

BEFORE THE
GOVERNING BOARD OF THE
GARVEY SCHOOL DISTRICT
STATE OF CALIFORNIA

In The Matter Of The Lay Offs Of:

OAH No. 2010030711

CLAUDIA BARAJAS, et al.,

Respondents.

PROPOSED DECISION

This matter was heard by Mark E. Harman, Administrative Law Judge of the Office of Administrative Hearings, State of California, on April 23, 2010, in Rosemead, California.

James R. Lynch and Rodrigo Guevara, Attorneys at Law, represented the Garvey School District (District). Kathleen M. Erskine, Attorney at Law, represented Claudia Barajas, Jose A. Cardenas, Suzana Carlos, Jenny Duque, Tran Ma, Lucy Sanchez Middleton, Cecile Quezada, Blanca Rios-Quiroz, and Tonie Lam Tran (collectively, Respondents).¹

The District decided to reduce or discontinue certain educational services and gave Respondents notice of its intent not to reemploy them for the 2010-2011 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2010-2011 school year.

Oral and documentary evidence, and evidence by oral stipulation on the record, was received. The matter was submitted for decision on April 23, 2010.

FACTUAL FINDINGS

1. The District operates 11 schools for 5,680 students. Dolores Preciado (Preciado) is the Interim Superintendent of the District. Genaro Alarcon (Alarcon), Assistant Superintendent, Human Resources, and his staff were responsible for implementation of the technical aspects of the layoff. Alarcon filed the Accusation in his official capacity.

2. Respondents are certificated employees of the District.

3. On or about March 4, 2009, Preciado recommended to the Governing Board of the District (Governing Board) that it reduce or discontinue particular kinds of services for

¹ All Respondents except Tonie Lam Tran were present at the hearing.

the 2010-2011 school year and, for that reason, that it give notice to certain certificated employees that their services will not be required for the 2010-2011 school year. On March 4, 2010, the Governing Board adopted Resolution No. 09-10-10 (the Resolution), determining to reduce services of nine full-time equivalent (FTE) positions of K-6 instruction and to terminate at the end of the 2009-2010 school year the employment of certificated employees of the District in a quantity and kind equal to the nine FTEs.

4. On March 5, 2010, Preciado provided written notice to the Governing Board and to Respondents that she recommended the termination of Respondents' services for the 2010-2011 school year due to the reduction of particular kinds of services. Respondents received these notices and requested a hearing. On or after March 26, 2010, the District served an Accusation and related materials on Respondents, and Respondents filed their Notices of Defense. The parties stipulated that service of all notices and jurisdictional documents was proper. All prehearing jurisdictional requirements have been met.

5. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code (the Code) section 44955.²

6. The Governing Board took action to reduce the services set forth in factual finding number 3 primarily because of the State's proposed reduction of funding for education. The decision to reduce or discontinue the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

7. The reduction or discontinuance of services set forth in factual finding number 3 is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

8. The District maintains a seniority list which contains employees' seniority dates (the date that an employee first rendered paid service in a probationary capacity), current assignments, and credentials. The Resolution included criteria for determining order of seniority of those employees with the same seniority date (tie-breaking criteria). Points were awarded for meeting one or more of the following criteria: credentialing; subject matter authorizations, including supplemental authorizations; possession of a Bilingual Cross-Cultural Language and Development certificate or its equivalent; and the employee's column placement on the District's salary schedule, all as of March 15, 2010. An additional criterion included the "earliest date of issuance of a preliminary, professional clear, or life credential." The District applied these criteria to determine the order of seniority among employees who had the same seniority date. Although Respondent Blanca Rios-Quiroz challenged the reasonableness of the last criterion, it is unnecessary to decide this issue since the application of the tie-breaking criteria was not required to determine the particular persons who would receive layoff notices.

² All further statutory references are to the Education Code.

9. The District used the seniority list to develop a proposed lay-off list of the least senior employees currently assigned to K-6 instruction. In determining who would be laid off for each 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. The District then determined whether these employees held credentials in another area and were entitled to “bump” other, more employees.

10. The Resolution also included “skipping” criteria, as follows:

The Superintendent is hereby authorized to determine, pursuant to subdivision (b) of section 44955 of the Education Code, whether to retain an employee to perform duties which he/she is certificated and competent to perform, over a more senior employee who is not certificated and competent to perform those duties. Minimally, in order for a certificated employee to be “certificated and competent” to teach a course in the District he/she must, in addition to being authorized by California law or certification to teach the subject matter of the course, be both a “highly qualified professional” within the meaning of the No Child Left Behind Act and its implementing regulations and authorized by the California Commission on Teacher Credentialing to teach English Learners as of March 15, 2010.

11. The District maintains that its skipping criteria are reasonable. It argues that, since more than 50 percent of its students are English Learners (EL), it is reasonable to require all of its teachers to obtain certificates from CTC authorizing the teachers to teach EL students. The District also asserts that it is mandated by state law to retain only teachers who are “highly qualified professionals” under the No Child Left Behind act (NCLB). Except with regard to Lucy Sanchez Middleton (Middleton), the District has not applied any of its skipping criteria in this proceeding. In light of Middleton’s unique circumstances, it is unnecessary to decide whether the entirety of the skipping criteria is valid.

12. Middleton has been teaching for the District since 1998. She teaches Kindergarten. Her preliminary credential expired in 2008. The Commission on Teacher Credentialing (CTC) granted her two one-year waivers; the latter will expire on May 1, 2010, and the District intends to seek an emergency permit to allow her to finish the current school year. Middleton intends to complete the requirements for a clear multiple subject credential, which she hopes to have done by this summer. She also intends to complete the work needed for EL authorization and NCLB compliance this summer.

13. If Middleton cannot obtain her clear credential, she will not be authorized to teach next year. In light of these circumstances, the District proposes to retain credentialed and competent teachers who do not have as much seniority as Middleton and terminate Middleton. The District did not specify any particular persons being retained for the 2010-2011 school year who are junior to Middleton, but it has established that each and every teacher being retained is credentialed, NCLB compliant, and authorized to teach EL students.

14. The District argues that application of the skipping criteria to terminate Middleton at the end of this school year is fairer to Middleton than if the District is required to initiate a “for cause” proceeding, since under the layoff procedure, she will retain her rehire and recall rights. The District contends Middleton is a good teacher. Alarcon wants to hire her back if he has a position and she has obtained the necessary credentials.

15. The District did not retain any certificated employee junior to Respondents to render a service which Respondents are certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 4.

2. The services listed in factual finding number 3 are particular kinds of services that could be reduced or discontinued under section 44955.

3. Cause exists for the District to reduce or discontinue the particular kinds of services listed in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils within the meaning of section 44949, as set forth in factual finding numbers 1 through 11.

4. The District has adequately supported its justification for skipping Middleton.

5. Cause exists to terminate the services of Respondents, Claudia Barajas, Jose A. Cardenas, Suzana Carlos, Jenny Duque, Tran Ma, Lucy Sanchez Middleton, Cecile Quezada, Blanca Rios-Quiroz, and Tonie Lam Tran for the 2010-2011 school year due to the reduction of particular kinds of services, by reason of factual finding numbers 1 through 14, and legal conclusion numbers 1 through 4.

ORDER

The Accusation is sustained and the District may notify Respondents, Claudia Barajas, Jose A. Cardenas, Suzana Carlos, Jenny Duque, Tran Ma, Lucy Sanchez Middleton, Cecile Quezada, Blanca Rios-Quiroz, and Tonie Lam Tran, that their services will not be needed during the 2010-2011 school year due to the reduction of particular kinds of services.

Dated: May 3, 2010

MARK E. HARMAN
Administrative Law Judge
Office of Administrative Hearings