

BEFORE THE
GOVERNING BOARD OF THE
NEWHALL SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation against:

Certificated Employees of the Newhall
School District,

Respondents.

OAH Case No. 2009030290

PROPOSED DECISION

Administrative Law Judge Susan L. Formaker of the Office of Administrative Hearings heard this matter on April 23, 2009, in Valencia, California.

Margaret A. Chidester of the Law Offices of Margaret A. Chidester & Associates represented Assistant Superintendent for Personnel Beverly Knutson (Knutson), Newhall School District (District).

Robert A. Bartosh and Jeffrey J. Stinnett of Hathaway, Perrett, Webster, Powers, Chrisman, & Gutierrez, A Professional Corporation, represented Respondents Rosette Braaten, Susan B. Broyer, Jessica Rachel Cioffi, Ilizabeth Gilbert, Lindsay Denise Kleban, Bridgette Miche Martinez, Melissa Nechell Mercy, Ashley Ariane Parker, Theresa Diane Ponek, Tara Shell Speiser, Sian Rhiannon Vann, Shannon E. Walls, and Patricia A. Zimmitti. Respondents Ashley Kay Hill, Hannah Lee, Kari Madison, and Lindsay Squibb were not represented by counsel and did not appear at the hearing.¹

Oral and documentary evidence was received at the hearing and the matter was submitted for decision on April 23, 2009.

FACTUAL FINDINGS

1. Knutson, acting in her official capacity with the District, caused all pleadings, notices and other papers to be filed and served upon Rosette Braaten, Susan B. Broyer, Jessica Rachel Cioffi, Ilizabeth Gilbert, Ashley Kay Hill, Lindsay Denise Kleban, Hannah Lee, Kari Madison, Bridgette Miche Martinez, Melissa Nechell Mercy, Ashley Ariane Parker, Theresa Diane Ponek, Tara Shell Speiser, Lindsay Squibb, Sian Rhiannon Vann,

¹ Respondents' counsel indicated they represented a number of employees as to whom the District withdrew the preliminary notices of layoff and/or who were never served with the Accusation. Those employees are not properly part of this proceeding.

Shannon E. Walls, and Patricia A. Zimmitti (Respondents) pursuant to the provisions of Education Code sections 44949 and 44955.²

2. Respondents are certificated employees of the District.

3. On February 17, 2009, the Governing Board of the District (Governing Board) adopted Resolution number 08/09-18 authorizing the reduction of services within the District, as set forth in the following table:

(1.1)	3	Counselors	2.2	F.T.E.
(1.2)	5	Music Teachers	5	F.T.E.
(1.3)	1	Fine Arts Teacher	1	F.T.E.
(1.4)	3	Physical Education Teachers	2	F.T.E.
(1.5)	85	K-6 Classroom Teaching Positions	81.6	F.T.E.
(1.6)	2	Option-2 Kindergarten Teachers	.4	F.T.E.
(1.7)	7	Assistant Principals	6.6	F.T.E.
(1.8)	1	Coordinator of Special Programs	1	F.T.E.
(1.9)	1	Coordinator of Special Services	1	F.T.E.
(1.10)	1	TOSA – Director of Even Start	1	F.T.E.
Total Staff	109	TOTAL FTEs	101.8	F.T.E.

4. As set forth in Exhibit “A” to Resolution number 08/09-18, the Governing Board exempted from the order of certificated layoff the following personnel:

“1. Certificated personnel who possess administrative credentials, who are currently assigned to administrative positions, and who will be assigned to administrative positions for the 2009-2010 school year.

“2. Certificated personnel who possess a credential authorizing service in special education, who are presently assigned within the scope of the credential, and who will be assigned within the scope of the credential for the 2009-2010 school year.

“3. Certificated personnel who possess a credential authorizing service in language and speech, who are presently assigned within the scope of the credential, and who will be assigned within the scope of the credential for the 2009-2010 school year.

² All further references are to the Education Code, unless otherwise specified.

“4. Certificated personnel who possess a permit authorizing service in special education who are currently assigned under that permit area, and who, if serving in school year 2009-2010 will be placed in a special education assignment.

“5. Certificated personnel who possess [sic] a credential authorizing service as a school nurse, who are presently assigned within the scope of that credential, and who will be assigned within the scope of that credential for the 2009-2010 school year.

“6. Certificated personnel who possess a credential authorizing service as a psychologist, who are presently assigned within the scope of that credential, who will be assigned with the scope of that credential for the 2009-2010 school year.”

These exemptions were created by the Governing Board because of the special training, experience, or credentials that others with more seniority do not possess and the needs of the District.

5. Subsequent to adoption of the Governing Board’s Resolution, the District identified vacancies for the 2009-10 school year due to positively assured attrition (confirmed retirements or resignations) and release of temporary teachers. Such attrition and release of temporary workers was taken into consideration in determining the order of layoff.

6. Knutson thereafter determined which certificated employees' services would not be required for the 2009-2010 school year due to the reduction of particular kinds of services.

7. On or about February 18, 2009, Knutson provided notice to Respondents that their services will not be required for the 2009-2010 school year due to the reduction of particular kinds of services, as authorized by the Governing Board's Resolution. A total of 125 certificated employees were served with preliminary notices of layoff, which notified the employees of their obligation to return a request for hearing so that it was received by the District by 4:30 p.m. on March 2, 2009.

8. Respondents filed timely requests for hearing.

9. On or about March 18, 2009, and as directed by the Governing Board in Resolution number 08/09-18, Knutson filed and served the Accusation on Respondents.

10. Respondents Ashley Kay Hill, Hannah Lee, Kari Madison, Theresa Diane Ponck, Lindsay Squibb, and Patricia A. Zimmitti filed timely Notices of Defense, seeking a determination of whether cause exists for not reemploying them for the 2009-20010 school year.

11. All of the other Respondents filed a belated group Notice of Defense through counsel on April 10, 2009, seeking a determination of whether cause exists for not reemploying them for the 2009-2010 school year.³ Included in the group Notice of Defense were a number of certificated employees who had not filed timely requests for hearing. The District objected to the late Notice of Defense, although the District did not show how it had been prejudiced by the late filing. The District was aware of the late Notice of Defense a full 13 days before the hearing. For those employees filing the late Notice of Defense who had previously filed a request for hearing, the lateness of the Notice of Defense therefore does not effect a waiver of the right to the instant hearing. For those certificated employees who had failed to file a request for hearing, the late Notice of Defense did not revive their already-waived claims.

12. The District failed properly to serve Kristen Varnhagen with a preliminary notice of layoff, and she was not served with an Accusation. The District is thus barred from obtaining a ruling as to her in these proceedings.

13. By virtue of Findings 1 through 11, all prehearing jurisdictional requirements have been met with respect to Rosette Braaten, Susan B. Broyer, Jessica Rachel Cioffi, Elizabeth Gilbert, Ashley Kay Hill, Lindsay Denise Kleban, Hannah Lee, Kari Madison, Bridgette Miche Martinez, Melissa Nechell Mercy, Ashley Ariane Parker, Theresa Diane Ponek, Tara Shell Speiser, Lindsay Squibb, Sian Rhiannon Vann, Shannon E. Walls, and Patricia A. Zimmitti.

14. The services set forth in Finding 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.

15. The Governing Board took action to reduce the services set forth in Finding 3 primarily because of a reduction in state funding, resulting budgetary concerns, and the need to ensure the solvency of the District. 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. The decision to exempt certain certificated employees from the order of layoff likewise was not arbitrary or capricious and was a proper exercise of the District's discretion.

16. The reduction of services set forth in Finding 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.

³ Theresa Diane Ponek and Patricia A. Zimmitti were also included in the joint Notice of Defense, even though they had previously submitted their own Notices of Defense.

17. The District maintains a seniority list which contains employees' seniority dates (first date of paid service), titles, indications as to whether employees are probationary, tenured, or temporary, current assignments, work locations, FTE percentages, credentials, authorizations, and certifications, and points assigned for tie-breaking purposes in accordance with the District's tiebreaker criteria. Certificated employees were provided the opportunity to review the list and confirm its accuracy. All information was included in the list that was updated as of the date of the hearing (Exhibit 2).

18. The District used the seniority list to designate who was proposed to be laid off and who could "bump" less senior employees currently assigned in the various services being reduced. The District then determined whether the least senior employees held credentials in another area and were entitled to "bump" other employees. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by the known vacancies and positive assured attrition, and determined the impact on current staff in inverse order of seniority, with probationary employees being proposed for layoff prior to any permanent (tenured) employees. The District also exempted from the services being reduced those persons holding credentials exempted from the layoff under Resolution number 08/09-18. The tiebreaker criteria were not needed in this matter.

19. No certificated employee junior to any Respondent properly a part of these proceedings was retained to render a service which any such Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists as against all named Respondents. Those Respondents who filed a timely request for hearing but who submitted a late Notice of Defense did not waive their right to a hearing. (Government Code §11506, subd. (b) ["Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing"].)

2. The services listed in Finding 3 are particular kinds of services within the meaning of section 44955, by reason of Findings 3 and 14.

3. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue the particular kinds of services set forth in Finding 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of Findings 1 through 19. 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.)

4. No permanent employee may be terminated before a probationary employee when they both are competent and certificated for the position. (*See Krausen, supra*, 42 Cal.App.3d at 405 [interpreting a predecessor to section 44955]; *Davis v. Gray* (1938) 29 Cal.App.2d 403, 406 [same].) 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, 473-474; *Krausen v. Solano County Junior College District* (1974) 42 Cal.App.3d 394, 402.) Junior teachers may be given retention priority over senior teachers if the junior teachers possess special credentials or needed skills or capabilities which 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.)

5. Cause exists to terminate the services of Respondents Rosette Braaten, Susan B. Broyer, Jessica Rachel Cioffi, Elizabeth Gilbert, Ashley Kay Hill, Lindsay Denise Kleban, Hannah Lee, Kari Madison, Bridgette Miche Martinez, Melissa Nechell Mercy, Ashley Ariane Parker, Theresa Diane Ponek, Tara Shell Speiser, Lindsay Squibb, Sian Rhiannon Vann, Shannon E. Walls, and Patricia A. Zimmitti by reason of Findings 1 through 19, and Legal Conclusions 1 through 4.

ORDER

The Accusation is sustained and the District may notify Rosette Braaten, Susan B. Broyer, Jessica Rachel Cioffi, Elizabeth Gilbert, Ashley Kay Hill, Lindsay Denise Kleban, Hannah Lee, Kari Madison, Bridgette Miche Martinez, Melissa Nechell Mercy, Ashley Ariane Parker, Theresa Diane Ponek, Tara Shell Speiser, Lindsay Squibb, Sian Rhiannon Vann, Shannon E. Walls, and Patricia A. Zimmitti that their services will not be needed during the 2009-2010 school year due to the reduction of particular kinds of services.

Dated: May 7, 2009

SUSAN L. FORMAKER
Administrative Law Judge
Office of Administrative Hearings