

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

In the Matter of the Accusation for

OAH No. 2008030572

A. Layoffs Against: CINDY BITTER,
NICK BURNS, GARY CAUCHI,
MAURECIA CLARK, JOHN DENNO,
SHELDON HORN, KIM JOHNSON,
KELLY VALMONTE, and GUILLERMO
VILLAREAL;

B. Reduction in Work Year Against:
CATHERINE COLEMAN-JOHNSON,
JULIE FRANICH, LUCKINDER GILL,
VICKI GINELLI, TINA GONZALEZ,
DONNA HAWES, BRENDA
LICCIARDELLO, DONNA LITTLE,
NANCY PARKER, CAITLIN PENDLEY,
JENNIFER SHOWALTER,
LORI SHREVE, and LYDIA TORRES;

C. Unnamed Precautionary Layoffs,

Respondents.

PROPOSED DECISION

Administrative Law Judge Marilyn A. Woollard, Office of Administrative Hearings (OAH), State of California, heard this matter in Madera, California, on April 22, 2008.

Madera Unified School District (District) was represented by Elizabeth Lind, of Atkinson, Andelson, Loya, Ruud & Romo. District Superintendent Larry Risinger and District Director of Certificated Human Resources, Jerry Stehman, were also present.

Ernest Tuttle III, of Tuttle & McCloskey, represented all respondents, except John Denno, Lydia Torres, and Donna Little. Respondents Cindy Bitter, Maurecia

Clark, and Tina Gonzalez were present. Sue Thornton, President of the Madera Unified Teachers Association (MUTA) was also present on respondents' behalf.

FACTUAL FINDINGS AND DISCUSSION

1. Larry Risinger is the Superintendent of the Madera Unified School District (District). Mr. Risinger's actions and the actions of the District Governing Board (Board) were taken in their official capacities.

2. The District has a projected budget deficit of over eight million dollars for the 2008-2009 school year, due to various factors including state budget cuts and increased salaries. In anticipation of financial reductions, the District and the Board engaged in a systematic process of gathering financial data and public input on how to remedy this deficit consistent with the best interests of the District and its students.

3. On March 11, 2008, the Board determined that it was necessary to reduce or discontinue particular kinds of services (PKS) of the District for the 2008-2009 school year, in accordance with Education Code sections 44949 and 44955. The Board adopted Resolution No. 55 – 2007/08, pursuant to which the Board determined that the following PKS will be reduced or discontinued no later than the beginning of the 2008-2009 school year:

Principal (Elementary) -- 1 Full Time Equivalent [FTE]

Vice-Principal (Elementary) -- 2 FTE

Physical Education Coordinator (Elementary) -- 1 FTE

Physical Education Teacher (Elementary) -- 4 FTE

Music Teacher (Elementary) -- 2 FTE

Nurse -- .619 FTE ($10 \times .052 \text{ FTE} = .52 + .042 + .031 + .026 \text{ FTE} = .619 \text{ FTE}$)

Total: 10.619 FTE

The Board adopted tie breaker criteria to be applied to any ties in seniority between certificated employees. The Board directed the District to send layoff notices to employees affected by its resolution.

4. The services set forth in Board Resolution 55-2007/2008 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. The decision to reduce or discontinue the services was a proper exercise of the Board's discretion and was neither arbitrary nor capricious.

5. Respondents are probationary or permanent certificated employees of the District.

Nine of the respondents were issued layoff notices of 1 full time equivalent (FTE) each. Respondent John Denno is the District's physical education (PE) coordinator, an administrative position. Respondents Cindy Bitter, Nick Burns, Maurecia Clark, Kim Johnson, Kelly Valmonte, and Guillermo Villareal are PE teachers. Respondents Gary Cauchi and Sheldon Horn are music teachers.

Thirteen of the respondents are school nurses who were issued reduction in work year layoff notices from 193 days per year to 183 days per year, for a reduction of .619 FTE, or corresponding fraction thereof for part-time nurses. Respondent nurses are Catherine Coleman-Johnson, Julie Franich, Luckinder Gill, Vicki Ginelli, Tina Gonzalez, Donna Hawes, Brenda Licciardello, Donna Little, Nancy Parker, Caitlin Pendley, Jennifer Showalter, Lori Shreve, and Lydia Torres.

6. On March 12, 2008, the District provided each of the respondents with a written notice of recommendation that his or her services will not be required for the 2008-2009 school year. Respondents were advised of the Board's adoption of Resolution No. 55 – 2007/08, reflecting its decision to reduce or discontinue PKS no later than the start of the 2008-2009 school year. Each of the respondents was further notified that the District had recommended to the Board that notice be given to him/her, pursuant to Education Code sections 44949 and 44955, that his/her services would be reduced or not required for the 2008-2009 school year. Respondents were advised of their right to request a hearing.

7. On or before March 15, 2008, the District caused this notice, its accompanying documents, and blank Request for Hearing forms to be personally served on each of the respondents.

8. On March 20, 2008, Sue Thornton, in her capacity as president of the Madera Teacher's Union (MUTA), filed timely requests for hearing on behalf of all respondents except John Denno and Lydia Torres.

9. *Waiver of Hearing by Respondents John Denno, Lydia Torres, and Donna Little:* Respondents John Denno and Lydia Torres were personally served with this notice and supporting documents, but did not file a Request for Hearing. Respondent Donna Little filed a timely Request for a Hearing, but later withdrew her request.¹

Pursuant to Education Code section 44949, subdivision (b), these three respondents have waived their right to a hearing in this matter. The District may proceed with its layoff of Mr. Denno and with the reduction of work year of Ms. Torres and Ms. Little.

¹On April 7, 2008, Ms. Thornton, MUTA, advised the District that Ms. Little had withdrawn her request for hearing.

10. On April 2, 2008, the District provided a "certificated layoff hearing packet" to all respondents who requested a hearing. The specific documents provided were: a statement to respondents that cause exists for terminating their employment in whole or in part pursuant to Education Code sections 44949 and 44955 with notice of right to request a hearing; a copy of the Accusation, Resolution No. 55-2007-08, the District's March 11, 2008 recommendation to the Governing Board that respondents be given notice that their services will not be required for the 2008-2009 school year; a blank Notice of Defense Form; a Notice of Hearing; and copies of relevant Education and Government Code sections.

The District thereafter caused these documents to be personally served on the respondents, who signed acknowledgments of receipt.

11. On April 7, 2008, Ms. Thornton of MUTA filed a timely Notice of Defense on behalf of the named respondents.

12. *Lack of Standing to Request Hearing by Nine Unnamed Precautionary Respondents*: On March 20, 2008, and on April 7, 2008, MUTA included the names of nine additional employees on the Request for Hearing and Notice of Defense forms, under Education Code sections 44949 and 44955, it filed with the District on respondents' behalf. The District never served the Accusation for reduction in services, or any documents regarding PKS layoffs on these nine employees, and they were not named in the Accusation. Rather, the District had served these nine teachers with "notices of non-reelection for probationary certificated employees," pursuant to Education Code section 44929.21, subdivision (b).

Under Education Code section 44929.21, subdivision (b), the non-reelection of probationary teachers is within the sole discretion of a school district. A school district may choose not to reelect a probationary employee "without providing cause or other procedural protections to the terminated employees" (*Board of Education v. Round Valley Teachers Assn.* (1996) 13 Cal. 4th 269, 281; *Bellflower Education Association v. Bellflower Unified School District* (1991) 228 Cal. App. 3d 805, 808). However, if non-reelection is for economic reasons (such as a decline in daily attendance or discontinuance of services), the teacher is entitled to certain procedural protections pursuant to Education Code section 44949. (*Cousins v. Weaverville Elementary School Dist.* (1994) 24 Cal. App.4th 1846, 1854; *Kavanaugh v. West Sonoma County Union High School Dist.*, 29 Cal. 4th 911, 918, fn. 4.)

In this case, there was no evidence offered to suggest that the non-reelection of these employees was for economic reasons. On March 11, 2008, the Governing Board adopted a distinct "Resolution Regarding the Non-reelection/Release of Certificated Employees," No. 58-2007/08, which ordered the non-reelection of these nine probationary employees and directed the Superintendent to serve written notice on them of their non-reelection pursuant to sections 44929.21 and 99454. Non-reelection notices were then personally served on these employees on a timely basis.

It was undisputed that these non-reelected employees did not meet the District's instructional needs and that the District was seeking appropriate teachers to fill their positions. As a consequence, these employees would have been non-reelected regardless of the District's need to reduce PKS, and they did not occupy any of the PKS positions being reduced or eliminated by the District pursuant to Resolution 55-2007-08.²

Accordingly, in the absence of any evidence of financial motive as a subterfuge for non-reelection, the District was entitled to issue notices of non-reelection to these probationary employees, and they lack standing to request a hearing or to participate in this matter.

13. *Administrative reductions:* The Board's reduction in PKS of one FTE elementary principal position and two FTE elementary vice-principal positions did not impact the lay offs of any of the respondents. Due to administrative attrition, these affected individuals did not receive lay off notices because they were able to fill other District administrative positions and did not "bump" into any positions respondents were certificated and competent to fill.

14. *Reduction in Work Year of School Nurses:* The District issued precautionary layoff notices to its school nurses advising them of the reduction of their school year, pursuant to Board Resolution 55-2007-08, from 193 days to 183 days. This reduction affects the following respondents: Catherine Coleman-Johnson, Julie Franich, Luckinder Gill, Vicki Ginelli, Tina Gonzalez, Donna Hawes, Brenda Licciardello, Nancy Parker, Caitlin Pendley, Jennifer Showalter, and Lori Shreve. All of these nurses are full time employees, except Nancy Parker, who works a 50 percent position, and Jennifer Showalter, who works an 80 percent position.

Jurisdiction does not exist under Education Code sections 44949 and 44955 to address the District's minor reduction in hours. (*Black v. Compton Unified School District* (1996) 46 Cal.App. 4th 493, 498-500.) In *Black*, adult education teachers had their hours reduced by approximately 6 to 18 percent due to a budget crisis. The court noted the general rule that school districts have broad powers to reassign permanent employees to different positions, including positions with a reduction in pay, so long as the reassignment is reasonable and is within the scope of the employee's certificate. It held that the Education Code's economic layoff notice and hearing procedures did not apply to a minor (i.e., reasonable) reduction in work hours by 5.7 to 17.6 percent,

² Pursuant to the Board's Non-Reelection Resolution (No. 58-2007/08), the probationary employees who were not reelected were: Sue (Laurel) Becker-See (ELA), Katherine Brown (Special Ed), James Davis (Alternative Ed), Nic Defendis (Science), Matthew Heberer (Math), Becky Ingels (Special Ed), Lennice Najieb (Math), Kimberly Parsneau (ELA), and George Roach (Special Ed).

where the teacher was not terminated, and remains employed full time, with no loss of benefits.

In this case, none of the respondent's school nurse positions are being eliminated; all the school nurses will be reemployed for the 2008-2009 school year, with a 10 day reduction. All full time nurses will experience a reduction calculated to be .052 FTE. The positions of respondents Ms. Parker and Ms. Showalter were never full time; their reductions are proportional to their respective positions (.026 and .042) and are reasonable. Respondents provided no evidence and no argument that any of the District's school nurses would suffer a loss of benefits. The reduction of 10 days over the school year brings the school nurses' work year into alignment with the 183 days typically allotted for teachers. This reduction still includes two days prior to the commencement of the school year and one day after the end of the school year to complete their work. Further, as indicated in Mr. Stehman's testimony, the District will be able to maintain all mandated nursing services within these reduced work year schedules.

Accordingly, the reduction in work year of these respondents is within the District's discretion.

District Subject-Specific Seniority Lists

15. Jerry Stehman is the District's Director of Certificated Human Resources. Mr. Stehman and other staff under his direction were responsible for the implementation of the technical aspects of the layoff required by the Board's Resolution. To implement the reduction of four FTE PE teachers and two FTE music teachers, the District relied on seniority lists that are specific to its PE and music teachers, rather than on a comprehensive, District-wide seniority list.

Mr. Stehman testified that the District does not currently have a comprehensive seniority list because it is in the process of transitioning to another system and is verifying the employment data of all District employees. Because the PKS to be reduced is narrowly focused on music and PE, the District developed and maintained separate seniority lists for these two areas, with the employee's name, his/her first date of paid service, type of teaching credential and, for the PE list only, the teacher's status as permanent or probationary. Mr. Stehman testified that he was confident in the accuracy of the initial dates of paid service contained on the PE and music seniority lists. Because the layoffs were implemented with the least senior PE and music teachers, each of whom only possessed a single subject credential, the employees affected by the layoff did not have the ability to bump any less senior teachers within their area of certification and competence.

The District does not dispute that having a comprehensive seniority list is the best practice, but noted the unusual circumstances that resulted in its absence at this time. Section 44955, subdivision (b), establishes the basic rule that "[e]xcept as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render." Neither Education Code section 44949 nor 44955, however, requires the District to provide a comprehensive seniority list to employees. Nevertheless, employees to a layoff action must have a reliable source of information from which to determine their seniority relative to other teachers, so they can assess whether they may be able to bump employees with less seniority.

The PE and music subject-specific seniority lists were created by the District as part of its obligation to implement the Board's reduction in PKS resolution. There is a presumption that District has regularly performed its official business. (Evid. Cod 664.) In this case, respondents did not present any evidence that they requested a District-wide seniority list in discovery as authorized by Education Code sections 44949, subdivision (c)(2), and 44955. More importantly, none of the respondents presented any evidence or testimony that they were prejudiced by the lack of a District-wide seniority list. This presumption of regularity, coupled with Mr. Stehman's testimony, establishes that the District used appropriate subject-specific seniority lists to implement the reduction in PKS in the inverse order of seniority.

Layoff of 2 FTE Music Teachers

16. The District provided a seniority list specific for their music teachers. Respondent Sheldon Horn's first date of paid service with the District was January 13, 2007. Respondent Gary Cauchi's first date of paid service with the District was August 10, 2007. Mr. Cauchi is the District music teacher with the least seniority; Mr. Horn is senior only to Mr. Cauchi.

Both Mr. Horn and Mr. Cauchi have a single subject credential in music. By virtue of their single subject music credentials, Mr. Horn and Mr. Cauchi are authorized to teach instrumental music, music appreciation, music theory, and vocal music. (Cal. Code Regs., tit. 5, 80005, subd. (a)(10).) Neither Mr. Cauchi nor Mr. Horn testified. No evidence was offered by either respondent that they are certificated and competent to bump into any other position. The District's layoff of these two music teachers is upheld.

Layoff of PE Teachers and Application of Tie Breaker Criteria

17. During the current school year, the District had 34 permanent or probationary PE teachers. In addition, the District had three temporary teachers who worked on a categorical grant program not required by state or federal statute. Funding for this program ended; these employees were terminated and are not respondents to this matter. (Educ. Code 44909.)³ One PE teacher, Nick Burns, had a probationary PE appointment and a partial appointment under the categorical grant.⁴ Mr. Burns is a respondent to this matter.

18. The Resolution called for the reduction in PKS of four FTE PE teachers. Because the District anticipated that it would be necessary to use the Resolution's tie breaker criteria to determine who should be laid off, it issued two additional precautionary layoff notices. The District asks that two of these layoff notices be rescinded, so that only four PE teachers are actually laid off.

Under the PE Seniority List, the six least senior PE teachers and their first dates of paid service with the District are as follows:

<u>Respondent</u>	<u>First Date of Paid Service</u>
Kelly Valmonte	August 13, 2004
Guillermo Villareal	August 11, 2005
Maurecia Clarke	August 11, 2005
Cindy Bitter	August 10, 2006
Kim Johnson	August 10, 2006
Nick Burns	August 10, 2007

19. No evidence was offered to challenge the appropriateness of the District's layoff notices to probationary (Prob) employees Mr. Burns (Prob 0), Ms. Johnson (Prob 2), and Ms. Bitter (Prob 2). These layoffs are appropriate and are upheld.

20. *The Fourth PE layoff:* Mr. Stehman testified that the District initially believed there was a three-way seniority tie between Ms. Valmonte, Mr. Villareal, and Ms. Clarke. However, although Ms. Valmonte had an emergency credential when she began working for the District in 2004, the District acknowledged her right to accrue seniority during this time period in

³ Education Code 44909 provides, in pertinent part, that "[s]uch persons may be employed for periods which are less than a full school year and may be terminated at the expiration of the contract or specially funded project without regard to other requirements of this code respecting the termination of probationary or permanent employees other than Section 44918." These individuals, Johnny Sharp, Wayman Stairs, and Salvador Lozano were not served with the notices/Accusation and are not respondents.

⁴ Mr. Burns's exact FTE was not provided.

light of *Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal. App. 4th 1260. Consequently, the District determined that Ms. Valmonte had more seniority and applied the Resolution's tie breaker criteria only to Mr. Villareal and Ms. Clarke, who each began paid service to the District on August 11, 2005.

21. *Tie Breaker Criteria*: The Resolution provides that its tie breaker criteria are listed in priority order and that each criterion shall be used only if the preceding criteria do not determine the order of termination:

- a. Possession of a currently valid and properly filed regular credential (clear, professional clear, or preliminary);
- b. The certificated employee is "Highly Qualified" within the meaning of the No Child Left Behind Act;
- c. Possession of a currently valid and properly filed BCLAD certificate;
- d. Possession of a currently valid and properly filed CLAD, EL, SDAIE, or other valid certificate authorizing instruction to English Language Learners;
- e. The certificated employee whose currently valid and properly filed credentials authorize a broader scope of service. (This tie-breaker is to be repeated as applicable.);
- f. Possession of a Master's Degree;
- g. The certificated employee holding the highest current placement on the salary schedule. (This tie-breaker is to be repeated as applicable.);
- h. If a tie still exists after application of criteria a. to g., the tie shall be broken by lot. Numbers shall be drawn with the lowest number drawn winning the tie and continuing until all remaining tied individuals are ranked in order.

22. In applying these criteria, Ms. Clark and Mr. Villareal tied on criteria (a) through (f). The tie was broken by comparing their relative placements on the District's salary schedule under subdivision (g). Because Ms. Clark has a lower salary placement on the District's salary schedule, the District determined that she should receive the fourth PE layoff. At the outset of the hearing, the District requested that the layoff notices issued to Mr. Villareal and Ms. Valmonte be rescinded and that those of Ms. Clark, Mr. Burns, Ms. Johnson, and Ms. Bitter be upheld.

23. Maurecia Clark testified that the information on the Seniority List about her credential and initial start date with the District was accurate. It was also accurate that Ms. Clark is a permanent employee; this status was effective at the beginning of the 2007-2008 school year.

Ms. Clark objected to the District's conclusion that Ms. Valmonte had more seniority than she did. Ms. Clark understood that Ms. Valmonte came into the District under an emergency credential. Once Ms. Valmonte obtained her credential, she became a first year probationary employee. Ms. Clark testified that she believed Ms. Valmonte was currently a second year probationary teacher, and had not achieved the permanent status that Ms. Clark possessed.

24. On reflection in light of this testimony, the District agreed with Ms. Clark that under Education Code section 44955, it could not release a permanent employee while retaining the services of probationary employee to render a service which the permanent employee is certificated and competent to render.⁵

25. In light of this concession by the District, and because Mr. Villareal is also a permanent employee, Ms. Valmonte is the PE teacher who shall receive the fourth PE layoff. The District's layoff of Ms. Valmonte is upheld.

Ability to Bump into Alternative Schools

26. Under Education Code section 44865, subdivision (f), a teacher who has a valid teaching credential "based on a bachelor's degree, student teaching, and special fitness to perform, shall be deemed qualifying for assignment as a teacher in" a District's alternative schools, if the teacher consents to the assignment.⁶

⁵ The precise dates during which Ms. Valmonte worked on an emergency credential were not introduced; however, this was during the 2004-2005 school year. Mr. Stehman believed Ms. Valmonte received her credential in May 2006.

⁶ Education Code section 44865 provides, in pertinent part, as follows:

A valid teaching credential issued by the State Board of Education or the Commission for Teacher Preparation and Licensing, based on a bachelor's degree, student teaching, and special fitness to perform, shall be deemed qualifying for assignment as a teacher in the following assignments, provided that the assignment of a teacher to a position for which qualifications are prescribed by this section shall be made only with the consent of the teacher:

[1]. . . [1].

(f) Alternative schools.

The District has alternative education programs that will operate in the 2008-2009 school year. Mr. Stehman conceded that it is possible that a teacher in a District alternative education program might have less seniority than a laid off music or PE teacher. In exercising its discretion to assign teachers to alternative education programs, however, the District considers whether a teacher is "highly qualified" under the No Child Left Behind (NCLB) program, 20 United States Code section 6301, et seq. Mr. Stehman testified that the PE and music teachers who were laid off only have single subject PE and music credentials and are not "highly qualified" teachers under the NCLB. No evidence to the contrary was provided by respondents.

LEGAL CONCLUSIONS

1. Education Code section 44949 provides, in pertinent part, as follows:

- (a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

[¶] . . . [¶]

- (b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. . . . If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute his or her waiver of his or her right to a hearing. The notice provided for in subdivision (a) shall advise the employee of the provisions of this subdivision.

- (c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency therein, except that all of the following shall apply:

- (1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing in the accusation.

(2) The discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate.

[¶] . . . [¶]

2. Education Code section 44955 provides, in pertinent part, that:

(a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

(b) Whenever in any school year . . . a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, . . . and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

[¶] . . . [¶]

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

(c) Notice of such termination of services shall be given before the 15th of May in the manner prescribed in Section 44949, and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. However, prior to assigning or reassigning any certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

[¶] . . . [¶]

3. Except as set forth in Legal Conclusions 4 and 5, jurisdiction in this matter exists under Education Code sections 44949 and 44955. As set forth in Factual Findings 1 through 8 and 10 through 11, all notices and jurisdictional requirements contained in those sections were satisfied. The District has the burden of proving by a preponderance of the evidence that the proposed reduction or elimination of particular kinds of services and the preliminary notice of layoff served on respondents are factually and legally appropriate.

4. As set forth in Factual Finding 9 and Legal Conclusion 1, respondents John Denno, Lydia Torres, and Donna Little have waived their rights to a hearing in this matter. The District may proceed with these layoffs.

5. As set forth in Factual Finding 14, jurisdiction does not exist over minor reductions of work year schedules of the District's school nurses. Accordingly, District has discretion to proceed with reductions in work year schedules of respondents Catherine Coleman-Johnson, Julie Franich, Luckinder Gill, Vicki Ginelli, Tina Gonzalez, Donna Hawes, Brenda Licciardello, Nancy Parker, Caitlin Pendley, Jennifer Showalter, and Lori Shreve.

6. The Governing Board may reduce, discontinue or eliminate a particular kind of service and then provide the needed services to the students in another manner. (*Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571; *California Teachers Association v. Board of Trustees of Goleta Union School Dist.* (1982) 132 Cal.App.3d 32.) A school board may reduce services within the meaning of the

statute either by determining that a certain type of service shall not be performed at all or by reducing the number of district employees who perform such services. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

As set forth in Factual Finding 4, the services set forth in Board Resolution 55-2007/2008 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. As set forth in Factual Findings 2 and 3, cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

7. In the course of reducing, discontinuing or eliminating a particular kind of service, the Governing Board may retain certificated employees junior to respondents to perform services which respondents are not certificated and competent to render. (*Moreland Teachers Association v. Kruse* (1980) 109 Cal.App.3d 648.)

8. As set forth in the Factual Findings 16, and the Legal Conclusions as a whole, the District has established that no employee junior to Mr. Horn is being retained to perform the services which Mr. Horn is competent and certificated to render.

9. As set forth in the Factual Findings 16, and the Legal Conclusions as a whole, the District has established that no employee junior to Mr. Cauchi is being retained to perform the services which Mr. Cauchi is competent and certificated to render.

10. As set forth in the Factual Findings 17 through 19, and the Legal Conclusions as a whole, the District has established that no employee junior to Mr. Burns is being retained to perform the services which Mr. Burns is competent and certificated to render.

11. As set forth in the Factual Findings 17 through 19, and the Legal Conclusions as a whole, the District has established that no employee junior to Ms. Johnson is being retained to perform the services which Ms. Johnson is competent and certificated to render.

12. As set forth in the Factual Findings 17 through 19, and the Legal Conclusions as a whole, the District has established that no employee junior to Ms. Bitter is being retained to perform the services which Ms. Bitter is competent and certificated to render.

13. As set forth in the Factual Findings 17 through 25, and the Legal Conclusions as a whole, the District has established that no employee junior to Ms. Valmonte is being retained to perform the services which Ms. Valmonte is competent and certificated to render.

14. As set forth in the Factual Findings as a whole, and particularly in Factual Findings 3, 18, 20 through 25, and the Legal Conclusions as a whole, the District has not established that there is a need to effectuate the layoffs of Ms. Clark or Mr. Villareal in order to implement the Resolution to reduce PKS. Accordingly, the Accusations against Ms. Clark and Mr. Villareal will be dismissed and no layoff shall proceed against these employees.

ORDER

1. Notice shall be given to Sheldon Horn that his services will be reduced by 1.00 FTE in the 2008-2009 school year, because of the reduction and discontinuance of particular kinds of services.

2. Notice shall be given to Gary Cauchi that his services will be reduced by 1.00 FTE in the 2008-2009 school year, because of the reduction and discontinuance of particular kinds of services.


3. Notice shall be given to Cindy Bitter that her services will be reduced by 1.00 FTE in the 2008-2009 school year, because of the reduction and discontinuance of particular kinds of services.

4. Notice shall be given to Kim Johnson that her services will be reduced by 1.00 FTE in the 2008-2009 school year, because of the reduction and discontinuance of particular kinds of services.

5. Notice shall be given to Ken Burns that his services will be reduced by 1.00 FTE in the 2008-2009 school year, because of the reduction and discontinuance of particular kinds of services.

6. The Accusations against Mauricia Clark and Guillermo Villareal are dismissed.

DATED: April 30, 2008


MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings