

BEFORE THE
GOVERNING BOARD OF THE
LAKE TAHOE UNIFIED SCHOOL DISTRICT

In the Matter of the Non-Reemployment of:

12.57 Full Time Equivalent Certificated
Employees

OAH No. N2005030127

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings on April 14, 2005, in South Lake Tahoe, California.

The Lake Tahoe Unified School District was represented by Allen R. Vinson, Esq., Girard and Vinson, 1676 N. California Boulevard, Suite 450, Walnut Creek, California 94596.

Respondents were represented by Lesley Beth Curtis, Esq., Langenkamp & Curtis, LLP, 1371 Garden Highway, Suite 100, Sacramento, California 95833-9769.

Submission of the case was deferred pending submission of post-hearing briefs. Briefs were filed by the District and respondents on April 15, 2005, and marked respectively as Exhibit 30 and Exhibit A for identification. The case was submitted for decision on April 15, 2005.

FACTUAL FINDINGS

1. Lorraine M. Garcy, Ed.D., is the Superintendent of the Lake Tahoe Unified School District and she made and filed the Accusation in her official capacity.
2. Each of the respondents listed on Attachment A, attached hereto and incorporated herein by reference, was at all times mentioned herein and now is a certificated employee of the District.

3. On February 25, 2005, it was recommended to the Governing Board of the Lake Tahoe Unified School District by Dr. Garcy that notice be given to respondents, pursuant to Education Code section 44949 and 44955, that their services will not be required for the ensuing school year and stating the reasons therefore. The recommendation to the Governing Board was amended on March 8, 2005.

4. On March 8, 2005, the Governing Board of the Lake Tahoe Unified School District adopted Resolution No. 2004/2005-19 directing the Superintendent or her designated representative to give notices to certificated employees that their services would not be needed for the 2005-06 school year.

5. Between March 11, 2005, and March 15, 2005, respondents were served in the manner prescribed by law with written notice that it had been recommended that notice be given to them that their services would not be required for the ensuing 2005-06 school year. Such notice stated the reasons for such recommendation.

6. Respondents, within the time limit specified in Education Code section 44949, subdivision (b), requested a hearing to determine if there is cause for not reemploying them for the ensuing school year.

All pre-hearing jurisdictional requirements were satisfied.

7. Board Resolution 2004/2005-19 proposed the elimination of 29.7 full time equivalent (FTE) positions and that notice be given to the affected certificated employees. Specifically, the Governing Board of the Lake Tahoe Unified School District has decided to reduce or discontinue the following particular kinds of services:

K-5 Self-contained Classroom Teachers	10.0 FTE
PE Specialist	0.8 FTE
Grades 6 – 8 Offerings	
6 th Grade	2.0 FTE
Social Studies	1.0 FTE
Home Economics	1.0 FTE
Math	1.0 FTE
Science	1.0 FTE
Physical Education	1.0 FTE
Grades 9 – 12 Offerings	
Math	1.0 FTE
English	0.2 FTE
French 5-6	0.2 FTE
Athletic Director	0.4 FTE
Technology	0.8 FTE
TLC Math	0.4 FTE
TLC ELD English	0.2 FTE
TLC Sheltered US History	0.2 FTE

Special Education

Elementary RSP	1.0 FTE
Elementary SDC	1.0 FTE
Middle School SDC	1.0 FTE
Middle School RSP	0.5 FTE
High School RSP	1.0 FTE
Speech Pathology	0.4 FTE
Safety Coordinator	1.0 FTE
Home School Outreach	0.2 FTE
Assistant Principal	0.4 FTE
Counselor	1.0 FTE
Central Office Administrator	1.0 FTE

In determining the extent by which to reduce or discontinue particular kinds of services, the Governing Board considered all positively assured attrition up to and including the date of the resolution. The total number of positions to be reduced or discontinued under this resolution is 29.7 FTE certificated positions. The Board has determined that the services of a corresponding number of certificated employees shall be terminated at the close of the current 2004-05 school year.

8. At the time of hearing the Lake Tahoe Unified School District and South Tahoe Educators Association agreed that based on retirements, resignations, and reinstatement of programs known as of the date of the hearing that accusations would be withdrawn for the following individuals:

- | | |
|-------------------------------|------------------------------|
| a. George Derek Allister | q. Diane Martin |
| b. Janae Ballingham | r. Susan McAllister |
| c. Gloria Beane | s. Lisa McDaniel |
| d. Geoffrey Blachman | t. Robin Milaege (.53 FTE) |
| e. Alison Buis | u. Vivian Rider |
| f. H. Bob Comlossy (.6 FTE) | v. Katrina Sanford |
| g. Bob Fannan | w. Charna Silver (.5 FTE) |
| h. Valorie Ford | x. Monique Vaughn |
| i. Jilene Frye | y. Jimmy Vaughn |
| j. Robin Hall | z. Margaret Whitfield |
| k. Odette Hodgkinson (.8 FTE) | aa. Heather Wildman (.6 FTE) |
| l. Dan Hodgkinson | bb. Cheryl Williams |
| m. Cynthia Horn | cc. Kristin Wilson |
| n. Terri Houser | dd. Tim Wright |
| o. Brittainy Berry-Lehmann | ee. Linda Wysong |
| p. Sally Loomis | |

This stipulation reduces the proposed layoffs from 29.7 FTE to 12.57 FTE certificated positions, corresponding to 16 named respondents.¹

9. Respondents contend that the District is retaining a teacher with less seniority to fill a position that more senior respondents are certificated and competent to fill. The District intends to move an administrator (Jim Valdes) into a position that can be filled with a multiple subject teaching credential. Mr. Valdes has a standard elementary teaching credential, and can teach in an elementary position as well as in a kindergarten – ninth grade (K-9) social science position as well as in a K-9 physical education position. The District plans to assign him to an elementary school teaching position for the 2005-06 school year. The issue is whether Mr. Valdes, who taught over the first four years of his employment with the District and who then served as an administrator since approximately 1987, retains his original seniority date of September 1983 for bumping purposes, or whether his seniority should be adjusted to include a maximum of seven years (four years as a classroom teacher plus three years as an administrator) based upon respondents' interpretation of Education Code section 44956.5. Several respondents are elementary school teachers who, if Mr. Valdes only receives three years of credit for time served as an administrator, would be more senior to Mr. Valdes.

10. Education Code section 44956.5 provides that:

For a certificated employee initially employed in an administrative position on or after July 1, 1983, who transfers to a teaching position, the period of employment in the administrative position shall not be included in determining seniority for purposes of Sections 44955 and 44956, except school site administrators who shall earn up to a maximum of three years seniority while serving as site administrators.

Respondents argue that a reading of the plain language of this statute appears to mandate that no site administrator can earn more than three years seniority for purposes of layoff and bumping while serving as a site administrator. The District contends that the language "initially employed" means that the three year limitation applies only to certificated individuals who were employed in the first instance as site administrators and who were not initially employed as teachers.

The District is correct. The general rule for determining the seniority of certificated employees is set forth in Education Code section 44845 which provides: "Every probationary or permanent employee employed after June 30, 1947, shall be deemed to have been employed on the date upon which he first rendered paid service in a probationary position."

¹ Respondents remaining include: Harold R. Comlossy (.4 FTE), Jonathan Conroy (.6 FTE), Jesus Cortes-Acosta, Nancy Dalton, Michael Davis, Odette Hodgkinson (.2 FTE), Gregory Kuntz, Robin Milaeager (.47 FTE), Margaret Munoz, Demetrius Olsen, Rhonda Riggs, Tisha Seims, Charna Silver (.5 FTE), Doug Watenpool, Heather Wildman (.4 FTE), and Sabrina Zalles.

A teacher has but one first date of paid service, and it is that date, rather than tenure, that governs a layoff. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627.) It appears that the Legislature carved out a limited exception to the general seniority rule for those employees initially hired as administrators and later transferred to teaching positions. And it also appears that the Legislature purposefully omitted a parallel exception for employees initially hired as teachers and subsequently transferred to administrative positions. Public policy considerations support this interpretation. If respondents' interpretation is accepted, teachers would be discouraged from promoting into administrator positions because they would risk forfeiture of multiple years of service while serving as administrators.

11. That the Legislature recognizes these concerns is seen in other statutes relating to teachers retaining their permanent teacher classifications when promoted into administrative or supervisory positions. Thus, Education Code section 44893 provides: "A permanent employee when advanced from a teaching position to an administrative or supervisory position, or assigned any special or other type of work, or given special classification or designation requiring certification qualifications, shall retain his permanent classification as a classroom teacher." Similarly, when teachers are assigned to a position in classified service of the same district, and later return to a teaching position, they retain all seniority and tenure rights upon their return shall be treated as if there had not been an interruption in their certificated service. (Ed. Code, § 44063.) There is no reason why a teacher, moving between certificated and classified service, should be treated more favorably than another teacher, such as Mr. Valdes, who is promoted to an administrative position without leaving certificated service.

For these reasons, the District correctly determined that the seniority date for Jim Valdes is September 20, 1983, the date he first rendered paid service in a probationary position for the District.

12. Except as provided by statute, no permanent or probationary certificated employee with less seniority is being retained to render a service which respondents, or any of them, are certificated and competent to render. As between employees who first rendered paid service to the District on the same date, the order of termination has been based solely on the needs of the District and the students thereof.

13. The reduction or discontinuation of the particular kinds of services set forth in Resolution No. 2004/2005-19 are related to the welfare of the schools and the students thereof within the meaning of Education Code sections 44949 and 44955. The decision to reduce or discontinue these services is neither arbitrary nor capricious, but rather a proper exercise of discretion of the District.

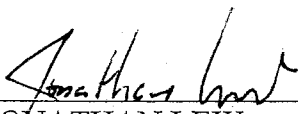
LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.
2. Cause exists to reduce the number of certificated employees of the Lake Tahoe Unified School District due to the reduction and discontinuation of particular kinds of services. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

Notice shall be given to respondents occupying up to 12.57 FTE that their services will not be required for the 2005-2006 school year because of the reduction or discontinuation of particular kinds of services.

DATED: April 26, 2005



JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings

ATTACHMENT A

LIST OF RESPONDENTS

1. Janae Ballingham
2. Gloria Beane
3. Brittainy Berry Lehmann
4. Geoffrey Blachman
5. Alison Buis
6. Jesus Cortes-Acosta
7. Nancy Dalton
8. Michael Davis
9. George Derek Allister
10. Robert Fannan
11. Jilene Frye
12. Daniel Hodgkinson
13. Odette Hodgkinson
14. Cyndy Horn
15. Terri Houser
16. Gregory Kuntz
17. Sally Loomis
18. Diane Martin
19. Susan McAllister
20. Lisa McDaniel
21. Robin Milaeger
22. Bob Comlossy
23. Vivian Rider
24. Tisha Seims
25. Charna Silver
26. Monique Vaughn
27. Jimmy Vaughn
28. Douglas Watenpool
29. Margaret Whitfield
30. Heather Wildman
31. Tim Wright
32. Linda Wysong
33. Sabrina Zalles
34. Wendy Gansberg-Smalley
35. Katrina Sanford
36. Robin Hall
37. Kristin Wilson