

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

In the Matter of the Layoff of  
Probationary and Permanent Certificated  
Employees.

OAH No. N2004030662

Kathleen Anderson, Paul Arnold, Bill  
Askea, Mark Bender, Greg Blake,  
Rebecca Bill, Liz Capen, Jennifer  
Cooper, Michelle Eaton, Brian Glover,  
Kathy Harris, Nelda Jessee, Becky  
Konyn, Mary Peterson, Bill Stevens,

Respondents

**PROPOSED DECISION**

This matter came on regularly for hearing before Jaime René Román, Administrative Law Judge, Office of Administrative Hearings, in Durham, California, on April 22, 2004.

Penny Chennell, Ed.D., Superintendent of the Durham Unified School District ("the Superintendent"), State of California, was represented by School and College Legal Services, by Elizabeth B. Mori, Esq.

Respondents were represented by Wells, Small, Selke & Graham, Attorneys at Law, by Tyler Maize Lalaguna, Esq.

Evidence and argument were received and the matter submitted on April 22, 2004.<sup>1</sup>

**FACTUAL FINDINGS**

1. The Durham Unified School District ("District") provides elementary, middle and high schools.<sup>2</sup>

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<sup>1</sup> Prior to the receiving of evidence, respondents moved for a continuance of the hearing. Opposed by complainant, and lacking good cause, the motion was denied.

2. Penny Chennell, Ed.D., is the District Superintendent.
3. Respondents are certificated employees of the District who render paid services to the District.
4. The District Superintendent, following an analysis of, inter alia, District trends and student course preferences, gave written notice of her recommendation to the District Governing Board ("Board") that particular kinds of services ("PKS") be reduced for the ensuing school year.
5. The Board adopted Resolution 04-2 establishing criteria for the order of termination among personnel who have the same date of hire.
6. On March 10, 2004, the Board, mindful of then-extant positively assured attrition and the Superintendent's recommendation that notice be provided particular respondents, pursuant to Education Code §§44949 and 44955, adopted Resolution #04-4 reducing or discontinuing 5.82 full-time equivalent ("FTE") positions of the District to effectuate a concomitant reduction in particular kinds of certificated services, and directing the Superintendent or his designee to give notices to affected certificated employees that their services would not be needed for the ensuing school year, 2004 – 2005, and stating the reasons therefore.
7. As early as January 2004, the District promulgated a seniority list. The District employed the seniority list to develop a proposed layoff and "bumping" list of the least senior employees currently assigned in the various services being reduced. The District then determined whether the least senior employees held credentials or authorizations entitling such employee to "bump" another employee. To determine who would be identified for layoff each kind of service to be reduced, the District counted the number of reductions not covered by known vacancies, and determined the impact on incumbent staff in inverse order of seniority.
8. On March 12, 2004, the Superintendent gave timely notice to respondents Walter Mark Bender, Greg Blake, Rebecca Bill, Michelle Eaton, Brian Glover, Becky Konyon, Mary Peterson and William Stevens pursuant to Education Code §§44949 and 44955 that their services would not be required for the ensuing 2004 - 2005 school year, and stating the reasons therefore.
9. Each respondent timely requested, in writing, a hearing to determine if there was cause for not reemploying him or her for the 2004 – 2005 school year.

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<sup>2</sup> Education Code §83: "A unified school district means a district maintaining grades kindergarten or 1 through 12. A unified district may comprise territory in more than one county."

10. The Superintendent made and filed Accusations against each respondent. The Accusations, with required accompanying documents and blank Notices of Defense, were timely served on each respondent.

11. Respondents filed timely Notices of Defense.

12. The services rendered by respondents in the Board's Resolution were the kinds of services that could be reduced or discontinued within the meaning of Education Code §44949. The Board's decision to reduce or discontinue these particular kinds of services was neither arbitrary nor capricious, but constituted a proper exercise of discretion. Further, the reduction or discontinuance of these kinds of services related to the overall welfare of the District and its pupils. In sum, the reduction or discontinuation of the kinds of services rendered by respondents was necessary to decrease the number of District certificated employees as properly determined by the Board.

13. Some respondents submit that notice was insufficient and that the resolution as applied to them does not categorically set forth the PKS reduction applicable to the affected respondent's FTE.

- A. With respect to the claim of improper notice of the layoff, the claim is readily belied by the District's evidence of personal service or certified mail to the address of record. Indeed, one respondent, William Stevens, claimed to have received no March 12, 2004 mailing; despite uncontroverted evidence by the District Secretary of the Superintendent's effort to personally provide service to him and, upon his rebuff, her multiple efforts to reach Mr. Stevens and apprise him of the March 12, 2004 mailing. Mr. Stevens failure to receive the March 12, 2004 mailing was clearly effectuated by his own personal dereliction in obtaining mail at a post office box reported to the District as his address of record for mail. His dereliction becomes further compounded by his own direction to the District in both his March 18, 2004 Request for Hearing and March 18, 2004 Notice of Defense that, on each document, further provided such post office box as his mailing address.<sup>3</sup>
- B. With respect to the claims of insufficient notice setting forth the categorical application of each PKS to each affected respondent's FTE, the District Superintendent provided a matrix<sup>4</sup> specifically establishing and linking the affected FTE to the recommended PKS for reduction or discontinuance.

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<sup>3</sup> Mr. Stevens' claims of an unidentified Budget Committee member's bias or partiality are, lacking cogent competency or credibility, summarily dismissed. In addition, his claim relating to the scope and extent to which his credential permits teaching in, for example, independent study, is belied by his credential.

<sup>4</sup> Exhibit 13. Admittedly not a model of clarity, it nevertheless sets forth both the application of seniority as it relates to bumping affected employees and respondents within the context of both FTE and PKS.

- C. Respondent Walter Mark Bender's contention that he should be senior to another teacher unaffected by the layoff fails by Mr. Bender's failure to articulate any objective criteria other than his opinion and a categorical misunderstanding of the limitation of his credential vis-à-vis the credential of the teacher he claims lacks his particular competency and seniority.

14. In reviewing the criteria imposed by the Board and applied by the District, no abuse of discretion or evidence of capriciousness or arbitrary exercise is competently demonstrated by any respondent.<sup>5</sup>

15. No employee with less seniority than any respondent is being retained to render a service which any respondent is certificated and competent to render.

### LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists pursuant to Education Code §§44949 and 44955.

2. Cause exists because of reductions in particular kinds of services pursuant to Education Code §44955 to give notice to District certificated employees in 5.82 full-time equivalent certificated employee positions as set out in Findings 1 – 15. Such cause relates to the welfare of the schools and the pupils thereof within the meaning of Education Code §44949.

3. Respondents objected to the Accusation upon the ground that it did not state acts or omissions upon which the District may proceed. No competent or credible evidence having been presented thereon, the objections are each overruled pursuant to Government Code §§11506(a)(2) and 11517.

4. Respondents objected to the Accusation upon the ground that it was so indefinite or uncertain that no respondent could identify the transaction or prepare his or her defense. No competent or credible evidence having been presented thereon (Findings 1 – 15), the objections are each overruled pursuant to Government Code §§11506(a)(2) and 11517.

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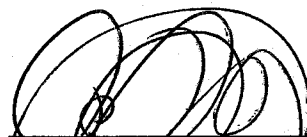
<sup>5</sup> *A.B.C. Federation of Teachers v. A.B.C. Unified Sch. Dist.* (1977) 75 Cal.App.3d 332; *El Dorado Union High School Dist. v. City of Placerville* (1983) 144 Cal.App.3d 123.

## ORDER

1. The Accusations are sustained as to respondents.
2. Notice shall be given to respondents that each of their services will not be required for the 2004 – 2005 School Year because of the District's reduction and discontinuance of particular kinds of services.
3. Notices shall be given to respondents in inverse order of seniority.

Dated: \_\_\_\_\_

4-27-04



JAIME RENÉ ROMAN  
Administrative Law Judge  
Office of Administrative Hearings