

BEFORE THE BOARD OF TRUSTEES
LA HONDA-PESCADERO UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against
Certificated Employees:

ADRIENNE AUTEN, JOSHUA
CROCKETT, ANNA FUERST and
KATHRYN SCHUTZ,

Respondents.

OAH No. 2009040184

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on May 6, 2009, in Redwood City, California.

Eugene Whitlock, Deputy County Counsel, County of San Mateo, represented the La Honda-Pescadero Unified School District.

Christopher Schumb, Attorney at Law, represented respondents Adrienne Auten, Anna Fuerst and Kathryn Schutz, who were present at the hearing, and respondent Joshua Crockett, who was not present.

The matter was submitted for decision on May 6, 2009.

FACTUAL FINDINGS

1. Timothy A. Beard made and filed the accusation in his official capacity as Superintendent of the La Honda-Pescadero Unified School District.

2. Respondents Adrienne Auten, Joshua Crockett, Anna Fuerst and Kathryn Schutz are certificated employees of the district.

3. On March 5, 2009, the district's Board of Trustees adopted Resolution No. 08-09-20 reducing particular kinds of services and directing the Superintendent or his designee to give appropriate notices to certificated employees whose positions will be affected by the action.

4. On or before March 15, 2009, Superintendent Beard gave preliminary layoff notices to the four respondents and to one other certificated employee. Respondents filed

timely requests for a hearing, and an accusation was served on them. Respondents are deemed to have filed timely notices of defense. All prehearing jurisdictional requirements have been met.

5. The hearing in this matter was originally scheduled for April 14, 2009. At the parties' joint request, two continuances were granted, the first to April 28, 2009, and the second to May 7, 2009. Then the hearing was changed from May 7 to May 6, 2009, to accommodate one of the respondents. The effect of the continuances is to extend the date by which copies of the proposed decision must be submitted to the board and to respondents and the date by which final layoff notices must be served. Ordinarily, copies of the proposed decision are required to be submitted to the board and to respondents by May 7 (Ed. C. § 44949, subd. (c)(3)¹), and final layoff notices are required to be served by May 15 (§ 44955, subd. (c)). If the hearing has been continued, these dates are extended for a period of time equal to the continuance (§ 44949, subd. (e)). May 6 is 22 days after April 14, so the proposed decision is due 22 days after May 7 (May 29, 2009) and final layoff notices are due 22 days after May 15 (June 6, 2009).

6. In order to address a projected shortfall in the district's budget as well as declining enrollment, the board took action to reduce or discontinue the following particular kinds of services (PKS) for the 2009-2010 school year:

<u>SERVICES</u>	<u>FTE</u> ²
Multiple Subject teaching	1.00
ESL teaching	1.00
Social Studies teaching	1.00
Spanish teaching	<u>0.66</u>
Total	3.66

7. The district non-reelected the probationary teacher with the least seniority in the district (seniority date: August 21, 2008). He teaches music in a position funded by parcel tax revenues, which position may or may not be funded next year. The teacher next lowest in seniority (seniority date: August 20, 2008) has a multiple subject credential and teaches elementary school. She received a preliminary layoff notice but did not request a hearing. After these two teachers, the next lowest seniority date is August 21, 2007, and respondents all share this date. Respondent Joshua Crockett has a single subject Spanish credential, and his position teaching Spanish is being reduced by .66 FTE, from 1.00 to .34 FTE. The more senior teachers whose Social Studies and ELD (English Language Development) positions at the middle school are being eliminated have a standard elementary or multiple subject credential that will enable them to be reassigned (or "bump") into an elementary teaching position. Respondents Adrienne Auten, Anna Fuerst and Kathryn Schutz, as well as three other teachers with the same seniority date, have multiple

¹ All statutory references are to the Education Code.

² Full-time equivalent positions.

subject credentials and hold elementary teaching positions. In order to determine who would be subject to layoff, the district had to determine the relative seniority among these six employees. This required the application of tie-breaking criteria.

8. Five years ago, on March 4, 2004, the board adopted Resolution No. 03-04-19, which provided that:

. . . [C]ertificated employees with the same first date of paid service shall be terminated as ordered on the seniority list based on an analysis of the programs and student needs involved as rated on one or more of the following criteria:

The criteria to be used in rating employees for this purpose shall be:

1. Credentialing – including but not limited to:
 - a. Legal requirements for each program vs. credentials held
 - b. Specialties specified within each credential held
 - c. Variety and breadth of credentials held
2. Experience – including but not limited to:
 - a. Length of experience here and elsewhere
 - b. Nature of experience here and elsewhere
 - c. Relation of experience to positions to be filled
3. Education – including but not limited to:
 - a. Degrees earned and dates
 - b. Majors and minors in all post-high school studies
 - c. Courses completed since employed in this office
 - d. Other in-service experience
4. Performance – including but not limited to:
 - a. Attendance
 - b. Evaluation documents on file
 - c. Specific job-related skills (such as signing) as measured in employment screening

The rating of each employee shall be accomplished by the Superintendent and/or his designee with the input of the appropriate program managers as needed.

9. Sometime during the 2007-2008 school year, Superintendent Beard developed specific tie-breaking criteria to implement the board's 2004 resolution. After discussions of the Leadership Team (the Superintendent and the three school principals in the district), Superintendent Beard met with Erica Hays, the acting president of the teachers' union, and they agreed on the following tie-breaking criteria and procedure to be used in the case of layoffs:

The district will use the following criteria to determine seniority for teachers with the same date of hire. Each criterion will be worth one point.

1. Clear credential
2. BCLAD authorization
3. Advanced degree
4. Previous teaching experience in other K-12 public school districts
5. High performance rating on latest evaluation ("meets or exceeds standards")

If two or more teachers have the same number of points after the tie-breaking criteria are applied, seniority shall be determined by lot.

Several of the tie-breaking criteria reflect provisions of the collective bargaining agreement between the district and the teachers' union. Under that agreement, teachers receive a stipend for a BCLAD authorization and for an advanced degree. Superintendent Beard explained why BCLAD was chosen for the tie-breaking criteria even though the district does not require BCLAD for any teaching positions. The district has a large Spanish-speaking population, and teachers with a BCLAD authorization have passed a test to prove they are bilingual in Spanish. A bilingual teacher can communicate with students' parents who do not speak English and provide support to students in their primary language.

A teacher would get one point under the fourth criterion if, prior to being hired by the district, the teacher had taught over 75 percent of a school year in a public school in a salaried position. (Previous experience in the district would count for a teacher who had come back to the district after a break in service.) This standard mirrors the standard in the collective bargaining agreement for giving credit for prior teaching experience in determining a new teacher's placement on the salary scale. The rationale for not giving credit for private school teaching experience is that private schools are not subject to the same requirements as public schools. Credit is not given for non-salaried teaching experience because it is generally substitute teachers who are non-salaried, and such teachers do not have the responsibilities that salaried teachers have.

The rationale for the first criterion is that a teacher with a clear credential, having completed more coursework and attained greater teaching skills, is generally more qualified than a teacher without a clear credential.

In developing the tie-breaking criteria, Superintendent Beard was trying to create a fair and objective process that would carry out the spirit of the board's resolution and meet the needs of the district and the students.

10. In February 2009, Superintendent Beard gave a copy of the tie-breaking criteria to the leadership of the teachers' union. On or before February 11, 2009, Beard and the three principals applied the criteria to the six teachers with multiple subject credentials who share the seniority date of August 21, 2007. For the fifth criterion ("high performance rating on latest evaluation"), Beard looked at the teachers' evaluations for the 2007-2008 school year as well as the 2008-2009 school year. Although all six teachers received a point for their evaluations for the 2008-2009 school year, only four teachers received a point for their evaluations for the 2007-2008 school year. Under this application of the tie-breaking criteria, respondent Anna Fuerst had the fewest points and respondents Adrienne Auten and Kathryn Schutz tied for having the next fewest points. On February 11, 2009, lots were drawn to determine the relative seniority of Auten and Schutz, and Auten came out ahead of Schutz.

11. The board is aware of the tie-breaking criteria developed pursuant to its 2004 resolution and of how those criteria were applied in February 2009.³ No one from the board or from the union leadership expressed any objection to the application of the tie-breaking criteria.

12. Superintendent Beard now concedes that the February 2009 tie-breaking was flawed by mistakenly considering the teachers' evaluations for the 2007-2008 school year when the tie-breaking criterion was a high performance rating on the *latest* evaluation. This mistake was brought to his attention shortly before the hearing, and Beard reapplied the tie-breaking criteria without giving points for the 2007-2008 evaluations. Under this application of the tie-breaking criteria, respondents Fuerst and Auten tied for having the fewest points. Respondent Schutz tied with Sarah Monger and Rebekah Rayher for having the next fewest points. (The sixth teacher had the most points of all.) Lots were drawn to determine the relative seniority of Fuerst and Auten, and the relative seniority of Schutz, Monger and Rayher. In the first tie, Auten came out ahead of Fuerst. In the second tie, Monger came out first, Schutz came out second, and Rayher came out third. Under this second application of the tiebreaking criteria, the relative seniority of the five teachers (with number 1 being the highest in seniority) is as follows:

1. Sarah Monger
2. Kathryn Schutz
3. Rebekah Rayher

³ There has been a change in the membership of the board between 2004 and 2009.

4. Adrienne Auten
5. Anna Fuerst

13. Respondents challenge the tie-breaking criteria as an unreasonable implementation of the 2004 board resolution. They contend that the board resolution contemplated that all the criteria set forth under the categories of credentialing, experience, education and performance be taken into consideration, in an individualized investigation and evaluation of each teacher with the same seniority date. Under this view, the tie-breaking criteria developed by Superintendent Beard were impermissibly narrow. Respondents Auten, Fuerst and Schutz testified about aspects of their education, experience and skills that were within the broad scope of the board resolution but which were not taken into account by applying the five tie-breaking criteria.

A school district has broad latitude in establishing tie-breaking criteria. Section 44955 requires only that the order of seniority for employees with the same first date of paid service be determined “solely on the basis of needs of the district and the students thereof.” Here, the board set forth broad categories of criteria for the Superintendent to utilize in tie-breaking without specifying the procedure to be followed. Superintendent Beard’s implementation of the board’s resolution by specifying five tie-breaking criteria was a reasonable exercise of his discretion. Each criterion served the needs of the district and students, and the objectivity of the criteria made the tie-breaking procedure fair and easy to administer. The individualized approach urged by respondents would be time-consuming and open to challenge as overly subjective.

14. The district properly applied the tie-breaking criteria when it gave points for the teachers’ evaluations for the 2008-2009 school year only. (Finding 12.) The district concedes that under the re-ordered seniority list, respondent Kathryn Schutz may not be laid off. This is because Rebekah Rayher, who has less seniority than Schutz, was not noticed for layoff and will be retained for the 2009-1010 school year.

15. Sarah Monger has submitted a letter of resignation effective at the end of the 2008-2009 school year. At the time of the hearing, her resignation had not been accepted by the board; the matter was to be brought before the board for consideration at its meeting on May 7, 2009. Although Superintendent Beard was not asked whether the district will take into account Monger’s resignation (assuming it is accepted by the board) before issuing the final layoff notices, it is presumed that this will be done, since such attrition would affect the number of employees who must be laid off to effectuate the PKS reductions. It is also noted that another elementary teacher with more seniority than respondents is on a leave of absence but will be returning for the 2009-2010 school year.

16. No certificated employee junior in seniority to any respondent other than Kathryn Schutz is being retained by the district to perform services that any respondent is certificated and competent to render.

17. All contentions made by respondents not specifically addressed above are found to be without merit and are rejected.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to sections 44949 and 44955.
2. Cause exists because of the reduction of particular kinds of services pursuant to section 44955 to give notice to respondents Adrienne Auten and Anna Fuerst that their services will not be required for the 2009-2010 school year. Cause exists to give notice to respondent Joshua Crockett that .66 FTE of his services will not be required for the 2009-2010 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of section 44949.
3. Cause does not exist to give notice to respondent Kathryn Schutz that her services will not be required for the 2009-2010 school year. Cause exists to dismiss the accusation filed against her.

ORDER

1. The accusation against respondent Kathryn Schutz is dismissed.
2. Notice may be given to respondents Adrienne Auten and Anna Fuerst that their services will not be required for the 2009-2010 school year because of the reduction or discontinuation of particular kinds of services.
3. Notice may be given to respondent Joshua Crockett that .66 FTE of his services will not be required for the 2009-2010 school year because of the reduction or discontinuation of particular kinds of services.

DATED: _____

NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings