

**BEFORE THE
BOARD OF TRUSTEES OF THE
COMPTON UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Reduction in Force of:

**CERTIFICATED TEACHERS OF THE COMPTON UNIFIED
SCHOOL DISTRICT,**

Respondents.

OAH No. 2022040023

PROPOSED DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on May 3, 2022, via videoconference.

Adam J. Fiss and Michell M. Holmes, Littler Mendelson, P.C., attorneys at law, represented the Compton Unified School District (District).

Stephanie Joseph, Staff Counsel, California Teachers Association, represented respondents Orlando Perez, Cleveland Palmer, and George Luna. Only respondent Luna appeared and participated in the hearing on May 3, 2022.

Respondents Perez and Palmer did not appear at the May 3, 2022 hearing because they reached a settlement with the District prior to the hearing date. Those

settlement agreements were subject to approval by the Board of Trustees of the District (Board), which was slated to consider the agreements at its next meeting, then scheduled for May 10, 2022. Counsel agreed to go forward with the case as it pertained to respondent Luna, and agreed to set a further hearing on the morning of May 13, 2022, so that if the settlement agreements were not approved by the Board, the parties would try the case as to respondents Perez and/or Palmer.

On May 11, 2022, District counsel gave notice that the settlements with Perez and Palmer had been approved, and the hearing then set for May 13, 2022, went off-calendar.

Oral and documentary evidence was received during the May 3, 2022 hearing. The record was closed on May 12, 2022, and the matter was submitted for decision on that date.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Complainant Kimberley Tresvant, Ed.D., filed and maintained the Statement of Reduction in Force while acting in her official capacity as Executive Director, Human Resources, for the District.

2. Respondent George Luna (Respondent) is a certificated teacher employed by the District.

3. On March 8, 2022, the Board adopted Resolution number 32, pertaining to the reduction or elimination of services within the District (Reduction Resolution). The purpose of the Reduction Resolution was to reduce and discontinue particular

kinds of certificated services no later than the beginning of the 2022-2023 school year. Specifically, the resolution requires the reduction of 2.5 "FTE"—Full Time Equivalents—by reducing three types of services.

4. The FTEs that the Board determined to reduce by the Reduction Resolution are as follows:

Culinary Arts/Advance Culinary	1.0
Automotive Technology (1B & B)/Auto Specializations	1.0
Visual/Commercial Arts	.5
Total FTE reductions, all programs	2.5

5. The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under Education Code section 44955. (Further statutory citations are to the Education Code unless otherwise noted.)

6. The decision by the Board to reduce or discontinue services was neither arbitrary nor capricious, but rather was a proper exercise of the District's discretion. The Board determined, after examining the labor market, that the courses to be reduced, being vocational education, were not needed.

7. The reduction and discontinuation of services 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 Board.

8. On March 11, 2022, Respondent was served with a notice that the Superintendent of the District had recommended to the Board that Respondent's

services would not be required for the 2022-2023 school year. The notice apprised Respondent of his right to a hearing. Respondent made a timely request for a hearing.

9. On April 6, 2022, the District wrote Respondent, acknowledging his request for a hearing, and transmitted to him a copy of the District Statement of Reduction in Force, a Notice of Hearing, and a Notice of Participation. Copies of pertinent provisions of the Education Code and Government Code were also provided to Respondent. The Notice of Hearing stated the hearing would be held on April 15, 2022.

10. Thereafter, the parties stipulated that the hearing would be continued to May 3, 2022, and OAH ordered the continuance of the hearing. The stipulation further stated that this proposed decision would be due May 25, 2022.

11. All jurisdictional requirements have been met.

Tie Break Criteria and the Seniority List

12. On March 8, 2022, the Board adopted resolution number 21/22-34, which established criteria for order of layoff and reemployment following layoff for employees with equal seniority. However, none of the respondents share a seniority date.

13. District staff, under Dr. Tresvant's direction, prepared a seniority list, ranking all certificated employees' seniority. No evidence was offered to establish that the seniority list was inaccurate.

Respondent Luna's Case

14. Respondent Luna credibly testified regarding his qualifications to teach automotive repair courses, and regarding the importance of such courses in public schools.

15. Respondent has been employed by the District since August 2016, teaching at Centennial High School. He previously taught as an automotive specialist instructor at other high schools in southern California, beginning in September 2003. He has been an automotive repair technician at dealerships and companies operating their own fleet of vehicles.

16. Respondent holds a Clear Designated Subjects Vocational Education Teaching Credential, which is valid through November 1, 2027. He is currently certified by the National Institute for Automotive Service Excellence (ASE) as a Maintenance and Light Repair Technician; that certification is valid through June 30, 2024. He has previously been certified by ASE in Engine Repair Recent (expired December 31, 2021) and Brakes Recent, as well as Automotive Parts.

17. Respondent has been active in attempting to obtain certification for the District's auto repair program from the National Automotive Teachers Education Program (NATEF). He believes he was very close to obtaining that certification, which would assist in obtaining resources such as equipment and even vehicles that students could train on. Luna believes NATEF certification could open doors for students later seeking employment in auto dealerships.

18. Respondent Luna asserted that the District should maintain automotive repair training courses, as not every student has college as a goal, and because there are jobs available for trained automotive repair technicians.

LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter, pursuant to sections 44949 and 44955, based on Factual Findings 1 through 11.

2. A district may reduce particular kind of services (PKS) 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 v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179 (*Rutherford*).) The Court of Appeal has made clear that a PKS reduction does not have to lead to fewer classrooms or classes; laying off some teachers amounts to a proper reduction. (*Zalac v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838, 853-855; see also *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 631, 637; *California Teachers Assn. v. Board of Trustees* (1982) 132 Cal.App.3d 32.)

3. The services to be discontinued by the District are particular kinds of services within the meaning of section 44955. 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 evidence indicated that the Board considered the current labor market and determined that its educational priorities should change. It is presumed that the Board regularly performed its duty in making its decision, and that it did not act arbitrarily or capriciously. (Evid. Code, § 664.) No evidence was offered to rebut that presumption.

4. Respondent Luna argued that the Board should re-consider its decision to eliminate the auto program at Centennial High School. Plainly, reasonable minds

might differ as to whether the automotive training course should be discontinued. However, the courts are not allowed to substitute their judgment for the judgment of a school board in these situations; and the undersigned cannot substitute his judgment for that of the Board either. (*Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571, 1588-1589; *Hildebrandt v. St. Helena Unified School Dist.* (2009) 172 Cal.App.4th 334.)

5. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or 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. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) At the same time, a junior teacher may be given retention priority by the District over one or more senior teachers, that teacher may be "skipped"—not laid off while more senior employees are laid off—if the junior teacher possesses skills or capabilities not possessed by more senior colleagues, which must be necessary to teach a course or course of study that is specifically needed in the District. (*Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers, Local 2393 v. Governing Bd. of Santa Clara Unified School Dist.* (1981) 116 Cal.App.3d 831.)

6. Respondent Luna did not demonstrate that he was entitled to bump another, more junior, teacher. Nor was he able to demonstrate that a junior teacher had been improperly skipped. There was no challenge to the seniority list, and there was no evidence that a junior teacher had been retained.

7. No certificated employee junior to any Respondent was retained by the District to render a service for which a Respondent was certificated and qualified to render.

ORDER

Respondent George Luna may be served with a final lay off notice.

DATE: 05/19/2022

Joseph Montoya

JOSEPH D. MONTOYA

Administrative Law Judge

Office of Administrative Hearings