

**BEFORE THE
GOVERNING BOARD OF
THE STOCKTON UNIFIED SCHOOL DISTRICT**

In the Matter of the Statement of Reduction in Force

Against:

ARMANDO OROZCO, Respondent

OAH No. 2023040269

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter by videoconference on April 27, 2023, from Sacramento, California.

Janelle Van Bindsbergen of the law firm Dannis Woliver Kelley represented the Stockton Unified School District (District). Claudia Moreno, Interim Director of Labor Relations, also appeared for the District.

Respondent Armando Orozco represented himself.

Evidence was received, and the record was left open to allow the District to produce a seniority list. The District's seniority list by date is marked as Exhibit 11, and its seniority list by name is marked as Exhibit 12. Exhibits 11 and 12 are admitted for all purposes, without objection. The record was closed and the matter submitted on April 27, 2023.

FACTUAL FINDINGS

Jurisdictional Matters

1. Wendy DeSimone is the District's Interim Assistant Superintendent of Human Resources. On March 7, 2023, she, as the Superintendent's designee, recommended to the District's governing board that certain positions of classified services be discontinued and/or reduced for the 2023/2024 school year. The 1.0 FTE position of "Director Maintenance & Operations/Transportation" was among those recommended for discontinuation.

2. The District's governing board followed Ms. DeSimone's recommendation and adopted Resolution No. 22-83 (resolution). The resolution directed Ms. DeSimone to give written notice to the permanent classified employees whose services will be eliminated or reduced such that they will not be reemployed for the 2023/2024 school year "no later than March 15, 2023."

3. On March 9 or 13, 2023, Ms. DeSimone personally handed Mr. Orozco a notice informing him that the District's governing board adopted the resolution (preliminary layoff notice). The notice explained that certain positions of the classified services will be reduced or eliminated for the 2023/2024 school year "due to lack of work and/or lack of funds," including the position of "Director Maintenance & Operations/Transportation." The notice advised Mr. Orozco that he will be laid off from the District "effective July 1, 2023."

4. Mr. Orozco timely signed and returned a request for a hearing to determine whether cause existed to not reemploy him for the 2023/2024 school year to Ms. DeSimone. Ms. DeSimone signed the District Statement of Reduction in Force

(RIF) solely in her official capacity. She personally served a copy of the RIF on Mr. Orozco. He timely signed and returned a Notice of Participation in Reduction in Force Hearing to her.

Ms. Moreno's Testimony

5. Ms. Moreno retired from the District on July 1, 2021, after serving as its Director of Labor Relations for six years. She returned to that position on an interim basis on January 30, 2023.

6. The District is facing financial difficulties, in part due to the impending depletion of federal COVID-19 mitigation funding. Therefore, the District is undergoing reorganization, including the elimination and merger of some positions of classified services. Ms. Moreno worked with Ms. DeSimone, the District's chief business officer, and the Superintendent's cabinet to produce a recommendation as to which of the District's positions in classified services should be kept and which should be eliminated or reduced at the end of the current school year.

7. Ms. Moreno explained that the resolution contains "a clerical error" in its identification of the position "Director Maintenance & Operations/Transportation" because the word "Facilities" is missing. Mr. Orozco received the preliminary layoff notice due to the elimination of that position.

8. Ms. Moreno also explained that Mr. Orozco was hired in July 2021 as the District's Director of Facilities and Transportation. "Maintenance and operations" are part of "facilities," and Mr. Orozco is responsible for overseeing maintenance and operations. However, his title does not include the words "maintenance and operations." He has not held any other positions with the District. His position is funded with federal funds that will run out in September 2023. Additionally, Mr.

Orozco's duties will be merged with the duties of other positions Mr. Orozco is not qualified to perform, so there will be a lack of work for him. Therefore, Mr. Orozco's position is being eliminated for the 2023/2024 school year.

Mr. Orozco's Testimony

9. The job posting for the position for which Mr. Orozco applied and was hired was "Director of Facilities and Transportation." His work identification card and business cards identify him as the District's Director of Facilities and Transportation. He has never held any other position with the District. Mr. Orozco explained that "facilities and transportation" is a "separate budget code" than "maintenance and operations."

10. Mr. Orozco disputed that his position is funded by federal funds. He explained that the job posting for his position identified the District's general fund as its funding source. Additionally, he explained the voters recently approved a bond measure that provides the District with additional funding. Therefore, the District has sufficient funds for his position. Furthermore, he said he has plenty of work to justify maintaining his position.

Analysis

11. The process for the District to reduce or discontinue one or more positions in its classified services and layoff the permanent employees holding those positions is entirely statutory. No later than March 15, the Superintendent, or her designee, must provide the District's governing board and the affected employees written notice of her recommendation to reduce or discontinue certain positions for the following school year.

12. On March 7, 2023, Ms. DeSimone recommended, and the District's governing board approved, discontinuing certain positions of its classified services for the 2023/2024 school year. That approval included the position "Director Maintenance and Operations/Transportation." She did not recommend, and the District's governing board did not approve, discontinuing the position "Director of Facilities/Transportation."

13. On March 9 or 13, 2023, Ms. DeSimone handed Mr. Orozco a preliminary layoff notice. The notice informed him of her recommendation, and the District's governing board's acceptance of her recommendation, that the position "Director Maintenance & Operations/Transportation" be discontinued at the end of the current school year. Therefore, he will not be reemployed for the 2023/2024 school year. The preliminary layoff notice did not mention the position "Director of Facilities/Transportation."

14. The persuasive evidence established that Mr. Orozco has been the District's Director of Facilities/Transportation since joining the District in July 2021. He has never held another position with the District.

15. Contrary to the District's argument, Ms. DeSimone's failure to recommend the "Director of Facilities/Transportation" position discontinue at the end of the current school year is not a "non-substantive procedural error" because a statutory prerequisite to Mr. Orozco's layoff is advance notice of the recommendation. Notice of the recommendation to discontinue a different position did not constitute adequate notice to the board or Mr. Orozco.

LEGAL CONCLUSIONS

Authority to Layoff Classified Employees

1. Education Code section 45308 provides the exclusive means for the District to layoff permanent classified employees. (Ed. Code, § 45114.) Education Code section 45308, subdivision (a), authorizes layoffs when there is a lack of work and/or funds.

2. The District's governing board must give a permanent classified employee subject to layoff "notice of termination . . . before May 15." (Ed. Code, § 45117, subd. (c)(3)(A).) Prior to the board providing such notice, however, and "no later than March 15 . . . , the governing board of the school district and the employee shall be given written notice by . . . the superintendent's designee . . . that it has been recommended that the notice be given to the employee, stating the reasons that the employee's services will not be required for the ensuing year, and informing the employee of the employee's displacement rights, if any, and reemployment rights." (*Id.*, subd. (a)(1).) "If a permanent classified employee is not given the notices . . . as provided for in this section, the employee shall be deemed reemployed for the ensuing school year" (*Id.*, subd. (e)(1).)

Conclusion

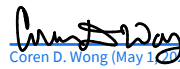
3. Neither the District's Superintendent nor Ms. DeSimone provided the governing board or Mr. Orozco notice of Ms. DeSimone's recommendation that the classified position of Director of Facilities/Transportation be discontinued for the 2023/2024 school year on or before March 15, 2023. Therefore, the District's governing board lacks jurisdiction to give Mr. Orozco "notice of termination" on or before May

15, 2023. His preliminary layoff notice shall be rescinded, and the District must reemploy him for the 2023/2024 school year.

RECOMMENDATION

No cause exists for not reemploying respondent Armando Orozco for the 2023/2024 school year. Therefore, the District shall rescind the preliminary layoff notice issued to him.

DATE: May 1, 2023


Coren D. Wong (May 1, 2023 14:37 PDT)

COREN D. WONG

Administrative Law Judge

Office of Administrative Hearings