

BEFORE THE  
GOVERNING BOARD  
OF THE  
GROSSMONT UNION HIGH SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of  
Certain Certificated Teachers Employed by  
the Grossmont Union High School District,  
  
Respondents.

OAH No. 2009030486

**PROPOSED DECISION**

Stephen E. Hjelt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in El Cajon, California, on April 21, 2009.

William A. Diedrich and Mark W. Thompson, Attorneys at Law, of Atkinson, Andelson, Loya, Ruud & Romo, APC, represented the Grossmont Union High School District.

Fern M. Steiner, Attorney at Law, of Tosdal, Smith, Steiner & Wax represented all of the respondent certificated employees of the Grossmont Union High School District who received preliminary layoff notices and were present at the hearing.

No appearance was made by or on behalf of the remaining certificated employees of the Grossmont Union High School District who received notice of the recommendation that their services would not be required for the 2009-2010 school year.

The matter was held open for the submission of any written closing argument and/or proposed findings of fact until the close of business on April 27, 2009. No party chose to file any further legal argument or proposed findings. The record was closed and the matter was submitted for decision on April 27, 2009.

**FACTUAL FINDINGS**

1. The Grossmont Union High School District (the District or GUHSD) is a public school district located in eastern San Diego County. The District provides educational services and supports for grades 9-12. The District consists of nine comprehensive high

schools, three charter schools, one continuation high school, two alternative education sites, four special education facilities, a middle college high school program, a Regional Occupational Program (ROP) and an adult education program. Over 24,000 students attend the District's schools.

2. The District is governed by an elected five-member Board of Trustees. The Board's Chief Executive Officer is Robert J. Collins., the Superintendent of Schools. Dr. Collins is supported by an administrative staff including Steve Sonnich, Associate Administrator of Human Resources, Patricia Floyd, Executive Director, Fiscal Services and Jeanette Liljstrom Executive Secretary, Human Resources.

3. Proposition 13 limited the imposition of property taxes and reduced a major source of assured revenue for funding public education in California. Since Proposition 13, public school districts have looked primarily to the State of California and to other governmental entities for funding.

A school district cannot determine the level of state funding it will receive until the state budget is chaptered, an event usually occurring in late June. Before then, a school district's governing board must take steps to make certain that ends meet if a worst-case financial scenario develops. California's current economic crisis has made budgeting problems far more complicated than they were before.

A school board's legal obligation to balance its budget often requires that some teachers, administrators and/or other certificated employees be given preliminary layoff notices, warning them that their services will not be required for the next school year. Under Education Code section 44949, preliminary layoff notices must be given to affected certificated employees no later than March 15.

The economic layoff statutes found in the Education Code generally require the retention of senior employees over more junior employees and the retention of permanent employees over probationary employees and other employees with less seniority. A public school district may deviate from the general rule requiring termination in reverse order of seniority only if it can demonstrate that identifiable junior employees possess a credential, special training or experience necessary to teach a course of study or to provide services which more senior employees do not possess.

4. By early 2009, the District's administration (as well as the administrators of most other school districts) was well aware of the State of California's massive economic problems. As a result of the financial crisis and the Governor's proposed budget, the District projected an estimated budget deficit of about \$10.6 million for the 2009-2010 school year. The District was required to look into ways to meet the budget deficit.

Under the Superintendent's direction, budgetary cuts were considered across the board including the elimination and reduction of particular kinds of services provided by the District's certificated employees. On or about March 5, 2009, the Superintendent's office presented to the Board a recommendation concerning the reduction and elimination of

particular kinds of services in the approximate amount of 96.96 FTEs (full time equivalent positions).

5. On March 5, 2009, the Board adopted Resolution #2009-76 recommending a reduction in particular kinds of services provided by District for the 2009-2010 school year, together with the adoption of tie-breaking criteria. The Board's adoption of the resolution and tie-breaking criteria was based on the welfare of the schools and their pupils.

6. Resolution No 2009-76 provided as follows:

**GOVERNING BOARD OF THE  
GROSSMONT UNION HIGH SCHOOL DISTRICT**

**REDUCTION OF PARTICULAR KINDS OF CERTIFICATED SERVICES**

**RESOLUTION NO. 2009-76**

WHEREAS, the Governing Board of the Grossmont Union High School District has determined that it is in the best interests of the District and the welfare of the schools and the pupils thereof that the particular kinds of services set forth herein must be reduced or discontinued due to financial hardship; and

WHEREAS, it is the opinion of the Board that because of the aforementioned reason, the number of certificated employees of the District must be reduced; and

WHEREAS, this Board does not desire to reduce the services of regular certificated employees based upon reduction of average daily attendance during the past two years.

NOW, THEREFORE, BE IT RESOLVED by the Governing Board of the Grossmont Union High School District as follows:

A. That the particular kinds of services set forth below be reduced or eliminated commencing in the 2009-2010 school year:

Art Teachers	2.0	F.T.E.
Automotive Teachers	1.4	F.T.E.
AVID Teachers	0.8	F.T.E.
Business Teachers	1.0	F.T.E.
Child Development Teachers	.4	F.T.E.
Counselors	6.0	F.T.E.
English Teachers	14.0	F.T.E.
French Teachers	.6	F.T.E.

Librarians	1.0	F.T.E.
Life Management/Healthy Paths Teachers	6.0	F.T.E.
Life Science Teachers	3.8	F.T.E.
Math Teachers	15.4	F.T.E.
Physical Education Teachers	4.0	F.T.E.
Physical Science Teachers	2.6	F.T.E.
Social Science Teachers	4.2	F.T.E.

Spanish Teachers	.6	F.T.E.
LH/SAI Teachers	8.6	F.T.E.
MH/SH Teachers	1.2	F.T.E.
<b>CATEGORICAL SERVICES AS FOLLOWS</b>		
Life Science Teachers	1.0	F.T.E.
Child Development Teachers	1.2	F.T.E.
Counselors	3.5	F.T.E.
English Teachers	9.33	F.T.E.
Math Teachers	7.33	F.T.E.
Special Education Nurses	1.0	F.T.E.
<b>TOTAL CERTIFICATED POSITIONS</b>	<b>96.96</b>	<b>F.T.E.</b>

- B. That due to the reduction or elimination of particular kinds of services, the corresponding number of certificated employees of the District shall be terminated pursuant to Education Code section 44955.
- C. That the reduction of certificated staff be achieved by the termination of regular employees and not by terminating temporary and substitute employees.
- D. That "competency" as described in Education Code section 44955(b) for the purposes of bumping shall necessarily include: (1) possession of a valid credential in the relevant subject matter area; (2) "highly qualified" status under the No Child Left Behind Act in the position into which the employee is bumping; (3) an appropriate EL authorization Of required by the position); and (4) with respect to specialty positions such as JROTC Instructor or Curriculum Specialist, at least one (1) year of experience in the position or assignment within the last three (3) years.

- E. That, as between certificated employees with the same seniority date, the order of termination shall be determined solely by Board-adopted criteria.
  
- F. That the District Superintendent or designee is directed to initiate layoff procedures and give appropriate notice pursuant to Education Code sections 44955 and 44949.

**PASSED AND ADOPTED** this 5th day of March, 2009, by the Governing Board of the Grossmont Union High School District of San Diego County, California by the following vote:

Shield, Kelly, Hoy, Schreiber, Woods

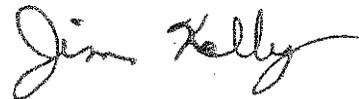
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AYES:

NOES:

ABSTAIN:

March 5, 2009



ABSENT:

STATE OF CALIFORNIA COUNTY OF SAN DIEGO

Date

Clerk of the Board

I, Jim Kelly,

Clerk of the Governing Board of the Grossmont Union High School District of San Diego County, California, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the said Board at a special meeting thereof held at its regular place of meeting at the time and by the vote above stated, which resolution is on file in the office of the said Board.

7. The Board adopted criteria for resolving ties in seniority related to the layoffs. Board resolution No. 2009-75 provided:

**RESOLUTION TO ADOPT CRITERIA FOR RESOLVING TIES IN SENIORITY  
RELATED TO CERTIFICATED LAYOFFS**

**RESOLUTION NO. 2009-75**

WHEREAS, Education Code section 44955, subsection (b), related to certificated layoffs, provides in relevant part, “[a]s between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of need of the district and the students thereof.”

NOW, THEREFORE, BE IT RESOLVED that based upon the needs of the District and the students thereof, in the event of a certificated layoff the following criteria shall be applied in order based on information on file as of March 1, 2009 one step at a time until the tie is broken, to resolve ties in seniority between certificated employees:

1. Possession of an authorization to teach English Language Learners in order of priority:
  - a. Bilingual Cross Cultural Language and Academic Development (BCLAD)
  - b. Cross Cultural Language and Academic Development (CLAD), SB 1969 or SB 395 Certificate, Language Development Specialist Certificate, Supplemental Authorization for English as a Second Language, Specially Designated Academic Instruction in English (SDAIE), other
  
2. Possession of a Clear or Preliminary Single Subject credential in the following areas, in order of priority:
  - a. Special Education
  - b. Math
  - c. English
  - d. Science
  - e. Foreign Language
  - f. Visual and Performing Arts
  - g. Social Science
  - h. Physical Education
  
3. Possession of a supplemental authorization to teach in the following areas, in order of priority:
  - a. Math
  - b. English
  - c. Science
  - d. Foreign Language

