

BEFORE THE
GOVERNING BOARD OF THE
MORENO VALLEY UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

RESPONDENTS LISTED IN EXHIBIT "A"

Respondent.

OAH No. 2013030554

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in Moreno Valley California, California, on April 25, 2013.

Melanie A. Peterson, Esq. and Kelley Owens, Esq., Fagen Friedman & Fulfrost LLP, represented Robert J. Verdi Ed.D., Assistant Superintendent - Human Resources, Moreno Valley Unified School District

Carlos R. Perez, Esq., Reich, Adell & Cvitan, represented Respondents listed in Exhibit "A".

The matter was submitted on April 25, 2013.

SUMMARY OF PROPOSED DECISION

The Board of Education of the Moreno Valley Unified School District determined to reduce or discontinue particular kinds of services provided by teachers for budgetary reasons. The decision was not related to the competency or dedication of the individuals whose services are proposed to be reduced or eliminated.

The Moreno Valley Unified School District staff carried out the Board of Education's decision by using a selection process involving review of credentials and seniority, "bumping," and breaking ties between/among employees with the same first dates of paid probationary service. The selection process was in accordance with the requirements of the Education Code.

FACTUAL FINDINGS

1. Respondents listed on Exhibit "A" (Respondents) are certificated employees of the Moreno Valley Unified School District (District).

2. Judy D. White, Ed.D., the District's Superintendent of Schools (Superintendent), notified the District's Governing Board (Board) of her recommendation that the District reduce or discontinue particular kinds of services for the 2013-2014 school year.

3. On March 12, 2013, the Board adopted Resolution No. 2012-13/23 reducing or eliminating particular kinds of services for the ensuing school year. The Board directed the Superintendent or her designated representative to send notices to all employees possibly affected by the reduction or elimination of particular kinds of services.

Resolution No. 2012-13/23 states, in pertinent part:

WHEREAS, the Board of Trustees of the Moreno Valley Unified School District has determined that it shall be necessary to reduce or discontinue the particular kinds of services of the District as itemized in Exhibit "A" at the close of the current school year; and

WHEREAS, it shall be necessary at the end of the 2012-2013 school year to terminate the employment of certain certificated employees of the District as a result of this reduction or discontinuance of particular kinds of services;

WHEREAS, pursuant to Education Code section 44955 (c), the Governing Board has determined that for the purpose of assignment and reassignment those persons assigned or reassigned to a position shall possess the necessary credential(s), subject matter authorization(s), certificate(s), and permit(s) in order to comply with all state and federal requirements;

THEREFORE, BE IT RESOLVED that the Superintendent is directed to send appropriate notices to all employees whose services shall be terminated by virtue of this action. Nothing herein shall be deemed to confer any status or rights upon temporary or categorically funded project certificated employees in addition to those granted to them by statute.

Exhibit "A" to Resolution 2012/13-23 states:

Recommended Reduction in 2013-14 Programs/Services for the Moreno Valley Unified School District.

The Superintendent recommends that the Governing Board adopt a resolution to reduce the programs and services for 2013-14 as follows:

<u>Item</u>	<u>Job Title</u>	<u>FTE</u> ¹
1.	Art	1.0
2.	Categorical Funding:	
3.	Avid	1.0
4.	English/Math Coach	1.0
5.	Math Coach	1.0
6.	Title 1 Teacher	
7.	Computers	2.0
8.	Computer Based Instruction:	
9.	English/Social Science	1.0
10.	Math/Science	1.0
11.	Consumer Science	2.0
12.	Elementary	28.0
13.	English	10.0
14.	French	1.0
15.	Industrial Tech/Engineering	1.0
16.	Math	7.0
17.	Music/Choral	1.0
18.	Physical Education	1.0
19.	Sixth Grade	3.0
20.	Science-Biology	1.0
21.	Social Science	2.0
22.	Spanish	1.0
	TOTAL	67.0

The proposed reductions totaled 67 full-time equivalent (FTE) positions.

4. On March 13, 2013, Robert J. Verdi, Ed.D. (Dr. Verdi), the District’s Assistant Superintendent of Human Resources (Assistant Superintendent), served permanent and probationary certificated Respondents with a Notice that the Superintendent of the District had recommended not to re-employ them for the 2013-2014 school year. The Notice included the Initial Notice of Intent, an Accusation, Statement to Respondent, and blank Request for Hearing/Notice of Defense form, accompanied by relevant sections of the Evidence Code and Government Code.

Each Respondent submitted a timely Request for Hearing/Notice of Defense to determine if there was cause for not re-employing him or her for the ensuing school year.

