. | O'Reilly, Kevin | 130. | Orlando, Lisa |
| 131. | Ortega, Franco | 132. | Ott, Lawrence (50%) |
| 133. | Owens, Stacy | 134. | Palti, Lisa |
| 135. | Pardo, Sarah | 136. | Patterson, Amy |
| 137. | Payne, Thomas | 138. | Peters, Molly |
| 139. | Phelan, Kelly | 140. | Pieper, Bridget |
| 141. | Plescica, Ryan | 142. | Poortman, Kellie |
| 143. | Portanova, Sean | 144. | Reynolds, Amy |
| 145. | Rincon, Darlene | 146. | Robledo, Jamela |
| 147. | Rodriguez, Krista | 148. | Ross, Kasey |
| 149. | Roy, Kelly | 150. | Rubio, Deborah |
| 151. | Ruiz, Jennifer | 152. | Russo, Danielle |
| 153. | Russo Harris, Nacina (50%) | 154. | Salaz, Julie |
| 155. | Sanders, Kristel | 156. | Sandoval, Tammy (50%) |
| 157. | Schoch, John | 158. | Self, Camie |
| 159. | Seybert, Teresa | 160. | Shirk, Ann |
| 161. | Simmons, Brett | 162. | Sinclair, Kristin |
| 163. | Slade, Laura | 164. | Smith, Alice |
| 165. | Smith, Christie | 166. | Smith, Lisa |
| 167. | Smith, Sheena | 168. | Sullivan, Kathryn |
| 169. | Thacker, Susan | 170. | Thomas, Robin |
| 171. | Topete, Jeremy | 172. | Torrez, Brenda |
| 173. | Torrez, Lauren | 174. | Tucker, Patrice |
| 175. | Van, Alysia | 176. | Van Hill, Jamie |
| 177. | Ward, Shannon | 178. | Washburn, Judson |

179. Weisz, Stacy
181. Willborn, Casi
183. Yucelidag, Sarah

180. Weston, Siobhan
182. Wind, Nicole
184. Zapata-Galvan, Maria