- e. Visual and Performing Arts
  - f. Social Science
  - g. Physical Education
4. Persons with Advancement via Individual Determination (AVID) Training and assigned to teach AVID as of March 1, 2009.
  5. Total Number of Clear or Preliminary credentials in different subject areas.
  6. Total number of supplementary authorizations in different subject areas.
  7. Possession of a Doctorate Degree, earliest date prevails.
  8. Possession of a Masters Degree, earliest date prevails.
  9. Persons who are currently assigned, as of March 1, 2009, to one of the following specialized assignments and/or training priority listed as follows:
    - a. Director of Student Activities (Associated Student Body (ASB) Advisor)
    - b. High School Head Coach
    - c. Yearbook or Journalism Sponsor
    - d. Director of Athletics
  10. A lottery among individuals who remain tied with the GEA President or her designee invited to attend and with the first name drawn being the most senior down to the last name being drawn being least senior.

PASSES AND ADOPTED this 5<sup>th</sup> day of March, 2009, by the Governing Board of the Grossmont Union School District of San Diego County, California by the following vote:

AYES: Shield, Kelly, Hoy, Schrieber, Woods

NOES: 0

ABSTAIN:

ABSENT:

8. The District's tie-breaking criteria were to be applied to certificated employees with the same date of hire. The tie-breaking criteria were prepared specifically to meet the needs of the District and the students and were applied appropriately.

9. Before preliminary layoff notices were served, the administrative staff circulated a certificated seniority list that contained: the names of all credentialed employees, ordered in longevity from the most senior employee to the most junior employee; the site where the employee provided services; the subject/grade level in which services were provided; the employee's full time employment status (a "1.0 FTE" indicated full time employment); the employee's credential(s) information; the employee's seniority date (i.e., the employee's first date of paid service with District on a probationary basis); the employee's hire date; and the employee's tenured status. Employees were invited to review the seniority list and to respond to the administrative staff with any changes or corrections.

10. On or before March 15, 2009, each certificated employee who is party to this proceeding was given a letter and notice that the Board had recommended that his or her services with the District would be terminated at the conclusion of the current school year. The letter stated the reduction in the District's workforce was due to California's serious budget shortfall. A notice advised each respondent that his or her services would be terminated at the close of the current school year, that the reasons for the termination were set forth in the Board's resolution (which was enclosed), that the employee had the right to request a hearing to determine if there was cause for termination, and specified dates on which the request for hearing had to be filed.

11. Most of the certificated employees served with the preliminary layoff notice requested a hearing. An accusation packet was thereafter served on the certificated employees who requested a hearing.

All jurisdictional requirements were met for the respondents in this proceeding.

12. On April 21, 2009, the record in the administrative hearing was opened. It was stipulated that the Accusations filed against Kelly Hale, Susan Saunders, Jason Cook, Heather Bowler, Mandana Najimi, Jose Garcia, Orelia Ramirez, Rachel Scott, Lisa Grimes and six tenths of an FTE of Jessica Runck were withdrawn; the Accusations against these employees were dismissed. Jurisdictional documents were presented. The District gave an opening statement. An opening statement was reserved on behalf of all respondents represented by counsel. A written stipulation to jurisdictional facts was filed, sworn testimony and documentary evidence was received, closing arguments were given, the record was closed and the matter was submitted.

13. The services identified by the Board for reduction or elimination in Board Resolution 2009-76 were particular kinds of services that could properly be reduced and discontinued. The reduction and elimination of those services was neither arbitrary nor capricious, and the reduction or elimination of those services constituted a matter well within the proper exercise of the Board's discretion. The layoff related to the welfare of the District, the schools, and the students. No services were reduced below levels required by federal and state laws.

14. The District's seniority list was accurate. The preponderance of the evidence did not establish that the certificated employees who were the subject to this layoff hearing were improperly classified. Nevertheless, the District should be available to make corrections to the District's seniority list, as may be appropriate following this hearing upon verification of the new information provided.

15. The Board's resolution called for the elimination or reduction of about 96.96 FTEs in particular kinds of services. Using the Board's resolution and the District's seniority list, the District's staff identified the most junior employees providing the particular kinds of services identified in the resolution. For those employees who were displaced, the District attempted to determine if the displaced employee could "bump" a more junior employee by providing a particular kind of service that the displaced senior employee was credentialed and competent to provide.<sup>1</sup> The Board's tie-breaking criteria established a method by which employees having the same seniority date could be ranked for layoff purposes. A preponderance of the evidence established that the tie-breaker criteria were applied appropriately. Through the tedious step-by-step elimination process, the District correctly determined which certificated employees should receive preliminary layoff notices. No permanent or probationary employee with less seniority will be retained to render a service any respondent is certificated and competent to provide.

16. Respondents contended the District retained the services of certain junior employees to provide services more senior employees who were laid off were credentialed and competent to provide. The evidence did not support this contention. No junior employee was retained over a more senior employee. The testimony of Mr. Sonnich established that the position of curriculum specialist was one that required special skills. Although certain respondents claimed they were willing to do that job, none of them met the competency requirement in the Board resolution.

Respondents argues that the District has not have afforded employees providing services in categorically funded programs the seniority rights to which they were entitled. A preponderance of the evidence established that the District properly classified employees providing services in categorically funded programs and their actions in the layoff proceeding were appropriate.

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<sup>1</sup> A senior teacher whose position is discontinued has the right to transfer to a continuing position that he or she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who holds that position.

## LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied as to those respondent certificated employees identified herein.

2. A school board's decision to reduce or discontinue particular kinds of services (PKS) need not be tied to any statistical computation, such as a reduction in the number of students. The number of terminations through PKS reductions depends totally upon the decision about how many services to reduce. A board may consider the school district's economic circumstances in making the determination to eliminate particular kinds of services. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627.)

A school board may "reduce services" by eliminating certain types of service or by reducing the number of district employees providing such services. The decision to reduce or discontinue a particular kind of service is not unfair or improper simply because a school board made a decision it was empowered to make. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

3. Education Code section 44955, subdivisions (b) and (c), sets forth a general rule requiring school districts to retain senior employees over more junior employees and to retain permanent employees over temporary employees. Any exception to this general rule must be based on statute. For employees hired on the same date, Education Code section 44955, subdivision (d) provides:

"(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws."

4. Seniority determines the order of dismissals; between employees with the same first date of paid service, the order of termination is determined on the "basis of the needs of the district and its students." Senior employees are given "bumping" rights and will not be terminated if junior employees are being retained to render services which the more senior employee is certificated and competent to render. (*Alexander v. Board of Trustees* (1983) 139 Cal.App.3d 567.)

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 holds that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.)

5. As a result of the District’s lawful reduction of particular kinds of services, cause exists under Education Code section 44955 for the District to give notice to all respondents who were previously served with preliminary layoff notices that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2008-2009 school year, except for those respondents identified in the stipulation resulting in the dismissal of the Accusations.

This conclusion is based on all Factual Findings and on all Legal Conclusions.

## RECOMMENDATIONS

1. It is recommended that the Board dismiss the Accusations filed against Heather Bowler, Jason Cook, Jose Garcia, Lisa Grimes, Kelly Hale, Mandana Najimi, Oralia Ramirez, Susan Saunders, Rachel Scott and a fractional FTE of Jessica Runk.

2. It is recommended that the Board give notice to all remaining respondents previously served with a preliminary layoff notice that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2009-2010 school year including Brandy Bryant, Shawn Cardoza, Brian Carpenter, Paola Cerezo, Emily Conrique, David Crabtree, Anthony Devine, Yvonne Duncan, Ana Claudia Duran, Carrin Edwards, Christopher Fanning, Sarah Feeley, Michael Fleming, Jessica Fleshner, Matthew Flisher, Karl Franz, Louise Fuller, Amber Garrett, Jonathan Geraci, Daniel Goodrich, Jose Guzman, Caralyn Hamilton, Marc Henning, Christina Holland, Holly Hubbard, Jeffrey Hunter, Laura Izbicki, Rachel Jackson, Sandra Jenkins, Ryan Kinser, Cody Kuhlken, Jeri Lines, Douglas Martin, Shaun McDade, Elisa Miller, Daniel Neighbors, McKenzie Nielsen, Misty Nowlin, Lucas Olivares, Brie Pagano, Gwenne Pagarigan, Andrew Phillips, Emmanuel Pizano, Sarah Provo, John Roberts, Jr., Jeffrey Rollins, Barbra Ruggles, Jessica Runck as to .4 FTE, Anthony Santana, Kasey Shemwell, Maria Simonsen, Lynette Smith, Kristina Stratton, Jennifer Vasil, Natalie Vasquez, Dana West, Nicole Williams, Marcy Wilson, Xeng Yang.

3. It is recommended that the Board release the following Categorical Temporary Employees as Temporary Employees and not be issued a final layoff notice. Leroy Alicea, Vivian Casillas, Chi-Ping Chang, Michelle Clark-Cadwell, Sophia Dyjak, Carolyn Earle, Tara Egipto, Travis Engstrand, Michael French, Dalia Gonzalez, Cleophus Harris, Jr., Tania Jackson, Sophia Jacob, Linda Kinney, Katherine Kipp, Valerie Kipper, Jose Lucero, Lisa Morgan, Stephanie Picon, Ramey Rahib, Marguerite Rohmer, Amy Schaetz, Guadalupe Sturgeon.

DATED: \_\_\_\_\_

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STEPHEN E. HJELT  
Administrative Law Judge  
Office of Administrative Hearings