

BEFORE THE GOVERNING BOARD  
PATTERSON JOINT UNIFIED SCHOOL DISTRICT  
COUNTY OF STANISLAUS  
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

CERTAIN CERTIFICATED PERSONNEL  
EMPLOYED BY THE PATTERSON  
JOINT UNIFIED SCHOOL DISTRICT,

OAH No. 2010021031

Respondents.

**PROPOSED DECISION**

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California heard this matter in Patterson, California at the District Office of the Patterson Joint Unified School District on April 12, 2010.

Philip Alfano, Assistant Superintendent for Human Resources, appeared as the representative of the Patterson Joint Unified School District (District), all of whom were represented by Chesley D. Quaide, Attorney at Law, Partner, Atkinson, Andelson, Loya, Ruud and Romo, Attorneys at Law.

Certificated teacher respondents named in Attachment A were represented by Chris Nunnemaker, Local Association President, all of whom were represented by Ernest H. Tuttle, IV, Attorney at Law.

No unrepresented respondents were identified who receiving preliminary notices of layoff. One respondent receiving a preliminary notice of layoff, Irma Hupe, did not appear at the evidentiary hearing. The parties stipulated and agreed that Ms. Hupe withdrew her previously filed Notice of Defense and withdrew her Request for a Hearing.

The matter was submitted based on an oral stipulation placed on the record in open court, together with the list of rescissions of preliminary notices of layoffs affecting some but not all of the respondents, announced on the record by Mr. Alfano during the hearing. The matter was submitted on April 12, 2010.

## FACTUAL FINDINGS

1. All respondents listed in Exhibit A to this Decision are, and at all times relevant to this Decision were, certificated employees of the District.

2. On or just before March 1, 2010, in accordance with Education Code section 44949 and 44955, Patrick Sweeney, Ed.D., Superintendent of the District (Superintendent) notified the Governing Board of the District (Board) in writing of his recommendation that certain particular kinds of services (PKS) would have to be reduced or eliminated for the upcoming school year. The Superintendent's recommendation specified the PKS to be reduced or eliminated, as set forth below. The Superintendent also notified the Board that a corresponding number of certificated employees of the District, in this instance and at this point in time, 29.6 full time equivalents (FTE), would have to be laid off to effectuate the PKS reduction or elimination. The Superintendent notified the Board that respondents had been identified as persons to whom notice should be given that their services would not be required for the ensuing school year. The recommendation that respondents' services for the District would not be required for the upcoming school year was not related to their skills, abilities or competencies as teachers.

### *Reductions/Eliminations Of Particular Kinds Of Services*

3. The Board adopted Resolution 03-01-10 (a) on March 1, 2010. The Board resolved to follow the Superintendent's recommendation to reduce 29.6 FTE PKS. The Resolution authorized and directed the Superintendent or her designee to give notice to a corresponding number of certificated employees of the District that their services would not be required for the upcoming school year in order to effectuate the reduction. The Resolution authorized the elimination of the following services now offered in the District:

#### PARTICULAR KINDS OF SERVICES (PKS) TO BE REDUCED OR ELIMINATED AT CLOSE OF 2010/2011 SCHOOL YEAR<sup>1</sup>

24.0	FTE	Elementary Teachers
1.0	FTE	Science Teacher
2.0	FTE	English Teachers
1.0	FTE	Math Teacher
1.0	FTE	Spanish Teacher
0.6	FTE	Home Economics Teacher

TOTAL: 29.6 FTE

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<sup>1</sup> Copied verbatim from the Resolution.

4. The Superintendent caused each of the respondents listed in Attachment A to this Decision with a written Notice of Intention to Dismiss (preliminary notice) on or before March 15, 2010. The written preliminary notices advised each respondent that his or her services would not be required for the upcoming school year. The preliminary notice set forth the reasons for the Superintendent's recommendation and the Governing Board's action.

5. All respondents identified in Exhibit A timely filed Requests for Hearing in response to receipt of preliminary notice of layoff.

#### *Accusations*

6. The Superintendent made and filed the Accusations in his official capacity as Superintendent of the Paterson Joint Unified School District (District).

7. The District timely served Accusations on each respondent identified in Exhibit A, each of whom had timely filed a Request for a Hearing with the District. Each respondent served an Accusation timely filed a Notice of Defense to the Accusation.

8. Notice of the date, time and place of the evidentiary hearing was timely served on all respondents and counsel. All respondents except Irma Hupe appeared at the evidentiary hearing. Ms. Hupe notified the District before the commencement of the hearing that she was withdrawing her Notice of Defense and Request for a Hearing, and that she was not contesting the action. She did not appear at the hearing, consistent with her withdrawal of her Notice of Defense and Request for a Hearing.

#### *Stipulation*

9. Following lengthy negotiations and exceptional efforts by all parties, the teacher's association and their respective representatives, the parties entered into two Stipulations (the Stipulations). The Stipulations form the basis for the remainder of this Decision. The Stipulations were put on the record and are here fully incorporated by reference into this Decision.

#### *Jurisdiction*

10. All prehearing jurisdictional requirements were met. Jurisdiction exists for this matter.

11. Counsel for the represented respondents represents each individual listed on Attachment A.

12. Other than Ms. Hupe, no other Requests for Hearing/Notices of Defense were withdrawn by any respondent.

13. The District rescinded Preliminary Notices of Layoff that had been issued to respondents as follows;

Ernesto Calderon;  
Millie Dahlgren;  
Ana Davilla;  
Peiman Hojjatijou;  
Eugenio Iniguez;  
Lia Cisneros-Barajas;  
Balena Lominario;  
Grace Villalobos;  
Carlos Jiminez;  
Jayne Lobao;  
Deyanira Lopez;  
Martha Sandoval;  
Sandra Silva-Cisneros;  
Jessica Souza;  
Tiffany Hood;  
Kellene Madruga;  
Marianne Zamzow;  
Jorge Pinedo;  
Karen Fauss; and  
April Weaver.

Upon the approval and adoption of this Proposed Decision by the Board pursuant to Government Code section 11517, subdivision (b), the rescission of preliminary notices of layoff issued to each person listed above shall be endorsed and approved.

14. All remaining respondents (listed below) named on Attachment A are the proper subject of these proceedings.

15. The remaining respondents still subject to this layoff and whose preliminary notices remain in full force and effect after the rescissions are as follows:

Irma Hupe;  
Marlene Avila;  
Angela Frank;  
Donna Clarke;  
Denise Copeland;  
Julie Du Priest;  
Jennifer King;  
Shivaughn Alves; and  
Natalie Hayes.

*PKS Reduction Action And Layoffs Unrelated To Skill Or Competence*

16. The issuance of preliminary notices of layoff to each respondent was not related to any respondent's competence, skill or ability as a certificated employee serving in the District. The cause for issuance of the preliminary notices of layoff was exclusively related to the grounds and causes set forth in Education Code sections 44949 and 44955.

*Entire Agreement And Limitations To Present Parties*

17. The Stipulations and the agreements reflected in this Proposed Decision reflect the entire agreement of the named parties. Any remaining issue regarding any respondent properly served with a preliminary notice of layoff not reflected in this Decision is dismissed with prejudice.

18. All respondent/employees of the District receiving a preliminary notice of layoff and properly subject to the jurisdiction of these proceedings shall be entitled to all the protections set forth in Education Code sections 44956 and 44957.

*Necessity Of PKS Reduction/Elimination And Layoffs*

19. The District is facing financial pressure necessitating the reduction or elimination of the particular kinds of services set forth in the Resolutions.

*All Known Attrition Considered*

20. The Superintendent and Assistant Superintendent, on behalf of the District, considered all known attrition, resignations, retirements, effects of furloughs and other agreements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

*Compliance With State And Federal Mandates*

21. The District does not propose to eliminate any services that are State or federally mandated.

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. The District has the burden of proving by a preponderance of the evidence that the proposed reduction or elimination of particular kinds of services and the preliminary notice of layoff served on respondent is factually and legally appropriate.<sup>2</sup> The parties stipulated the District

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<sup>2</sup> Education Code section 44944.

met its burden with respect to the remaining respondents. All claims and issues raised by the giving of preliminary notices of layoff are resolved here, by the Stipulations or by waiver or default.

2. The services the District seeks to eliminate in this matter 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 demonstrated to be arbitrary or capricious, but constituted a proper exercise of discretion.

3. The reduction or discontinuation of particular kinds of services related to the welfare of the District and its pupils. The District’s reduction in particular kinds of services proposed is necessary to avert the District operating in a deficit in the upcoming school year.

4. Other than that reflected in the Stipulations and the rescinded preliminary notices of layoff, there was no evidence any person receiving a preliminary notice of layoff is being laid off in favor of a junior employee being skipped, or that any employee being laid off is entitled to bump into a position held by a more junior employee where the employee being laid off has the credentials and competence to take the position of the more junior employee being retained. There was no evidence that any certificated employee of the District is being retained to provide a service any of the remaining respondents still subject to this layoff are certificated and competent to render.

5. Legal cause exists pursuant to Education Code section 44949 and 44955 for the Lodi Unified School District to reduce or discontinue 29.6 FTE of particular kinds of services, as set forth in the District’s Resolution. The cause for the reduction or discontinuation of particular kinds of services relates solely to the welfare of the schools and the pupils thereof. Legal cause therefore exists to sustain the remaining Accusations. The Board may give the remaining respondents still subject to layoff final notices that their services will not be required by the District in the upcoming school year, in inverse order of seniority, as governed by the Stipulations and Attachments.

## ORDER

The Accusations are SUSTAINED.

The Patterson Joint Unified School District action to reduce or eliminate 29.6 Full Time Equivalents of particular kinds of services for the 2010-2011 school year is AFFIRMED.

Final notice may be given by the District to the remaining respondents still subject to this layoff identified above that their services will not be required for the upcoming school year. Notice shall be given in inverse order of seniority.

DATED: April 20, 2010

  
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STEPHEN J. SMITH  
Administrative Law Judge  
Office of Administrative Hearings

## Exhibit A

Alves, Shivaugn
Avila, Marlene
Calderon, Ernesto
Clarke, Donna
Copeland, Denise
Dahlgren, Millie
Davila, Ana
DuPriest, Julie
Fauss, Karen
Franck, Angela
Hayes, Natalie
Hood, Tiffany
Hupe, Irma (late receipt)
Iniguez, Eugenio
Jimenez, Carlos
King, Jennifer
Lobao, Jayne
Lopez, Deyanira
Madruga, Kellene
Pinedo, Jorge
Sandoval, Martha
Silva-Cisneros, Sandra
Souza, Jessica
Villalobos, Grace
Weaver, April
Zamzow, Marianne