

**BEFORE THE GOVERNING BOARD OF THE
KERN HIGH SCHOOL DISTRICT
COUNTY OF KERN, STATE OF CALIFORNIA**

In the Matter of the Accusation Against:) OAH NO. 2009030807
)
Meaghan Barber-Smith, Nicole Bentley,)
Brooke Castro, William Crowles, John H.)
Hansen, Richardo Ishida, Sarah Kalinay,)
Jason Lenahan, Lucia Medina, Mathew V.)
Olegnik, Danielle Poterek, William B. Prins,)
John Rand, Robert Riley, Evelia Rodriguez,)
Chris Rzewuski, John Salazar, Amanda Smith,)
Scott Smith, and Thomas Weyant)
)
_____ Respondents.)

PROPOSED DECISION

Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 17, 2009, in Bakersfield, California.

Peter Carton, Attorney at Law, represented the Kern High School District.

Ernest Tuttle, Attorney at Law, represented the respondents who appeared at the hearing.

Evidence was received, and the matter was submitted for decision.

SUMMARY

The Governing Board (Board) of the Kern Unified School District (District) decided to reduce or discontinue particular kinds of services provided by certificated personnel for the 2009-2010 school year for budgetary reasons.

District staff carried out the Board's decision by using a selection process involving review of credentials, seniority, skipping and breaking ties between employees with the same first dates of paid service. The selection process complied with Education Code requirements.

FACTUAL FINDINGS

1. Donald E. Carter, Superintendent of the District, filed the Accusation in his official capacity.

2. Respondents are certificated employees of the District.

3. On or before March 9, 2009, the Superintendent of the District recommended that the Board give notice that certain services performed by certificated employees be reduced or eliminated for the 2009-2010 school year. The Superintendent also recommended that the Board adopt a resolution to reduce or discontinue particular kinds of services for the 2009-2010 school year. Specifically, the Superintendent recommended the reduction and/or elimination of 81 full-time-equivalency (FTE) certificated employees as follows:

English	27.1 FTE
Math	24.0 FTE
Social Studies	6.4 FTE
Science	7.0 FTE
Fine Arts (Drama, Music & Art)	3.7 FTE
CTE (Business, Vocational Arts, Industrial Arts & Agriculture)	3.8 FTE
Modern Language (Spanish, French & German)	3.9 FTE
PE/Health	5.1 FTE
Site Alternative Programs	2.183 FTE
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Total	81.0 FTE

4. On March 9, 2009, the Board adopted a resolution to discontinue or reduce the particular kinds of services set forth in Factual Finding 3. The Board further determined that based on the discontinuance or reduction of services, it would be necessary to decrease the number of certificated employees at the close of the present school year by a corresponding number of full-time equivalent positions. The Board also directed the Superintendent to notify the employees affected by the Board's resolution.

5. In a resolution adopted March 2, 2009, the Board established tie-breaking criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. It provided that the order of termination and reemployment would be based on the needs of the District and its students in accordance with the specific criteria set forth in the resolution. The District did not apply the tie-breaking criteria in this case because all Respondents are subject to layoff.

6. Prior to March 15, 2009, the Superintendent notified certificated employees, including Respondents, in writing that it had been recommended their services would not be required for the next school year. The mailing included the reasons for the notification. Respondents made timely requests for hearing.

6. On March 25, 2009, Superintendent Carter made and filed an Accusation against Respondents.

7. Notices of Defense were timely filed by Respondents. All prehearing jurisdictional requirements were met.

8. On or about April 1, 2009, the District rescinded the layoff notices previously issued to former Respondents Nicole Bentley, Brooke Castro, John Hansen, Sarah Kalinay, Lucia Medina, William Prins, Robert Riley, Evelia Rodriguez, Chris Rzewuski, and Amanda Smith.

9. The reduction or discontinuation of the particular kinds of services set forth in Factual Finding 3, related to the welfare of the District and its pupils.

10. The District maintains a Seniority List which contains employees' seniority dates (the first date of paid service in a probationary position), current assignments and locations, advanced degrees, credentials, and authorizations.

11. The District has determined that Respondent Scott Smith's seniority date is August 15, 2007. However, Mr. Smith claims that his seniority date should be August 16, 2006, because that was his first date of paid service. The District records indicate that Mr. Smith was first hired on August 16, 2006, under a Provisional Intern Permit (PIP), which was a type of emergency credential. He was hired under a one year contract for the 2006/07 school year, pursuant to a resolution by the Board. His contract under PIP was not renewed for the following year. Respondent Smith obtained his Preliminary Single Subject Credential on June 1, 2007 and was hired as a probationary employee on August 16, 2007. Therefore, the District contends that, even though Respondent Smith has worked full-time for the District since 2006, there was a break in service, and that his seniority date should be the day he was hired as a probationary employee. Respondent Smith did not testify at the hearing. Finally, the District contends that even if Respondent Smith's seniority date is determined to be August 16, 2006, he would nevertheless be subject to layoff because all of the other certificated employees who teach health are permanent employees.

12. The District used the Seniority List to develop a proposed layoff and "bumping" list of the least 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. The District properly discharged its discretionary duties in determining which employees would be subject to layoff.

13. No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render.

LEGAL CONCLUSIONS

1. All notices and other requirements of Education Code sections 44949 and 44955 were met. Therefore, jurisdiction was established for this proceeding as to all Respondents.

2. 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.)

3. Cause was established as required by Education Code sections 44949 and 44955 to reduce the number of certificated employees due to the reduction or discontinuation of particular kinds of services. The Board’s decisions to reduce or eliminate the identified services were neither arbitrary nor capricious. The decisions relate solely to the welfare of the District’s schools and the pupils within the meaning of Education Code section 44949.

4. The evidence in this case does not support Respondent Smith’s contention that he is entitled to a seniority date of August 16, 2006, pursuant to the holding in *Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260. He was originally hired under a one year contract which was not renewed. Once he obtained his preliminary credential, Respondent Smith was hired as a probationary employee on August 15, 2007. The latter date was his first date of paid service in a probationary position.

5. No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render.

ORDER

Notice may be given to Respondents Richardo Ishida, Jason Lenahan, Mathew V. Olejnik, Danielle Poterek, John Salazar, Scott Smith, and Thomas Weyant, that their services will not be required for the 2009-2010 school year.

Dated: April 28, 2009

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings

