

**BEFORE THE
GOVERNING BOARD
OF THE ARVIN UNION SCHOOL DISTRICT**

In the Matter of the Accusations Against:

OAH NO. 2011031607

Rosemary Borquez, Christie Caldwell,
Magdalena Hernandez and Vanessa Valtierra,

Respondents.

PROPOSED DECISION

Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 13, 2011, in Bakersfield, California.

Peter Carton, Attorney at Law, represented the Arvin Union School District.

Paul A. Welchans, Attorney at Law, represented the respondents.

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

SUMMARY

The Governing Board (Board) of the Arvin Union School District (District) decided to reduce particular kinds of services provided by certificated personnel for the 2011-2012 school year for budgetary reasons. District staff carried out the Board's decision by using a selection process involving review of credentials, seniority, and skipping.

FACTUAL FINDINGS

1. Michelle McLean, Superintendent of the District, filed the Accusation in her official capacity.

2. Respondents are certificated employees of the District.

3. On February 15, 2011, the Board adopted Resolution No. 10:2010/2011, to discontinue or reduce particular kinds of services for the 2011/2012 school-year as follows:

Self-Contained Multiple Subject Classroom

10.0 FTE

4. The Board passed Resolution 10:2010/2011 pursuant to Education Code section 44955 and made a determination to decrease the number of certificated employees for the ensuing school year by a corresponding number of full-time equivalent positions as set forth in Factual Finding 3.

5. The Board also passed Resolution 8:2010/2011, which 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 would be based on the needs of the District and its students in accordance with the specific criteria set forth in the resolution. The resolution also states, "These criteria shall be applied in determining the order of termination." Superintendent McLean testified that the Board directed her to apply these criteria in descending order and that she followed this directive.

6. The Board directed the Superintendent to notify the employees affected by the Board's resolution. On or about March 8, 2011, 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.

7. On April 1, 2011, Superintendent McLean made and filed Accusations against each Respondent.

8. Respondent Caldwell filed a Notice of Defense.¹

9. The reduction 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. The District used the Seniority List to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. In determining who would be laid off for the kind of service reduced the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority.

11. Four certificated employees who are not being laid off have less seniority than Respondents. These certificated employees were "skipped" because they hold a BCLAD credential, which allows them to teach dual language emersion classes. Respondents hold CLAD credentials, therefore, they are not authorized to teach dual emersion classes. The District properly exercised its discretion in deciding to skip of the above mentioned less senior certificated employees.

¹ Exhibit 10 contained only the Notice of Defense submitted by Ms. Caldwell. However, the District did not contend that the other Respondents were not entitled to a hearing.

12. The seniority list (exhibit 7) specifies that Respondents share the same seniority date of August 2, 2007. Respondent Valtierra contends that her seniority date should be August 3, 2006. In 2005, Ms. Valtierra worked 3 days in August, 19 days in September, 21 days in October, and nine days in December. On February 15 2006, Respondent Valtierra signed a temporary employment contract, which was accepted by the District. This temporary contract terminated June 30, 2006. On November 17, 2006, Respondent Valtierra signed a "Contract for Intern Classroom Teacher." She taught in that capacity for the entire 2006/2007 school-year. Respondent Valtierra worked under a subsequent temporary contract for the 2007/2008 school year. Respondent Valtierra was then hired as a probationary employee on August 4, 2008, the first day of the 2008/2009 school year.

13. During a summer layoff proceeding in July 2009, Respondent Valtierra disputed her assigned seniority date of August 4, 2008. In his July 30, 2009 proposed decision, the administrative law judge ruled that Ms. Valtierra was correct in her assertion that her true seniority date was August 2, 2007. The proposed decision was thereafter adopted by the District and became final in August 2009.

14. In a subsequent layoff proceeding in April 2010, Respondent Valtierra again raised the issue of her seniority date, this time disputing the August 2, 2007 seniority date, which had been heard, litigated, argued and decided after the 2009 layoff proceeding. In denying her contention, the administrative law judge applied the doctrine of collateral estoppel, precluding Respondent Valtierra from disputing her seniority date determined in the 2009 proceeding.

15. The District considered positively assured attrition, including resignations and retirements, occurring prior to sending notices of non-reemployment to the certificated employees affected by the decision to reduce particular kinds of services. Respondents contend that the District failed to consider all known assured attrition in determining the number of teachers to be laid off. In support of their contention, Respondents cite the March 11, 2011 resignation of certificated employee Barbara Caldwell. Respondents' contention is not persuasive for the reasons set forth in Legal Conclusion 4.

16. 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.

17. Respondents are not certificated and competent to render a service being performed by any employee with less seniority who is being retained.

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. Cause was established as required by Education Code sections 44949 and 44955 to reduce the number of certificated employees due to the reduction of particular kinds of services. The Board's decision to reduce the identified services of respondents was neither arbitrary nor capricious. The decision relates solely to the welfare of the District's schools and the pupils within the meaning of Education Code section 44949.

3. Ms. Valtierra is collaterally estopped from disputing her seniority date. Collateral estoppel is established if the following threshold requirements are met: (1) the issue sought to be precluded from litigation must be identical to that decided in a former proceeding; (2) this issue must have been actually litigated in the earlier action; (3) it must have been necessarily decided in the earlier action; (4) the decision in the former proceeding must be final and on the merits; and (5) the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. (*Zapata v. Department of Motor Vehicles* (1991) 2 Cal.App.4th 108, 112.) All of the requirements for collateral estoppel have been met in this case. The issue was thoroughly litigated in 2009, which resulted in a final decision on the merits in favor of Respondent Valtierra. Respondent Valtierra did not present persuasive authority or argument to overcome the application of collateral estoppel.

4. Respondents contend that the District "over-noticed" because it failed to consider the March 11, 2011 resignation of employee Barbara Castle. Respondents' contention is not persuasive. Ms. Castle resigned three days after the District sent notices of non-reemployment to Respondents. Where the governing board of a district determines to discontinue or reduce a particular kind of service, the district is not required to account for circumstances that occur after issuing preliminary layoff notices. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 934.)

5. The District did not act in an arbitrary manner in adopting its tie-break resolution. Although the District did not give a specific weight to each criterion, it applied the criteria in descending order, which is a proper exercise of its discretion. Therefore, cause does not exist to invalidate the tie-break criteria or their implementation.

ORDER

Notice may be given to Respondents in the inverse order of their seniority that their services will not be required for the 2011-2012 school year.

Dated: April 22, 2011

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings