

BEFORE THE GOVERNING BOARD OF THE
GREENFIELD UNION SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Termination of Services
of Certificated Employees:

OAH No. 2009020696

ROBERTA WILHELM, et al.,

Respondents.

PROPOSED DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Greenfield, California, on April 21, 2009.

Sarah Levitan Kaatz, Attorney at Law, Lozano Smith, 4 Lower Ragsdale Drive, Suite 200, Monterey, California, represented the Greenfield Union School District.

Michelle Welsh, Attorney at Law, Stoner, Welsh & Schmidt, 413 Forest Avenue, Pacific Grove, California, represented all respondents except Aurora Arroyo and Katherine Redenbaugh. No appearance was made by or on behalf of either of those respondents. As to them, the matter proceeded as a default pursuant to Government Code section 11520. A complete list of represented respondents is found on Exhibit 1, attached.

The matter was deemed submitted for decision on April 21, 2009.

FACTUAL FINDINGS

1. On March 3, 2009, the governing board of the Greenfield Union School District adopted Resolution No. 751 in which the board resolved to reduce or discontinue the following particular kinds of services at the end of the 2008-2009 school year and directed the superintendent to send appropriate notice to the employees whose services will be terminated by this action:

SERVICES

FTE REDUCTION

Elementary Services

K-5 Teaching Positions

29.0 FTE

Physical Education Teaching

1.0

<u>Middle School Services</u>	
6 th Grade Core	2.0 FTE
7 th Grade Core	2.0
8 th Grade Core	2.0
Physical Education Teaching	1.0
Opportunity Teaching	1.0
 <u>Special Education</u>	
Special Day Class Teaching	1.0
RSP Teaching	1.0
 <u>Student Services</u>	
Reading First Coaches	3.0
Literacy Lead Coaches	1.0
Teacher on Special Assignment	
• English Language Learner Coaches	4.0
• English Language Learner Coordinator	1.0
• Pre-School/Even Start Coordinator	1.0
• Parent Educator	1.0
 <u>Certificated Management</u>	
Counselor	2.0
Psychologist	1.0
Speech Therapist	1.0
After School Intervention/Test Coordinator	<u>1.0</u>
 Total Full-Time Equivalent Reduction	 56.0 FTE

2. On or about March 5, 2009, the superintendent gave written notice to respondents that, pursuant to Education Code sections 44949 and 44955, it was being recommended that their services would be terminated at the end of the current school year. Respondents filed timely requests for hearing. Respondents were timely served with accusation packets and they timely filed notices of defense

3. The reductions were based on the district's financial situation. As a result of the state budget crisis, the district is projecting a budget deficit of at least one million dollars for the 2009-2010 school year. Considering this, the reductions are in the interest of the schools and their pupils.

4. At hearing, the district rescinded the layoff notice and accusation served on respondent Elaine Ernst.

5. All known attrition occurring prior to March 5 (three resignations and one temporary non-reelect) was taken into account in determining how many layoff notices to send. The district has received notice that two employees intend to retire at the end of the current school year. However, those retirements are not yet assured – they came in response to a retirement incentive program that will not be implemented unless there are at least four retirements. In any case, the district does plan to take any attrition occurring prior to the board’s final action in this matter into account in determining how many employees to lay off.

6. The district operates three elementary schools and one middle school. The middle school and one of the elementary schools receive funding of approximately \$1.1 million under the Quality Education Investment Act. Schools receiving QEIA funding must maintain class sizes at a maximum of 25:1, or five students fewer than in the 2005-06 school year. Failure to meet QEIA standards can result in loss of funding. Once a school begins receiving QEIA funding it cannot elect to withdraw from the program. The district’s schools are currently receiving QEIA funds for the second year of QEIA’s seven-year term.

Respondents assert that the proposed reductions in service will leave the district unable to meet the mandated requirements of QEIA, thus jeopardizing the funding source. The district disagrees. Although the proposed reductions will result in increased class sizes at grades K-5, the district intends to continue meeting the class size requirements at the QEIA schools.

It was not shown that the proposed reductions would result in cuts below mandated QEIA service levels.

7. On February 17, 2009, the board adopted Resolution No. 745, which established criteria to determine the order of termination for employees sharing the same seniority date. The resolution provided,

For the 2008-2009 school year only, to meet the requirements of section 44955, the Board of Trustees determines the needs of the District and the students by establishing the following tie-breaking criteria:

The following rating system shall be applied in determining the order of termination of certificated employees:

- A. Multiple and Single Subject Credentials. **Rating: +1 per credential.**
- B. Credentials and experience to teach in a special categorical program (e.g., bilingual, special education). **Rating: +1 per credential, +1 per year of experience.**

- C. Earned degrees beyond the BA/BS level. **Rating: +1 per degree.**
- D. Multiple language skills relevant to District need. **Rating: +1 for Spanish.**

Tie-Breaking Procedure

In the event that common day hires have equal qualifications based on application of the above criteria, the District will then break ties by utilizing a lottery.

8. The tie-breaking criteria were applied to all employees having shared seniority dates of August 15, 2005, August 14, 2006, August 13, 2007, December 5, 2007, and August 11, 2008. Application of the initial criteria resulted in numerous employees having the same number of tie-breaking points. For instance, both employees sharing an August 15, 2005 seniority date had one tie-breaking point; both employees sharing an August 14, 2006 seniority date had one point; three of the twelve employees sharing an August 13, 2007 seniority date had three points and seven had one point; both employees sharing a December 5, 2007 date had one point; four of the 21 employees sharing an August 11, 2008 date had three points, two had two points and 14 had one point. When two employees had the same number of tie-breaking points, a coin toss was used to determine their relative seniority rankings. When more than two employees had the same number of points, a lottery was used to break the tie.

Respondents contend that the district's tie-breaking criteria do not comport with the requirements of Education Code section 44955, subdivision (b), which provides that the order of termination of employees sharing the same seniority date shall be determined "solely on the basis of the needs of the district and the students thereof." Respondents contend that because the stated criteria were insufficient to differentiate between most employees, leaving 36 of the 39 affected employees still tied after application of the tie-breaking criteria, the order of termination was effectively left to chance. Respondents also assert that use of a coin toss to break ties was improper since the board's resolution called for a lottery as the final tie-breaker.

It is true that the established tie-breaking criteria resulted in numerous ties. But the district points out this is largely because the criteria were applied to new employees, who often have similar education, credentials and experience. In any case, it is found that the established criteria were set up to meet the district's needs. That they resulted in so many ties was unfortunate. But that does not invalidate the criteria. They did meet the requirements of section 44955, subdivision (b).

The use of a coin toss to break ties when only two employees had the same number of points was not improper. There is no effective difference between tossing a coin or choosing random numbers in breaking ties. No employees were disadvantaged in any way by use of a coin toss rather than a lottery.

9. Of the 21 employees sharing an August 11, 2008 seniority date, 18 are first year probationary employees. The remaining three are classified as “Prob 0’s.” The district created two separate tie-breaking lists, one for Prob 1’s and one for Prob 0’s. Respondents assert this was improper, that a single list should have been created showing relative seniority of all these employees. However, this issue is moot as none of the three Prob 0 employees is a respondent in this proceeding. Failure to include them on the same list as the Prob 1’s did not disadvantage any respondent.

10. Six respondents maintain they are entitled to an additional tie-breaking point under category D, “Multiple language skills relevant to District need. Rating: +1 for Spanish.” The district had awarded a point in this category only to teachers holding a bilingual certification. None of the six respondents hold such a certification, but each claims Spanish competence.

At hearing, the parties reached an agreement concerning this criterion. The district agreed to administer an existing language skills test currently used primarily for classified employees to any employee who wishes to take it. Any respondent who takes and passes the test before the board’s final action in this matter will be awarded an additional tie-breaking point.

11. The district stipulates that respondent Marie Abercrombie is entitled to an additional 24 tie-breaking points in category B for her prior bilingual teaching experience in another district.

12. Category B of the tie-breaking criteria is, “Credentials and experience to teach in a special categorical program (e.g., bilingual, special education). Rating: +1 per credential, +1 per year of experience.” For the bilingual experience portion of this criterion, the district awarded points only to teachers who had taught in classes requiring bilingual certification. Respondents assert this is too narrow an interpretation of the board’s criterion. They assert that the “e.g.” means that the two subjects listed are merely examples of “special categorical program[s]” for which points may be awarded and not an exclusive list.

Respondent Martha Aranda was awarded one tie-breaking point in category B for her BCLAD certification. She was not awarded any points for prior experience. Aranda seeks an additional seven points, testifying she taught a bilingual class in another district for one year and in a structured English immersion class for another six years.

Respondent Steven Starks seeks an additional five points in category B for five years spent teaching in a Specially Designed Academic Instruction in English program in another district.

The district's interpretation of the tie-breaking criterion was reasonable and not an abuse of discretion. Because of the student population, the district has a particular need for teachers with bilingual certification. Thus there is a reason to award more points to teachers demonstrated to be credentialed and experienced in teaching bilingual classes. Neither SDAIE nor structured English immersion classes were shown to require a bilingual credential (in fact, Starks does not possess bilingual certification). Therefore, Aranda is not entitled to tie-breaking credit for her six years in a structured English immersion class and Starks is not entitled to credit for his five years in a SDAIE class. However, Aranda's testimony that she also taught one year in a bilingual class was undisputed. She is entitled to one additional tie-breaking point for that experience.

13. Respondent Cristela Aguilar asserts she earned a BCLAD certification as part of her university training. However, the Commission on Teacher Credentialing does not have such certification on record. Its records show only that Aguilar has a CLAD certification. She is not entitled to an additional tie-breaking point in category B.

14. Respondent Aurora Arroyo was misplaced on the tie-breaking list for August 11, 2008. Arroyo received only one tie-breaking point in category A. However, she was mistakenly credited with a total of three points and was placed in a lottery with three other teachers who had achieved that total. The district must rerank Arroyo within those employees receiving only one tie-breaking point.

15. Respondents Guadalupe Garcia and Anabel Miramontes both challenged their classification as Prob 0 employees. The district stipulated that Garcia should actually be classified as a second year probationary employee, and that it would make that change on its records.

Miramontes worked under an internship credential for the 2007-2008 school year. She began the 2008-2009 school year under the same credential. She received her Preliminary Multiple Subject credential on December 1, 2008. She therefore asserts that she is entitled to Prob 1 status for the current school year, and that she is entitled to tack on the prior year's service, making her a Prob 2 employee.

Education Code section 44666 provides:

An intern shall not acquire tenure while serving on an internship credential. A person who, after completing a teaching internship program . . . is employed for at least one complete school year in a position requiring certification qualifications by the school district that employed the person as an intern during the

immediately preceding school year and is reelected for the next succeeding school year shall, at the commencement of the succeeding school year, acquire tenure.

Miramontes should properly be classified as a Prob 1 employee as she is now teaching under a full credential. But because she has not taught a complete school year (or at least 75% of a school year) under her preliminary credential, she is not entitled to tack on her prior year of internship service. She is not entitled to Prob 2 status.

16. Any contentions raised by respondents and not discussed above are found to be without merit and are hereby rejected.

17. No junior employee is being retained to render a service that any of the respondents are certificated and competent to provide.

LEGAL CONCLUSIONS

Cause for the elimination of 56.0 FTE positions exists in accordance with Education Code sections 44949 and 44955. Except as to Elaine Ernst, cause further 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 to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

1. Respondent Marie Abercrombie shall be given an additional 24 tie-breaking points. Her position on the seniority list shall be reordered in accordance with her new ranking.

2. Respondent Martha Aranda shall be given one additional tie-breaking point. Her position on the seniority list shall be reordered in accordance with her new ranking.

3. The district shall rerank respondent Aurora Arroyo on the tie-breaking list.

4. The district shall provide all interested respondents with an opportunity to take a language skills test. Any respondent passing that test shall be given one additional tie-breaking point and his/her position on the seniority list shall be reordered in accordance with his/her new ranking.

5. The district shall reclassify respondent Guadalupe Garcia as a Prob 2 employee.

6. The district shall reclassify respondent Anabel Miramontes as a Prob 1 employee.

7. The district shall take into account any positively assured attrition occurring prior to the date of the board's final action in this matter.

8. Notice may not be given respondent Elaine Ernst that her services will not be required for the 2009-2010 school year.

9. Notice may be given 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.

DATED: _____

MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings