

BEFORE THE
BOARD OF EDUCATION OF THE
SOUTH PASADENA UNIFIED SCHOOL DISTRICT
COUNTY OF LOS ANGELES
STATE OF CALIFORNIA

In the Matter of the District Statement of
Reduction in Force Against:

MELISSA CHENG and ALISIA
ENGELHARD,

Respondents.

Case No. 2018040321

PROPOSED DECISION

Administrative Law Judge Thomas Heller, State of California, Office of
Administrative Hearings, heard this matter in South Pasadena, California on April 23, 2018.

Sharon J. Ormond, Esq., Atkinson, Andelson, Loya, Ruud & Romo, represented the
South Pasadena Unified School District (District).

Carlos M. Coye, Esq., Rothner, Segall & Greenstone, represented respondent Melissa
Cheng, who was present, and respondent Alisia Engelhard, who was not present.

The matter was submitted on April 23, 2018.

SUMMARY

After the District's Board of Education (Board) resolved to reduce high school
Chinese language and Social Studies teaching services next year, the Superintendent
recommended laying off Cheng, a part-time Chinese language teacher, and Engelhard, a full-
time Social Studies teacher. Each teacher requested a hearing to determine if there was cause
for the layoffs. The District proved there was, and Cheng and Engelhard may therefore be
notified their services will not be required for the 2018-2019 school year.

FACTUAL FINDINGS

1. The District serves just under 5,000 students in three elementary schools, one middle school, and one high school. Each year, it reviews enrollment data for the next school year to ensure operational efficiency, maintain fiscal solvency, and avoid overstaffing. In February 2018, preliminary data for next year showed insufficient enrollment in high school Chinese and Social Studies to fill the number of classes offered this year in those subjects. In analyzing the data, the District considered 32 students to be a full high school class.

2. Superintendent Geoff Yantz, Ed.D., recommended reducing teaching services in the two subjects. On March 5, 2018, the Board adopted Resolution No. 2017-2018-13, resolving to reduce the District's high school Chinese language and Social Studies teaching services for next year by 0.60 and 1.00 full-time equivalents (FTE's), respectively. The resolution stated the reduction would require reduction of employment of certain certificated employees, and directed the Superintendent or his designee to initiate layoff procedures. Citing the Education Code, the resolution noted that no permanent employee could be laid off while any less senior employee is retained to render a service that the permanent employee is certificated and competent to render, defining "competency" as follows:

"[C]ompetency" as described in Education Code section 44955(b) for the purposes of bumping [i.e., displacing a less senior employee] shall necessarily include: (1) possession of a valid clear or preliminary credential in the subject(s) or grade level to which the employee will be assigned at the beginning of the 2018-2019 school year; (2) possession of an appropriate full (not emergency) EL [i.e., English Learner] authorization (if required by the position); (3) in the case of displacing junior employees teaching in a departmentalized setting, possession of a single subject credential(s) or subject matter authorization in that subject area; and (4) any training and experience necessary to meet the job requirements of specialized positions.

3. On March 6, 2018, the Superintendent recommended the Board notify Cheng and Engelhard that their services would not be required for the upcoming school year. Cheng is a part-time (0.60 FTE) Chinese language teacher with a single subject teaching credential in Mandarin, and is less senior than the one other high school Chinese language teacher on the District's certificated seniority list. Engelhard is a full-time (1.00 FTE) Social Studies teacher with a single subject teaching credential in Social Science, and is the least senior Social Studies teacher on the list.

4. On March 8, 2018, Assistant Superintendent for Human Resources Karen Reed personally delivered notice of the recommendation and resolution to Cheng and Engelhard, advising them they could request a hearing to determine if there is cause for not employing them next year.

5. Cheng and Engelhard timely requested a hearing.

6. On March 21, 2018, the District filed a Statement of Reduction in Force requesting that the Board give notice to Cheng and Engelhard that their services will not be required for the 2018-2019 school year. Reed signed the pleading in her official capacity. The same day, Reed personally delivered notices to Cheng and Engelhard enclosing the pleading, a blank Notice of Participation form, and copies of Government Code statutes describing the teacher's hearing rights. Each teacher timely submitted a Notice of Participation to request a hearing, and the District provided timely notice of the hearing.

Testimony

7. Reed testified about the District's layoff process and the student enrollment data underlying the Board's resolution. While those data are preliminary, the Board started the layoff process in order to meet the deadlines for layoffs next year. Reed also testified about the District's seniority list, establishing that no permanent or probationary employee with less seniority than Cheng or Engelhard would be retained to render a service that either teacher is certificated and competent to perform. Neither Cheng nor Engelhard contended otherwise.

8. Cheng testified she teaches three of the eight high school Chinese language classes offered this year, each with 25 or 26 students. She is concerned students will struggle in larger classes, and asserted that 185 students had enrolled in Chinese for next year as of the hearing date. If the high school offers just five Chinese language classes next year, the average class size with that enrollment would exceed 32 students per class, the size the District used to assess overstaffing.

9. Overall, the testimony established the Board acted reasonably to ensure flexibility in determining staffing for next year in light of layoff deadlines and available enrollment data, resources, and staffing needs. Reed's testimony demonstrated the proposed layoffs are related solely to the welfare of the schools and the pupils of the schools. Cheng's contention that laying her off is inadvisable and will lead to understaffing of Chinese language classes evidences a disagreement with the Board's decision, but not fraudulent, arbitrary, or capricious action by the Board.

LEGAL CONCLUSIONS

Legal standards

1. "[W]henEVER a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year" and a school district's governing board deems a resulting layoff to be necessary, "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." (Ed. Code, § 44955, subd. (b).) In such a layoff, "[e]xcept as otherwise provided by statute, the services of no

permanent employee may be terminated . . . while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.” (*Ibid.*) “Essentially this language provides “bumping” rights for senior certificated and competent employees, and “skipping” authority for a district to retain ‘junior employees who are certificated and competent to render services which more senior employees are not. [Citations.]’” (*Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 135, quoting *Alexander v. Board of Trustees* (1983) 139 Cal.App.3d 567, 571.)

2. “[N]o later than March 15 of the school year preceding dismissal, the district must give a notice (preliminary notice) to each certificated employee of the decision recommending he or she not be reemployed for the ensuing year, stating the reasons therefore and the employee’s entitlement to a hearing.” (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 631-632 (*Allen*)). “The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year.” (Ed. Code, § 44949, subd. (b).) If a hearing is requested, the school district files and serves a District Statement of Reduction in Force, which the employee answers with a Notice of Participation. (Gov. Code, §§ 11503, subd. (b), 11505.) “The hearing takes place before an administrative law judge who prepares a proposed decision which the board may or may not accept. The board’s final decision to terminate and notice to the employee of that decision (final notice) must be made by May 15. Any employee not given the preliminary and final notices and the right to the hearing is deemed reemployed for the following year. [Citations.]” (*Allen*, *supra*, 144 Cal.App.3d at p. 632; see Ed. Code, §§ 44949, 44955.)

3. The layoff decision of a governing board need only be reasonable under the circumstances. (*Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 796, 807-808 (*Campbell*)). “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.” [Citation.]” (*Id.* at p. 808.)

Discussion

4. The teaching services identified in the Board’s resolution are “particular kind[s] of service[s]” that may be reduced as proposed. (Ed. Code, § 44955, subd. (b).)

5. The Board’s layoff decision was reasonable under the circumstances. (*Campbell*, *supra*, 76 Cal.App.3d at pp. 807-808.) The Board acted reasonably in response to projected overstaffing in high school Chinese language and Social Studies teaching services next year. (Factual Findings 1, 9.) Cheng’s difference of opinion with the Board’s decision does not compel a conclusion that the decision was unreasonable. (See *Campbell*, *supra*, 76 Cal.App.3d at p. 808.)

6. The District satisfied the jurisdictional and notice requirements for the proposed layoffs. (Factual Findings 2-6.)

7. No permanent or probationary employee with less seniority is being retained to render a service that Cheng or Engelhard is certificated and competent to perform. (Factual Finding 7.)

8. The proposed layoffs are related solely to the welfare of the schools and the pupils of the schools. (Ed. Code, § 44949, subd. (b)(3); see Factual Finding 9.)


9. Based on the above, there is sufficient cause for not reemploying Cheng and Engelhard for the ensuing school year. (Ed. Code, § 44949, subd. (b).)

ORDER

1. The District Statement of Reduction in Force is sustained.

2. Notice may be given to respondents Melissa Cheng and Alisia Engelhard that their services will not be required for the 2018-2019 school year.

DATED: May 2, 2018

DocuSigned by:

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THOMAS HELLER
Administrative Law Judge
Office of Administrative Hearings