

BEFORE THE GOVERNING BOARD
HAYWARD UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against
Certificated Employees:

DAVID AKRABAWI, et al.,

Respondents.

OAH No. 2009020379

PROPOSED DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Hayward, California, on April 20, 2009.

Attorney Laurie S. Juengert, Fagen, Friedman & Fulfroost, LLP, represented the Hayward Unified School District. Donna Becnel, Assistant Superintendent, Human Resources, was present as a representative of the District.

Attorney Sheila K. Sexton, Beeson, Tayer & Bodine, represented respondents. A list of the respondents is attached as Appendix A.

The matter was submitted for decision on April 20, 2009.

FACTUAL FINDINGS

1. Donna Becnel, Assistant Superintendent, Human Resources, Hayward Unified School District, made the accusation in her official capacity.
2. Each of the respondents is a certificated employee of the district.
3. On February 11, 2009, the Governing Board, Hayward Unified School District, adopted resolution 0809-25, setting forth "tie-breaker" criteria to determine the order of termination between employees who have the same date of first paid service to the district ("seniority date"). The tie-breaker criteria, not necessarily in order of importance, are:

1. Bilingual capabilities:
 - a. BCLAD – 3 points
 - b. CLAD or equivalent authorization – 1 point

2. Education:
 - a. Doctorate Degree – 2 points
 - b. Masters Degree – 1 point each

3. Teaching Experience Under a Clear (i.e., Non-provisional / Non-emergency) Credential:
 - a. 3 years of less – 1 point
 - b. 4 to 5 years – 2 points
 - c. 6 or more years – 3 points

4. Credentials – 2 points each
 - Math
 - Science
 - Special Education
 - Reading Specialist
 - NCLB Highly Qualified

5. Specialized Training – 2 points
 - Instrumental Music

The board further resolved that in the event common day hires have equal qualifications based upon application of the above criteria, the district would break ties by utilizing a lottery.

4. On February 25, 2009, Assistant Superintendent Becnel gave notice to the board of her recommendation that notice be given to respondents that their services would be terminated at the close of the current school year.

5. On February 25, 2009, the board adopted resolution 0809-30, which directed the superintendent to reduce or discontinue particular kinds of services equivalent to 290.47 full-time equivalent (FTE) certificated employees. The resolution further directed the superintendent to initiate and pursue procedures necessary to not reemploy the equivalent of 290.47 FTE certificated employees. The board further resolved that the district may deviate from terminating certificated employees in order of seniority, based on specific need for personnel who possess special training and/or experience or competency necessary to teach specific courses or courses of study or to provide specific services, which others with more seniority do not possess, as follows:

1. Instruction of English Language Learners: Possession of either of the following:
 - a. Cross-Cultural Language Academic Development Certificate (CLAD) or
 - b. As of March 15, 2009, possess a current emergency CLAD permit and by May 1, 2009 demonstrate evidence of maintaining either emergency CLAD permit through the 2009-2010 school year or obtaining a CLAD certificate during the 2009-2010 school year, prior to expiration of the emergency CLAD permit.

Resolution 0809-30 is attached as Appendix B.

6. On March 11, 2009, the board adopted resolution 0809-36, which directed the district Superintendent to reduce or discontinue additional particular kinds of service equivalent to 13 full-time equivalent (FTE) certificated employees. The resolution further directed the Superintendent to initiate and pursue procedures necessary to not reemploy the equivalent of 13 FTE certificated employees. Resolution 0809-36 is attached as Appendix C.

7. The district timely sent all layoff notices by March 15, 2009. Respondents timely provided to the district requests for hearing. The district timely served accusations on employees who requested a hearing. Respondents timely provided to the district notices of defense.

8. The proposed reductions and discontinuances of particular kinds of services will not reduce district services below legally mandated levels. The proposed reductions and discontinuances are based on the district's financial situation and are in the interest of the district's schools and its pupils.

9. The district has rescinded the layoff notices against Diane Tiller, Deborah Murayama, Karen Horner, Beverly Johnson, John Orosco, Amanda Kairys, Kevin Cato, Carmela Carlos, Raymond Winder, Heidi Morrison, Courtney Marshall, and Giovanni Coleman. The accusations against them will be dismissed.

10. The district has changed the seniority dates of the following: Muna Bishr (changed from May 27, 2006, to November 10, 2005); Ann Marie Walters (changed from August 24, 2007, to October 26, 2004); and, Heidi Morrison (changed from August 28, 2006, to September 3, 1999).

11. The district has changed its records to reflect that Joseph Binger has a Supplemental Authorization to teach K-12.

12. The district acknowledges that Patricia Brandt has a health credential.
13. The district paid for education classes through which Yashoda Nand, Ruth Holguin, and Christine Oliveras received their teaching credentials. In return, Nand, Holguin, and Oliveras committed to teach in the district for five years. It was not shown that these circumstances change these teachers' rights in this proceeding.
14. The parties stipulated that Nand's seniority date is August 24, 2005.
15. Nancy Rodriguez previously had a district seniority date in 1996. She resigned from the district in June 2004 for personal reasons. About 17 months later, she returned to the district with a new seniority date of November 21, 2005. It was not shown that Rodriguez's previous service changes her November 21, 2005 seniority date.
16. The parties stipulated that Myrna Baldemor will show her Masters degree to the district. The district will adjust its records to reflect Baldemor's Masters degree.
17. The parties stipulated that Kathryn Gregory has a supplementary authorized subject – health science.
18. Any contentions raised by respondents and not discussed above are found to be without merit and are hereby rejected.
19. No junior employee is being retained to render a service that any of the respondents are certificated and competent to provide.

LEGAL CONCLUSIONS

Cause exists for the elimination of the FTE positions set forth in resolutions 0809-30 and 0809-36 in accordance with Education Code sections 44949 and 44955. Further, cause exists to give respondents notice that, to the extent shown in the layoff notices sent them, their services will not be required for the 2009 – 2010 school year. This cause relates solely to the welfare of the schools and pupils within the meaning of Education Code section 44949.

ORDER

1. The accusations against Diane Tiller, Deborah Murayama, Karen Horner, Beverly Johnson, John Orosco, Amanda Kairys, Kevin Cato, Carmela Carlos, Raymond Winder, Heidi Morrison, Courtney Marshall, and Giovanni Coleman are dismissed.
2. Notice may be given to the remaining respondents that, to the extent shown in the layoff notices sent them, their services will not be required for the 2009 – 2010 school year.

3. The district shall take into account any adjustments set forth in Factual Findings 11 through 17 in determining the order of layoffs.

DATED: _____

STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings