

BEFORE THE GOVERNING BOARD OF THE
INGLEWOOD UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Employment Status of:

Certificated Employees of the Inglewood
Unified School District,

Respondents.

OAH No. 2011030664

PROPOSED DECISION

Ralph B. Dash, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on April 4, 5 and 6, 2011, at Inglewood, California.

Sharon J. Ormond and Jabari A. Willis, Attorneys at Law, represented Inglewood Unified School District (District).

Exhibit A, attached here and by this reference made a part hereof, is a list of all District employees who have received layoff notices which have not been rescinded. Lawrence B. Trygstad, Attorney at Law, represented the Respondents named in the list admitted in evidence as Exhibit H and which is attached hereto as Exhibit B.

Kiwiana M. Caine represented herself.

The record was left open until April 13, 2011, to allow the District to provide revised seniority and tie-breaker lists based on stipulations reached with Respondents at the hearing. The lists were timely received, marked as Exhibits 19 and 20 respectively, and admitted.

Oral and documentary evidence having been received and the matter submitted, the Administrative Law Judge makes the following Finding of Facts.

FINDINGS OF FACT

1. Gary McHenry, Superintendent of the District, acting in his official capacity, caused all pleadings, notices and other papers to be filed and served upon Respondents pursuant to the provisions of Education Code Sections 44949 and 44955. All pre-hearing jurisdictional requirements have been met with respect to the District and the Respondents named in Exhibit A.

2. On February 23, 2011, the District's Governing Board (Board) adopted a Resolution to reduce and discontinue the services of 191 full time equivalent (FTE) certificated positions for the 2011/2012 school year as follows:

Reduce K-6 Elementary Teaching Services	75.0	F.T.E.
Reduce 7-8 Art Teaching Services	1.0	F.T.E.
Reduce 7-8 Music Teaching Services	1.0	F.T.E.
Reduce 7-8 Language Arts Teaching Services	7.0	F.T.E.
Reduce 7-8 Math Teaching Services	2.0	F.T.E.
Reduce 7-8 Physical Education Teaching Services	3.0	F.T.E.
Reduce 7-8 Life Science Teaching Services	1.0	F.T.E.
Reduce 7-8 Physical Science Teaching Services	1.0	F.T.E.
Reduce 7-8 Social Studies Teaching Services	9.0	F.T.E.
Reduce 7-8 Computer/Technology Teacher	1.0	F.T.E.
Reduce 9-12 Art Teaching Services	1.0	F.T.E.
Reduce 9-12 Language Arts Teaching Services	8.0	F.T.E.
Reduce 9-12 Math Teaching Services	3.0	F.T.E.
Reduce 9-12 Physical Education Teaching Services	4.0	F.T.E.
Reduce 9-12 Life Science Teaching Services	1.0	F.T.E.
Reduce 9-12 Physical Science Teaching Services	1.0	F.T.E.
Reduce 9-12 Social Studies Teaching Services	12.0	F.T.E.
Reduce 9-12 Computer/Technology Teacher	1.0	F.T.E.
Reduce 9-12 Home Economics/Consumer Science Teacher	1.0	F.T.E.
Reduce Resource Specialist Program (RSP) Services	2.0	F.T.E.
Discontinue Site-Level Program Coordinators	18.0	F.T.E.
Discontinue Site- Level Instructional Coaches	21.0	F.T.E.
Reduce Counseling Services	6.0	F.T.E.
Reduce Nursing Services	1.0	F.T.E.
Reduce 6-8 Assistant Principal Services	3.0	F.T.E.
Reduce K – 8 Administrative Assistant Services	4.0	F.T.E.
Discontinue Executive Director School Improvement	1.0	F.T.E.
Discontinue Executive Director of Special Education & Pupil Services	1.0	F.T.E.
Discontinue Human Resources and Compliance Officer	1.0	F.T.E.
TOTAL CERTIFICATED POSITIONS:	191.0	F.T.E.

3. On February 28, 2011, the Board adopted a Resolution to reduce and discontinue the services of an additional 147 full time equivalent (FTE) certificated positions for the 2011/2012 school year as follows:

Reduce K-6 Elementary Teaching Services	60.0	F.T.E.
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Reduce 7-8 Music Teaching Services	1.0	F.T.E.
Reduce 7-8 Language Arts Teaching Services	9.0	F.T.E.
Reduce 7-8 Math Teaching Services	10.0	F.T.E.
Reduce 7-8 Physical Education Teaching Services	4.0	F.T.E.
Reduce 7-8 Life Science Teaching Services	5.0	F.T.E.
Reduce 7-8 Physical Science Teaching Services	4.0	F.T.E.
Reduce 7-8 Social Studies Teaching Services	3.0	F.T.E.
Reduce 9-12 Language Arts (English) Teaching Services	13.0	F.T.E.
Reduce 9-12 Math Teaching Services	9.0	F.T.E.
Reduce 9-12 Physical Education Teaching Services	3.0	F.T.E.
Reduce 9-12 Life Science Teaching Services	5.0	F.T.E.
Reduce 9-12 Physical Science Teaching Services	5.0	F.T.E.
Reduce 9-12 Social Studies Teaching Services	2.0	F.T.E.
Reduce 9-12 Computer/Technology Teaching Services	2.0	F.T.E.
Reduce 9-12 Foreign Language-French Teaching Services	1.0	F.T.E.
Reduce 9-12 Foreign Language-Spanish Teaching Services	4.0	F.T.E.
Reduce Resource Specialist Program (RSP) Services	5.0	F.T.E.
Reduce Special Day Class-Mild to Moderate Teaching Services	2.0	F.T.E.
TOTAL CERTIFICATED POSITIONS:	147.0	F.T.E.
TOTAL CERTIFICATED POSITIONS BOTH RESOLUTIONS:		338.0 F.T.E.

4. These services 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 arbitrary or capricious, but constituted a proper exercise of discretion.

5. The reduction or discontinuation of these particular kinds of services are related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Board. Respondents argued that because the number of F.T.E. to be eliminated constituted approximately one-half of all F.T.E. in the District, effectively “destroying the District in order to save it,” the Board’s actions were arbitrary and capricious. Complainant responded that, over the next three years, the District was projected to be \$100,000,000 in debt, might not be able to meet its payroll next month and that the Resolutions would allow the District flexibility, through the shifting of funds and other measures, to be able to retain many of the F.T.E. proposed for layoff. The intent of the Resolutions was also to avoid having the District placed in receivership, thereby losing “local control.” In determining whether the decision of a school board is reasonable as distinguished from fraudulent, arbitrary, or capricious, its action is measured by the standard set by reason and reasonable people, bearing in mind that such a standard may permit a difference of opinion on the same subject. (*Campbell v. Abbott* (1978) 76 Cal.App.3d 796, 808.) Reasonable minds can differ regarding the rationale and need for “flexibility” and for retaining “local control” at the expense of laying off half of the District’s certificated

personnel. There was no evidence presented that Board acted in an arbitrary and capricious manner, and in the absence of such evidence, the Board's determination should not be disturbed. (*Ibid.*)

6. The Board properly considered all known attrition, resignations, retirements, deaths and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees as of March 15, 2010. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627 at 636 (1983).¹

7. The District created a seniority list (Exhibit 12), later revised (Exhibit 19),² naming all probationary and permanent teachers in order of each one's first date of paid service. Respondents are certificated District employees. Except in one instance, no certificated employee junior to any Respondent was retained to perform any services which any Respondent was certificated and competent to render. That exception is with respect to Respondent Robert Chase, a permanent teacher whose seniority date is August 26, 2008. Mr. Chase was skipped in favor of retaining Joshua Konegni, a probationary employee whose seniority date is September 9, 2010. The District retained Mr. Konegni over Mr. Chase to teach Visual and Performing Arts (drama). This decision was made based on Mr. Konegni's experience and expertise in teaching this subject and Mr. Chase's lack of such experience. Both teachers have the necessary credential (single subject, English) to teach drama. However, Mr. Chase has never taught drama, has virtually no formal training in the subject and has never taken courses in acting, directing or coaching drama. He has no experience in teaching students to use regional dialects nor to teach or arrange "stage stunts." His only experience comes from his having had two non-speaking roles in "Diagnosis Murder" and having performed in a number of plays and directing a film, all in the 1970's. He does not have a fine arts degree. Mr. Konegni, who has a fine arts degree, as well as an English credential, has taught drama for three years. Although this is his first year with the District, Mr. Konegni taught at the Los Angeles School for the Performing Arts until budget cuts prompted his layoff last year. Mr. Konegni has extensive experience in theater and film (Exhibits 16 and 17) and is a member of the Screen Actors' Guild. He is proficient in and teaches the use of the International Phonetic Alphabet, a system for transcribing the sounds of speech which is independent of any particular language and applicable to all languages. It is used in teaching the pronunciation of "regional dialects." He has worked with student actors from beginners through advanced, teaching them skills such as facial expression, improvisation and puppetry. He also has training in teaching and performing stage stunts and stage fighting techniques to avoid injury. This past year Mr. Konegni casted, produced and directed a play at Morningside High School which had six performances and which earned the school \$4,000. Through his extensive contacts in the entertainment industry, this past year Mr. Konegni has obtained monetary donations, stage props, accessories, and small set pieces, valued at over \$30,000, from sources such as Home Box Office.

¹ All layoffs were for particular kinds of service, and not "average daily attendance" which might require positively assured attrition to be considered through May 15, 2010.

² The District revised the original seniority list to reflect changes made pursuant to stipulations placed on the record at the hearing.

8. In Code section 44955, subdivision (d), the Legislature has established four justifications for school district's skipping over a junior employee, not terminating him or her, but terminating a more senior employee. That is, the Legislature has established four justifications for deviating from terminating employees according to their seniority. The justification applicable here is that a district may skip over a junior teacher and terminate a senior teacher if "the district demonstrates a specific need for personnel to teach a specific course or course of study . . . and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess." The District in this case is clearly justified in skipping Mr. Konegni and terminating the services of Mr. Chase based on Mr. Konegni's demonstrated wealth of experience and expertise in teaching drama as opposed to Mr. Chase's very limited drama background.

Motion to Dismiss

Respondents filed a two-part Motion to Dismiss. Neither part is well taken and both parts are denied. In the first part of the motion, Respondents point out that although the Board determined it would eliminate 338 F.T.E, the District sent out layoff notices to 390 employees. Respondents moved to dismiss the Accusation as to the 52 employees over and above the 338 "employees" whose dismissal was authorized. However, the Board did not authorize a layoff of 338 employees, it authorized the reduction in force of 338 F.T.E. In certain instances, several employees are grouped, based on the percentage of time spent teaching a particular kind of service, into one F.T.E. As an example, a teacher may split his or her time teaching English and Mathematics. Four-tenths of the time may be spent on English. Three other teachers may each spend two-tenths of their time teaching English. If one F.T.E. of English is eliminated, four teachers may be affected and thus each must be given notice of possible layoff. Section 44955, subdivision (b), implicitly authorizes the service of notice on more employees than F.T.E.'s sought to be reduced. That section provides, in pertinent part:

. . . [W]henver a **particular kind of service is to be reduced or discontinued** not later than the beginning of the following school year . . . and when in the opinion of the governing board of the district it shall have become necessary by reason of any of the [above specified] conditions to decrease the number of permanent employees in the district, the governing board **may terminate the services of not more than a corresponding percentage of the certificated employees** of the district, permanent as well as probationary, at the close of the school year. (Emphasis added)

The term "corresponding percentage" relates to the number of teachers actually performing the particular kinds of services that are to be reduce or eliminated. Thus, if one F.T.E. of English is to be reduced, and four teachers combined constitute one F.T.E., then the corresponding percentage of teachers to that F.T.E. is the ratio of four to one, and those four

teachers must each be given notice. There was no “over-noticing,” and the District will not eliminate more than 338 F.T.E.

Respondents also contend that three teachers received “precautionary notices” (Exhibit 4) and the Accusation must be dismissed as to those three, because the Education Code does not provide for the giving of such notices. These three teachers were given notice, as in all other layoff notices, that their services would not be required for the following school year. However, the precautionary notice goes on to specify that the teacher is being given the notice, not because it is expected that he or she will not be retained, but rather that, because at the hearing there might be challenges to the seniority list (such as the tie breaker criteria used), the order of termination could change, the teacher could be affected thereby, and the teacher had a right to be present and be heard with respect thereto. Nothing in the Education Code prohibits the common practice of giving of precautionary notices. The precautionary notices do not, in any way, impair the due process rights of the teachers receiving same. Rather, they protect those rights by advising the teacher that issues raised by others might affect them, and giving them the opportunity to respond.

Conclusions of Law

1. Jurisdiction for these proceedings exists pursuant to Education Code Sections 44949 and 44955.

2. The services set forth in Findings 2 and 3 are particular kinds of service which may be reduced or discontinued in accordance with applicable statutes and case law. A district may reduce services, within the meaning of Education Code 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 v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. Cause exists because of the reduction in particular kinds of services to reduce the District's teaching positions by 338 Full Time Equivalent and to give notice to the affected teachers pursuant to Education Code Section 44955. (*Campbell v. Abbot* (1978) 76 Cal.App.3d 796; *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

4. The Board’s decision to reduce or discontinue the services is neither arbitrary nor capricious, but rather a proper exercise of its discretion. The Board’s decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. The reduction or discontinuation of services relates solely to the welfare of the District’s schools and pupils, within the meaning of Education Code section 44949.

5. Except as set forth in Finding 7, no junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

6. A junior teacher may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack (*Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831), and the District offered sufficient evidence that it had justification to skip Mr. Konegni and not retain the more senior Mr. Chase.

ORDER

As a result of the reductions of services, the District may give notice to all teachers listed on Exhibit A that their services will not be required for the 2011/2012 school year.

Dated: _____

RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings