

BEFORE THE
GOVERNING BOARD OF THE
EL RANCHO UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations Re:

OAH No. 2009040471

Certain Certificated Employees of the El Rancho
Unified School District,
Respondents.

PROPOSED DECISION

This matter was heard by Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 30, 2009, in Pico Rivera, California.

Edward L. Kunkel, Attorney at Law, represented the El Rancho Unified School District (District).

Lawrence Rosenzweig, Attorney at Law, represented the Respondents who are certificated teachers. Rico Tamayo, President of the El Rancho Federation of Teachers, was also present.

Respondents Melissa Garcia, Tarcio Lara, and Yvette Ventura, who are District employees serving in administrative positions, represented themselves.

Oral and documentary evidence was received, and argument was heard. By agreement of the parties, the record was held open until May 1, 2009, for the District to submit additional information and for Respondents to submit a written response or objections. By letter dated May 1, 2009, the District agreed to remove Respondent Claudio Heredia from the layoff list, and to change Respondent Karen Pidd's seniority date from August 28, 2008, to August 25, 2008. By letter dated May 1, 2009, Respondents' counsel indicated there was no objection to the determinations set forth in the District's letter. The District's letter was marked and admitted as Exhibit 21. The letter from Respondents' counsel was marked and admitted as Exhibit A. The record was closed and the matter was submitted on May 1, 2009.

SUMMARY OF PROPOSED DECISION

The Governing Board (Board) of the District determined to reduce particular kinds of services provided by teachers and other certificated employees for budgetary reasons. The

decision was not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

District staff carried out the Governing Board's decision by using a selection process involving review of seniority. The selection process was in accordance with the requirements of the Education Code.

FACTUAL FINDINGS

1. Dr. Kathryn Enloe is the Assistant Superintendent, Human Resources Department, of the District, and her actions were taken in that official capacity.

2. Respondents are certificated employees of the District.

3. On January 15, 2009, the Governing Board adopted Resolution 23 to reduce or discontinue particular kinds of services by the equivalent of 89.5 full-time equivalent (FTE) positions for the 2009-2010 school year. This resolution was amended as described in Factual Finding 4 below.

4. On February 12, 2009, the Governing Board adopted Amended Resolution 23 to reduce or discontinue particular kinds of services (PKS) by the equivalent of 93.5 FTE positions for the 2009-2010 school year, as follows:

1. Kindergarten through Grade 6 Classroom Teaching Services - 48 FTE
2. Resource Teaching Services/Bilingual - 1½ FTE
3. Resource Teaching Services/Program Improvement - 1 FTE
4. Resource Teaching Services/Math - 1 FTE
5. Resource Teaching Services/Middle School - 2 FTE
6. Resource Teaching Services/BTSA/PAR - 1 FTE
7. Middle/Elementary Math Coaching Services - 2 FTE
8. Elementary Reading Coaching Services - 4 FTE
9. District Wide Nursing Services - 1 FTE
10. Grade 6 through Grade 12 District Counseling Services - 8 FTE
11. District Wide Psychologist Services - 2 FTE
12. District Admin. Services/Coordin., Student Intervention & Support - 1 FTE
13. District Admin. Services/Coordin., Reading First/State Pre-School - 1 FTE
14. District Admin. Services/Coordin., Categorical Programs - 1 FTE
15. High School Administrative Services/9th Grade Dean - 1 FTE
16. High School Administrative Services/10th Grade Dean - 1 FTE
17. High School Administrative Services/11th Grade Dean - 1 FTE
18. Middle School Administrative Services/Assistant Principal - 1 FTE
19. High School Administrative Services/Assistant Principal - 1 FTE
20. Elementary School Administrative Services/Principal - 3 FTE
21. High School Math Teaching Services - 2 FTE
22. High School Science Teaching Services - 2 FTE

- 23. High School Social Studies Teaching Services - 2 FTE
- 24. High School English Teaching Services - 2 FTE
- 25. High School Physical Education Teaching Services - 1 FTE
- 26. High School Resource Teaching Services/Technology - 1 FTE
- 27. Resource Teaching Services/Independent Studies - 1 FTE

Total Reduction - 93.5 FTE

5. The Governing Board determined that, due to the reduction or discontinuance of services, it would be necessary to decrease the number of certificated employees by a corresponding number of FTE positions, and directed the Superintendent or his designee to take all actions necessary and proper to accomplish the purpose of Amended Resolution 23.

6. The Governing Board adopted resolutions setting forth competency standards (Resolution 24), procedures for skipping (Amended Resolution 25), and tie-breaker criteria for determining seniority among certificated employees with the same seniority date (Resolution 26).

7. On March 5, 2009, pursuant to Amended Resolution 23, the Governing Board was given notice of the Superintendent's recommendation of which certificated employees of the District should be given notice that their services would not be required for the 2009-2010 school year. All temporary employees, except those in special education positions, were released by the District.

8. Before March 15, 2009, the District served each employee identified for layoff with written notice that it had been recommended that notice be given to them pursuant to Education Code sections 44949 and 44955¹ that their services would not be required for the 2009-2010 school year. Each written notice set forth the reasons for the recommendation and noted that the Governing Board had decided to reduce or discontinue particular kinds of services no later than the start of the 2009-2010 school year. Notice was served by personal service or registered mail.

9. The District received requests for hearing from 70 employees. Twenty-six employees who were sent the March 15 layoff notice did not request a hearing.

10. On April 14, 2009, the District issued the Accusation and thereafter served it on the employees who timely requested a hearing pursuant to section 44949, subdivision (b). The Accusation packets were served by registered mail.

11. In this case, Respondents are the 70 employees who requested a hearing and were served with the Accusation, a notice of defense form, and other required documents. No issue was raised at the hearing regarding notices of defense.

¹ All further statutory references are to the Education Code, unless otherwise indicated.

12. All prehearing jurisdictional requirements have been met.
13. The services set forth in Factual Finding 4 are particular kinds of services which may be reduced or discontinued within the meaning of section 44955.
14. The Governing Board took action to reduce or discontinue the services set forth in Factual Finding 4 because of the looming State budget crisis and the potential impact on funding education for the next school year. 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.
15. The reduction of services set forth in Factual Finding 4 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.
16. The District properly considered all known attrition, resignations, and retirements. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 636.)
17. The District properly created its seniority list by determining the first date of paid service of each certificated employee and properly utilized reasonable "tie-breaker" criteria when necessary. For each PKS identified in Amended Resolution 23, the District looked at all employees within the PKS, and went through the seniority list in reverse seniority order, starting with the least senior employee, until enough employees were identified corresponding to the PKS reduction. The District used tie-breaker criteria, which were negotiated with the teachers' union and adopted by the Governing Board, to break ties between employees having the same seniority date. The last tie-breaker criteria was a lottery, which the District used to break some ties.
18. The District examined the seniority list to determine whether any junior employee was performing a service that a senior employee was certificated and competent to render and, if so, allowed the senior employee to "bump" into the junior employee's position. The District "skipped" employees serving in special education positions or as a speech and language pathologist.
19. The District has agreed to remove Respondent Claudio Heredia from the lay-off list. His employment is not at issue in this layoff proceeding.
20. The District has agreed to change Respondent Karen Pidd's seniority date from August 28, 2008, to August 25, 2008. Despite this change, Respondent Pidd remains as one of the two PKS high school science teachers slated for layoff.
21. (A) Respondent Amalia Gutierrez is currently a second grade teacher at Durfee Elementary. She was assigned a seniority date of August 30, 1999. She is classified as a first-year probationary employee ("Prob-1"). Respondent Gutierrez testified she should have a 1999 seniority date, which she does. By her testimony, it appears that Respondent Gutierrez disputes her classification as a Prob-1. She contends this classification does not

reflect her previous employment in the District as a preschool teacher and resource teacher in the District's Child Development Center. The District contends Respondent Gutierrez is correctly classified as Prob-1 because her current assignment is her first assignment in a K-6 classroom. The District's counsel also noted that all teachers in the Child Development Center are temporary employees.

(B) Respondent Gutierrez's contention that she is entitled to change her Prob-1 status is not persuasive and not established by the evidence. There is insufficient evidence to establish that any of her employment at the Child Development Center should count towards achieving permanent status. No evidence was presented regarding the job requirements and job duties at the Child Development Center, or the specific dates of Respondent Gutierrez's employment there. For example, section 44918, subdivision (a), provides that a temporary employee "who serves during one school year for at least 75 percent of the number of days the regular schools of the district were maintained in that school year and has performed the duties normally required of a certificated employee of the school district, shall be deemed to have served a complete school year as a probationary employee if employed as a probationary employee for the following year." Respondent Gutierrez failed to present evidence that she meets the requirements of section 44918 or any other Education Code provision that would entitle her to change her classification as a probationary employee.

22. Respondents contend the District is proposing to eliminate mandated services, referring to items 2-6 listed in Amended Resolution 23, but has no plan on how to provide the services if the layoff is implemented. There is no requirement the District must determine its plan for providing mandated services at a certificated layoff hearing such as this. The District has not yet received confirmation regarding next year's funding for some of those services. The District recognizes that some of the PKS are mandated services and must be provided. It is reasonable to expect that the District will have a plan for providing mandated services if the layoff is implemented, as the District would not likely act in a manner that invites federal or state scrutiny regarding such services. Respondents' contention that the District will be unable to provide mandated services if the layoff is implemented is speculation.

23. Respondents also contend that teachers holding credentials authorizing them to teach in elementary school should not be laid off if less senior teachers in sixth grade teaching assignments are being retained. In the District, kindergarten through fifth grade are in elementary school, and sixth grade is in middle school. Assistant Superintendent Enloe testified that a typical elementary school teacher holds a multiple subject credential, and is authorized to teach sixth grade. Thus, Respondents argue, elementary school teachers should not be laid off if less senior sixth grade teachers are retained. This argument is not persuasive and not supported by the evidence. An elementary classroom typically involves one teacher teaching multiple subjects to the same group of students for the day. By contrast, teachers in a middle school setting typically teach one subject to different groups of students during the day. An elementary school teacher is not automatically competent and qualified to teach sixth grade in the District solely on the basis that he or she is authorized to teach in elementary school.

24. All other arguments presented by Respondents were unconvincing and were not established by the evidence. Respondents did not establish that the District did not follow the required procedures or that the District acted in an arbitrary and capricious manner.

25. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of Factual Findings 1-12.

2. The services listed in Factual Finding 4 are determined to be particular kinds of services within the meaning of section 44955, by reason of Factual Findings 4 and 13.

3. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue the particular kinds of services set forth in Factual Finding 4, which cause relates solely to the welfare of the District's schools and pupils, by reason of Factual Findings 1-25.

4. Courts have permitted districts to reduce or discontinue particular kinds of services as long as mandated services continue to be performed. (See, e.g., *Gallup v. Alta Loma School District Board of Trustees* (1996) 41 Cal.App.4th 289 (*Gallup*); *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 639-640.) It was not established that the discontinuation of PKS set forth in Factual Finding 4 will preclude the District from discharging its obligation to provide mandated services. (Factual Finding 22.)

5. Based on the above Factual Findings and Legal Conclusions, except for Claudio Heredia, the names of the affected certificated employees, those as to whom final notices of layoff may be given, are set forth on Attachment "A" attached hereto.

ORDER

As a result of the reductions of services, the District may give notice to the certificated employees identified on Attachment "A," except for Claudio Heredia, that their services will not be required for the 2009-2010 school year.

DATED: May ____, 2009

ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings

ATTACHMENT "A"
OAH NO. 2009040471 - EL RANCHO USD
HEARING DATE: April 30, 2009

LIST OF EMPLOYEES NOS. 1-70 TO WHOM
FINAL NOTICES OF LAYOFF MAY BE GIVEN

1. JANET ALONSO
2. CRYSTAL ANN ALVAREZ
3. GUILLERMINA ALVAREZ
4. DIANA ARRATA
5. ALICE VALADEZ BARAJAS
6. RUTH BASKETT
7. SOFIA BERNAL
8. ALEJANDRA BRAVO
9. NORMA GISELA CASTANON
10. PATRICIA FRANCO CELIZ
11. MICHAEL CELIZ
12. LARRY DEAN COCHRAN
13. MARLA M. DIAZ
14. CAROLYN M. ESPINOZA
15. SUSAN ESTRADA
16. KAYLYN FODOR
17. SANDRA E. GALLEGOS
18. MELISSA GARCIA
19. RACHEL Y. GARCIA
20. ROBERTA GONZALEZ
21. GUADALUPE GUERRERO-LIRANZA

22. AMALIA GUTIERREZ
23. CLAUDIO HEREDIA [notice may not be given to this employee]
24. ROSIE HERNANDEZ
25. SARA K HOLCOMB
26. CHRISTINE ITURRINO
27. PABLO R JIMENEZ
28. STEPHEN KIM
29. TARCIO V. LARA
30. ANDREA LARIOS
31. BRENDAN P LEDDEN
32. KENDRA LEONARDI
33. ANITA LOMELI
34. LETICIA R. LOPEZ
35. JESUS E. LOPEZ
36. MAYA LUNA
37. DELIA MADERA
38. DIANA C. MATA
39. DARREN ROBERT MEYER
40. FRANCES THI THU NGUYEN
41. OLIVIA C. OLIVER
42. TOR ORMSETH
43. LILLIAN L. ORTIZ
44. MARISA LAURA OSTE
45. ARACELY PANEDA
46. SUMMER L. PARDEE

47. RAMON PENA
48. KAREN L. PIDD
49. BERNICE S. PONCE
50. EDWIN R PONCIANO
51. SHIRLEY MARIE PRADO
52. BLANCA G RAMIREZ
53. JOSEFINA RAMIREZ
54. LUZ MARIA RAMIREZ
55. LINDA RAMIREZ
56. RICARDO RAMIREZ
57. CLAUDIA RODRIGUEZ
58. NANCY L. RONZELLO
59. DAVID SERMENO
60. VIRIDIANA SIERRA
61. DORA SOTO-DELGADO
62. PAUL A. THOMAS
63. LOURDES TORRES
64. ARACELY VALENZUELA
65. MARIA C VALERA-BARAJAS
66. COLLENE VALLE
67. HILDA BARAJAS VASQUEZ
68. YVETTE VENTURA
69. JUDITH VERBERA
70. CLAUDIA A VILLARRUEL