5. On April 1, 2013, the District served Respondents with a Notice of Hearing setting the hearing for April 25, 2013, in accordance with Government Code section 11509.

¹ FTE means full-time equivalent

6. All prehearing jurisdictional requirements were satisfied.

7. The District considered all known attrition, including resignations and retirements, in determining the actual number of final layoff notices to be delivered to its certificated employees. As a result, even though the District authorized the reduction of 67 FTE positions, the District issued layoff notices to 27 certificated employees.

During the hearing, the District rescinded layoff notices previously issued to Respondents Noreen Bills, Hilary Small, Rosa Prins-Prado, Deepika Srivastava and Jerri Lane.

8. The District's Assistant Superintendent of Human Resources was responsible for implementing the technical aspects of the layoff. He developed a seniority list for probationary or permanent certificated staff that included, among other matters, the name of the certificated employee, first date of paid service, assignment, credentials and status.

The Assistant Superintendent of Human Resources used the seniority list to develop a proposed order of layoff list to determine the least senior employees currently assigned to provide the service being reduced. Then, the District determined whether the least senior employees held credentials in another area that would entitle them to "bump" other junior employees. In determining who would be laid off for the service reduced, Verdi counted the number of reductions and determined the impact on incumbent staff in inverse order of seniority. Then, he checked the credentials of affected individuals and whether they could "bump" other employees.

9. The Board adopted Resolution No. 2012-13-41 – Determination of Tie-Breaking Criteria for 2013-2014, which states:

WHEREAS, pursuant to the provisions of Education Code §44955, the Board of Education is required to determine the District needs should it become necessary to determine the order of termination for employees who first rendered paid service to the District on the same day.

WHEREAS, for the 2013-14 school year only, to meet the requirements of Education Code §44955, the Board of Education determines the needs of the District and the students by establishing the following tie-breaking criteria:

WHEREAS, the following rating system shall be applied in determining the order of termination of certificated employees:

- A. Credentials and credentialed experience to teach or serve in a particular program or provide a particular service of need by the district (English, Foreign Language, Math, Science). **Rating: +1 per credential; +1 per year of credentialed experience.**

- B. Special programs credentialed and experience to teach (bilingual, special education). **Rating: +1 per credential; +1 per year of experience.**
- C. Years of experience employed as a full-time K-12 certificated employees in a public school. **Rating: +1 per year.**
- D. Number of supplementary authorizations. **Rating: +1 per supplementary authorization.**
- E. Number of valid teaching and/or special service credentials. **Rating: +1 per credential.**
- F. Earned degrees beyond the BA/BS level. **Rating: +1 per degree.**
- G. Preliminary vs. Clear/Life Credentials. **Rating: +1 per preliminary credential; +2 per clear/life credential.**

There were District certificated employees who had the same seniority date. However, the District determined that it was not necessary to apply the Tie-Breaking Criteria for purposes of layoff.

10. The services that the Board proposed to reduce were “particular kinds of services” that can 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 discretion.

11. The Board’s reduction or discontinuance of particular kinds of services related to the welfare of the District and its pupils. The reduction or discontinuance of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Board.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in these sections are satisfied.

2. A District may reduce services within the meaning of section 44955, subdivision (b), “either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may ‘reduce services’ by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved.” (*Rutherford vs. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. Cause exists under Education Code sections 44949 and 44955 for the Moreno Valley Unified School District to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuance of particular kinds of services is related solely to the welfare of the schools and the pupils thereof.

4. A senior teacher whose position is discontinued has the right to transfer to a continuing position that he/she is certificated and competent to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. (*Poppers v. Tamalpais Union High School Dist.* (1986) 184 Cal.App.3d 399, 405.)

5. No employee with less seniority than any Respondent is being retained to perform a service that any Respondent is certificated and competent to render.

6. All arguments not addressed herein are not supported by the evidence and/or the law and therefore rejected.

ORDER

1. The layoff notices issued to Respondents Noreen Bills, Hilary Small, Rosa Prins-Prado, Deepika Srivastava and Jerri Lane are rescinded. The Accusation against Respondents Noreen Bills, Hilary Small, Rosa Prins-Prado, Deepika Srivastava and Jerri Lane is dismissed.

2. Except as provided in paragraph one of this Order, the Accusation served on Respondents listed on Exhibit “A” is sustained. The Moreno Valley Unified School District shall give notice to these Respondents before May 15, 2013 that their services will not be required for the 2013-2014 school year because of the reduction or discontinuance of particular kinds of services.

3. Notice shall be given in inverse order of seniority.

DATED: May 2, 2013

VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings