

BEFORE THE GOVERNING BOARD OF THE  
EXETER UNION ELEMENTARY SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

COURTNEY BRODECKY, et al.,

Respondents.

OAH No. 2009031058

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Dian M. Vorters, State of California, Office of Administrative Hearings, on April 17, 2009, in Exeter, California.

Carol L. Laird, Deputy County Counsel,<sup>1</sup> represented complainant, Renee Whitson, Superintendent, Exeter Union Elementary School District.

Joshua F. Richtel, Attorney at Law,<sup>2</sup> represented respondents. (See Exhibit A)

The matter was submitted on April 17, 2009. All jurisdictional documents (District's Exhibits 1-11) were admitted for jurisdictional purposes. All evidentiary documents (Districts Exhibits 12-19) were admitted by stipulation of both counsel. On April 17, 2009, at the start of the hearing, the district moved to dismiss the accusation as to two respondents, Courtney Brodecky and Rachel Burke. The motion was granted, without objection. Of the four respondents who requested a hearing and returned a Notice of Defense, the hearing proceeded as to the two remaining respondents.

**FACTUAL FINDINGS**

*General Findings Concerning Statutory Requirements*

1. Respondents are certificated district employees.

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<sup>1</sup> Carol L. Laird, Deputy County Counsel, County of Tulare, 2900 W. Burrel, County Civic Center, Visalia, California 93291.

<sup>2</sup> Joshua F. Richtel, Attorney at Law, 750 East Bullard Avenue, Suite 101, Fresno, California 93710.

2. Not later than March 15, 2009, the superintendent of the school district caused the governing board of the district and respondents to be notified in writing of her recommendation that notice be given respondents, pursuant to Education Code sections 44949 and 44955,<sup>3</sup> that the district would not require their services for the 2009-2010 school year. The notice stated the reasons for the recommendation. In recommending reductions in certificated staff, the superintendent considered the district's projected deficit in general education funds, next year's budget, and state budget projections. The recommendation was not related to respondents' performance as certificated employees.

3. A notice was delivered to each respondent, either by personal delivery or by depositing the notice in the United States mail, registered, postage prepaid, and addressed to respondent's last known address.

4. The notice advised each respondent of the following: He or she had a right to a hearing. In order to obtain a hearing, he or she had to deliver a request for a hearing in writing to the person sending the notice. The request had to be delivered by a specified date, which was a date that was not less than seven days after the notice of termination was served.<sup>4</sup> And the failure to request a hearing would constitute a waiver of the right to a hearing.

5. Respondents timely filed written requests for a hearing to determine whether there was cause for not reemploying them for the ensuing year. An accusation was timely served on respondents. Respondents were given notice that, if they were going to request a hearing, they were required to file a notice of defense within five days after being served with the accusation.<sup>5</sup> Respondents filed timely notices of defense. All prehearing jurisdictional requirements were met.

6. The governing board of the district resolved to reduce or discontinue particular kinds of services. Within the meaning of Code section 44955, the services are "particular kinds of services" that can be reduced or discontinued. The decision to reduce or discontinue these services was not arbitrary or capricious but constituted a proper exercise of discretion.

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<sup>3</sup> All references to the Code are to the Education Code unless otherwise specified.

<sup>4</sup> Employees must be given at least seven days in which to file a request for a hearing. Education Code section 44949, subdivision (b), provides that the final date for filing a request for a hearing "shall not be less than seven days after the date on which the notice is served upon the employee."

<sup>5</sup> Pursuant to Government Code section 11506, a party on whom an accusation is served must file a notice of defense in order to obtain a hearing. Education Code section 44949, subdivision (c)(1), provides that, in teacher termination cases, the notice of defense must be filed within five days after service of the accusation.

*Services the District Intends to Reduce or Discontinue*

7. The governing board of the Exeter Union School District (EUSD) <sup>6</sup> determined that, because particular kinds of services are to be reduced or discontinued, it was necessary to decrease the number of permanent employees in the district by 4.0 full-time equivalents (FTE). The service reductions were passed by the governing board in Layoff Resolution No. 9-14-19, on March 12, 2009.

8. The particular kinds of services the governing board of the district resolved to reduce or discontinue are:

<b>Elementary Teaching Services</b>	
K-8th Grade	4.00 FTE
<b>Total:</b>	<b>4.00 FTE</b>

9. The governing board also resolved that it would be necessary to retain the services of certificated employees in the 2009-2010 school year regardless of seniority, who possesses qualifications needed for the following programs and/or subject matters: Special Education, Mathematics, Science.

*Findings Regarding Noticing*

10. The district mailed five (5) notices of layoff to employees before March 15, 2009. On March 13, 2009, notices of layoff were personally served on: Courtney Brodecky, Kristi Jensen, Marion Plein, and Whitney Robertson. Due to application of tie-breaking criteria, Ms. Jensen’s notice was rescinded and as such, she is not a respondent in this matter. On March 13, 2009, Rachel Burke (aka LePlant) was subsequently personally served with notice of layoff.

*Positively Assured Attrition*

11. Rene Whitson, district superintendent, testified that the board considered all cost saving measures to reduce the budget for the 2009-2010 school year. With respect to staff reductions, the district took into account positively assured attrition. The district offered an incentive to employees eligible to retire. Six employees agreed to retire. The district noticed two teachers who held intern credentials that they would not be re-elected for the 2009-2010 school year. School districts have discretion to nonreelect probationary employees who lack full credentials. (*California Teachers Assoc. v. Vallejo City Unified School Dist.* (2007) 149 Cal.App.4th 135, 157.)

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<sup>6</sup> There are two public education districts in Exeter, California. Elementary education is part of the Exeter Union School District (EUSD). The four schools in this district are: Lincoln School (K-2), Rocky Hill School (Grades 3-5), Wilson Middle School (Grades 6-8), and Community Day School (Grades 4-8). Secondary education is part of the Exeter Union High School District (EUHSD).

*Individual Bumping/Skipping/Seniority Issues - Elementary*

12. Skipping describes the process by which the district may deviate from the order of seniority when there is an identified need for a particular type of service, there is a junior employee who is uniquely qualified to provide that service or teach a subject, and there is no senior employee who is certificated and competent to provide the service.

13. Resolution no. 9-14-19, identified three programs and/or subject matters for which qualified certificated employees would be retained, regardless of seniority: Special Education, Mathematics, and Science. Complainant noted that four teachers were skipped for purposes of layoff in the 2009-2010 school year, based on their competence to teach one of these three subjects. The district skipped the following four teachers:

- *Gina Ecker*. Ms. Ecker's seniority or district start date is August 4, 2008. She holds a multiple subject credential, no supplemental credentials, and taught in special education during the 2008-2009 school year.
- *Amy Plyman*. Ms. Plyman's district start date is August 4, 2008. She holds a Level One Education Specialist Instruction: Mild/Moderate credential. She taught in special education pre-school during the 2008-2009 school year.
- *Justin Ward*. Mr. Ward's district start date is August 4, 2008. He holds a multiple subject credential, no supplemental credentials, and taught science during the 2008-2009 school year.
- *Deanna Wright*. Ms. Wright's district start date is August 4, 2008.<sup>7</sup> She holds a Level One Education Specialist Instruction: Mild/Moderate credential. She taught as a reading specialist during the 2008-2009 school year.

14. Bumping describes the process by which the district identifies those employees who are more senior and who are competent to perform a particular kind of service or teach a particular subject. Of the least senior teachers who hold multiple subject credentials, no bumping was necessary or employed to achieve the list of employees to receive layoff notices.

*Use of Tie-Breaking Criteria Based on the Current Needs of the District and Students*

15. Pursuant to Code section 44955, subdivision (b), the governing board of the district established criteria for determining the order of termination as among employees who first rendered paid service to the district on the same day. As set forth in board resolution no. 09-14-18, the tie-breaking criteria, based solely on the needs of the district, are as follows:

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<sup>7</sup> Deanna Wright's EUSD start date is August 4, 2008. Her EUHSD start date is January 3, 2005.

1. Bilingual certification (BCLAD)
2. Special education certification
3. Total teaching experience in public schools
4. Professional preparation, i.e., advanced degrees, continuing education in assignment-related subject areas
5. Breadth of credential(s)

16. The governing board originally determined it was necessary to reduce four FTE Elementary Teaching Service Positions. This number was lowered to two FTE Elementary Teaching Service Positions before hearing. The district implemented the reduction of two K-8 elementary teachers by first looking at the seniority chart and identifying which employees held multiple subject credentials. Fifteen employees shared a district start date of August 4, 2008. Of those fifteen employees, four were skipped (Factual Finding 15) and two interns, Brandon Pace and Katie Maze were released or non-reelected.

17. Marion Plein has the least seniority in the district with a start date of August 27, 2008. She does not share this start date with any other employee. Hence, tie-breaking criteria were not applicable. She taught third grade during the 2008-2009 school year, holds a multiple subject credential, and no supplemental credentials. Ms. Plein is the proper recipient for a final layoff notice.

18. Tie-breaking criteria were applied to the remaining nine employees who first rendered service on August 4, 2008. The district noted that the first criteria, BCLAD had no effect because most teachers in the district are bilingual. The second criteria, special education certification, was a skipping criteria. The third criteria, total teaching experience in public schools, was applied to determine the final order of seniority.

- *Whitney Robertson*. Ms. Robertson's seniority date is August 4, 2008. She taught fourth grade during the 2008-2009 school year, holds a multiple subject credential, and no supplemental credentials. She has one year of public school teaching experience, the least amount when ranked against her colleagues. As such, she had the lowest seniority after application of the tie breaking criteria. She is the proper recipient for a final layoff notice.

## LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists pursuant to Education Code sections 44949 and 44955. All notices and jurisdictional prerequisites required by those sections were satisfied.

2. The services the district seeks to eliminate in this matter, as set forth in Layoff Resolution 9-14-19, are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955. The board's decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious, but constituted a proper exercise of the Board's discretion. Pursuant to Education Code sections 44949 and 44955, legal cause exists for the district to reduce or discontinue the particular kinds of services set forth in the layoff resolution. The reduction or discontinuance of these identified particular kinds of services relates solely to the welfare of the district and its pupils.

3. No certificated employee with less seniority than any respondent is being retained to render a service that any respondent is certificated and competent to render. Legal cause exists pursuant to Education Code sections 44949 and 44955 to give respondents final notice that their services will not be required for 2009-2010 school year.

### RECOMMENDATION

1. The Exeter Union Elementary School District's action to reduce or eliminate the particular kinds of services identified in Layoff Resolution 9-14-19, for the 2009-2010 school year is AFFIRMED.

2. The Accusation against respondents is SUSTAINED. The Exeter Union Elementary School District may give final notices to the remaining respondents that their services will not be required for the 2009-2010 school year. Notices shall be given in inverse order of seniority.

DATED: May 1, 2009

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DIAN M. VORTERS  
Administrative Law Judge  
Office of Administrative Hearings

**EXHIBIT A**  
**EXETER UNION ELEMENTARY SCHOOL DISTRICT**  
**Named Respondent Teachers**

1	Courtney Brodecky	District's April 17, 2009, Motion to Dismissed Accusation granted. No longer a respondent.
2	Rachel Burke (aka LaPlant)	District's April 17, 2009, Motion to Dismissed Accusation granted. No longer a respondent.
3	Marion Plein	
4	Whitney Robertson	