

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

In the Matter of the Accusation Against:

LETICIA ARANDA, ET AL., MEMBERS OF
THE CASTAIC TEACHERS ASSOCIATION
IMPACTED BY THE REDUCTION IN
FORCE,

Respondents.

OAH Case No. 2009030191

PROPOSED DECISION

Nancy Beezy Micon, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 14, 2009, in Valencia, California.

Margaret A. Chidester & Associates, by Joel B. Mason, Attorney at Law, represented James M. Gibson (Gibson), Superintendent of the Castaic Union School District (District). Mr. Mason was assisted by Wendy Mullins, Coordinator of Payroll/Personnel Services for the District.

Hathaway, Perrett, Webster, Powers, Chrisman & Gutierrez, by Robert A. Bartosh, Attorney at Law, represented Leticia Aranda, Paul Barr, Pamela Bercovic, Susan Bowen, Patricia Cessna, Theresa D'Ambrosio, Carey Durfee, Aubrie Fairbanks, Stacy Furr, Timothy Garman, Matthew Gilpin, Giselle Gitter, Angela Gundry, Patricia Hough, Britney Hubbard, Jennie Jenkins, Jodi Lopata, April Meraz, Dulce Mogan, Micole Noddle, Midori Oliver, Erin Oxhorn, Julie Pomilia, Christine Racina, Joni Richards, Ashley Ricks, Sheryl Rothstein, Elizabeth Smith, Veronica Smith, Melissa Solomon, Mahbuba Lina Talukder, Sheila Tanenbaum, Beth Wood, David Zieper, and Edward Zippay (Respondents). Mr. Bartosh was assisted by Jeffrey J. Stinnett, Attorney at Law, of the same law firm.

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2009-2010 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2009-2010 school year.

At the hearing, the District withdrew the Accusation against Aubrie Fairbanks, Stacy Furr, Giselle Gitter, Patricia Hough, Joni Richards, Ashley Ricks, Sheryl Rothstein, and Sheila Tanenbaum.

Oral and documentary evidence was received and the matter was submitted for decision on April 14, 2009.

FACTUAL FINDINGS

1. Superintendent Gibson filed the Accusation in his official capacity.
2. Respondents are certificated employees of the District.
3. On February 23, 2009, the Governing Board of the District (Governing Board) adopted Resolution number 08/09-16, reducing or discontinuing the following services for the 2009-2010 school year:

<u>Service</u>	<u>Full-Time-Equivalent Positions</u>
K-5 Classroom Teachers	15.00
Elementary Music Teachers	1.60
Elementary Reading Teachers	.40
Elementary Physical Education Teachers	2.00
Middle School 7-8 Teachers	4.00
1 English Language Arts	
1 History/Social Science	
1 Mathematics	
1 Science	
6 th Grade Classroom Teachers	2.00
Home Study Teacher	.50
Consulting Teacher, PAR (BTSA, EL Coach)	1.00
Special Education Pre-School Teacher	.30
Psychologist	.80
Counselors	<u>1.30</u>
Total	28.90

4. Superintendent Gibson thereafter notified the Governing Board that he recommended that notice be provided to Respondents that their services will not be required for the 2009-2010 school year due to the reduction or discontinuance of particular kinds of services.

5. During the period of March 3 to 6, 2009, notice was personally provided to Respondents that their services will not be required for the 2009-2010 school year due to the reduction or discontinuance of particular kinds of services. The District issued the Accusation on March 16, 2009, and served it on Respondents.

6. Respondents timely requested hearings and filed notices of defense, to determine if there is cause for not reemploying them for the 2009-2010 school year.

7. All prehearing jurisdictional requirements have been met.

8. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.¹

9. The Governing Board took action to reduce or discontinue the services set forth in factual finding number 3 primarily because of the uncertainty surrounding future funding. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

10. The reduction of services set forth in factual finding number 3 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 Governing Board.

11. No certificated employee junior to any Respondent was retained to render a service which any Respondent is certificated and competent to render.

12. Britney Hubbard, whose seniority date is August 11, 2008, was identified as the middle school English teacher whose position is being reduced.

13. Susan Bowen (Bowen) and Paul Barr (Barr), who both possess a seniority date of August 8, 2007, were identified as middle school English teachers whose services were also being reduced. The District initiated separate proceedings concerning the non-reelection of Bowen and Barr.

14. During the hearing, the District announced the withdrawal of the proposed reduction of the 0.3 full-time equivalent position for Special Education Pre-School Teacher services. Thus, the District now requests the reduction or elimination of 28.6 total full-time equivalent positions.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 7.

2. The services listed in factual finding number 3 are determined to be particular

¹ All further references are to the Education Code.

kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 8.

3. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 11.

4. Cause does not exist to lay off Susan Bowen (Bowen) and Paul Barr (Barr), middle school English teachers who are more senior than Britney Hubbard (Hubbard), who was identified as the middle school English teacher whose services would not be required as a result of the reduction of the middle school English teacher service. The Board Resolution, adopted February 23, 2009, established the foundation for the procedure followed in this matter. It provided that one middle school English teacher service would be reduced. It is within the discretion of the Governing Board to determine the extent to which services are reduced. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 636-37.) Having established that one middle school English teacher service would be reduced, only one full-time equivalent for that position may be eliminated. The District notified three middle school English teachers, Hubbard, Bowen, and Barr, that their services would not be required for the ensuing school year. The District argues that Bowen and Barr were not re-elected. However, the District did not establish their non-reelection. The reduction in force process may not be used in place of the non-reelection proceedings, especially when there is no Board Resolution necessitating the elimination of the positions.

5. Cause exists to terminate the services of Respondents Leticia Aranda, Pamela Bercovic, Patricia Cessna, Theresa D'Ambrosio, Carey Durfee, Timothy Garman, Matthew Gilpin, Angela Gundry, Britney Hubbard, Jennie Jenkins, Jodi Lopata, April Meraz, Dulce Mogan, Micole Noddle, Midori Oliver, Erin Oxhorn, Julie Pomilia, Christine Racina, Elizabeth Smith, Veronica Smith, Melissa Solomon, Mahbuba Lina Talukder, Beth Wood, David Zieper, and Edward Zippay, by reason of factual finding numbers 1 through 11, and legal conclusion numbers 1 through 3.

RECOMMENDATION

1. It is recommended that the Accusation be sustained, and the District may notify Respondents Leticia Aranda, Pamela Bercovic, Patricia Cessna, Theresa D'Ambrosio, Carey Durfee, Timothy Garman, Matthew Gilpin, Angela Gundry, Britney Hubbard, Jennie Jenkins, Jodi Lopata, April Meraz, Dulce Mogan, Micole Noddle, Midori Oliver, Erin Oxhorn, Julie Pomilia, Christine Racina, Elizabeth Smith, Veronica Smith, Melissa Solomon, Mahbuba Lina Talukder, Beth Wood, David Zieper, and Edward Zippay that their services will not be needed during the 2009-2010 school year due to the reduction of particular kinds of services.

2. It is recommended that the layoff notice be rescinded, and the Accusation be dismissed as to Respondents Paul Barr, Susan Bowen, Aubrie Fairbanks, Stacy Furr, Giselle Gitter, Patricia Hough, Joni Richards, Ashley Ricks, Sheryl Rothstein, and Sheila Tanenbaum.

DATED: May ____, 2009

Nancy Beezy Micon
Administrative Law Judge
Office of Administrative Hearings