

BEFORE THE
GOVERNING BOARD OF THE
LAS VIRGENES UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of:

OAH No. L2008030354

The Reduction in Force of 28.5 Full-Time
Equivalent Positions of the Certificated
Employees of the District,

Respondents.

PROPOSED DECISION

David B. Rosenman, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on May 14, 2008, at the Las Virgenes Unified School District, Las Virgenes, California.

Atkinson, Andelson, Loya, Ruud & Romo, by Warren S. Kinsler, Attorney at Law, represented the Las Virgenes Unified School District (District).

Hathaway, Perrett, Webster, Powers, Chrisman & Gutierrez, by Robert A. Bartosh and Jeffrey J. Stinnett, Attorneys at Law, represented Respondent teachers: Debbie Haro*, Julie Just, Cathy Latty*, Michelle Manning*, Linda Ordin*, Marianne Pall*, Robin Stidham, Brittany Stone and Janet Svoboda*. The Respondents marked with "*" were present at the hearing.

Evidence was received by way of stipulation, testimony and documents. At Respondents' request, the record remained open for briefing. On May 20, 2008, Respondents' counsel informed the ALJ that no brief would be submitted. The record was closed and the matter was submitted on May 20, 2008.

By agreement of the parties and by operation of Education Code section 44949, subdivision (b), any actions to be taken by the Governing Board and the District are extended by 28 days; that is, actions required to be taken by May 7, 2008, are extended to June 4, 2008, and actions required to be taken by May 14, 2008, are extended to June 11, 2008.

SUMMARY OF PROPOSED DECISION

The Governing Board of the District determined to reduce or discontinue particular kinds of services provided by certificated teachers for budgetary reasons. The decision was

not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

District staff carried out the Board's decision by using a selection process involving seniority and review of credentials. The selection process was in accordance with the requirements of the Education Code. The Board may proceed to give final layoff notices as indicated herein.

FACTUAL FINDINGS

Jurisdiction and Parties

1. The District provides educational services for students in kindergarten through grade 12. The District employs approximately 682 certificated staff in permanent or probationary positions.

2. Donald M. Zimring, Ph.D., is the Superintendent of the District and Dan Stepenoski is the Assistant Superintendent of Personnel of the District. Their actions were taken in those official capacities. Mr. Stepenoski was responsible for implementation of the technical aspects of the layoff.

3. Before March 15, 2008, the District served on 22 teachers¹, including Respondents, a written notice (notice) that it had been recommended that notice be given to them pursuant to Education Code sections 44949 and 44955 that their services would not be required for the next school year. Each notice set forth the reasons for the recommendation and noted that the Board had passed a Resolution reducing the certificated staff by 28.5 full-time equivalent (FTE) positions.

4. Nine certificated employees, referred to as Respondents, submitted timely written requests for a hearing to determine if there is cause for not reemploying them for the ensuing school year.

5. The Superintendent made and filed Accusations against each of the Respondents. On March 31, 2008, the District served the Respondents by certified mail with an Accusation along with required accompanying documents and blank Notices of Defense.

6. All nine Respondents served their Notices of Defense on the District.

¹ Exhibit 9 indicates there may have been 25 teachers: nine teachers who requested hearings and sixteen who did not. Respondents objected to this exhibit. According to Exhibit 4, there are proofs of service for notices to 22 Respondents. There is a discrepancy between these 22 who were served in Exhibit 4, and the inference that 25 teachers were served as noted in Exhibit 9. The objections that Exhibit 9 has insufficient foundation and is cumulative are sustained.

7. Respondents in this proceeding are probationary certificated employees of the District, except Respondent Robin Stidham, who is a categorical temporary employee who was given a precautionary layoff notice.

8. The District dismissed the Accusations against Respondents Robin Stidham and Janet Svoboda.

The Governing Board and the Lay Off Resolution

9. On March 11, 2008, the Board of Education of the District (Board) was given notice of the Superintendent's recommendation that 28.5 FTE employees be given notice that their services would not be required for the next school year and stating the reasons therefore.

10. Board Resolution number 33-07, adopted on March 11, 2008, proposed a layoff of 28.5 FTE certificated employees (Resolution). Specifically, the Resolution provided for the reduction or elimination of the following particular kinds of services:

<u>FTE</u>	<u>Services</u>
4.0	Librarian Services
3.8	Elementary Counselors
4.4	SB 1802 Counselors
3.0	Middle School Dean
1.0	Continuation High School Principal
0.4	Regional Occupation Program Coordinator
0.4	Assistant Director Special Education
1.0	Director of Education Technology
7.5	Kindergarten through Fifth Grade Classroom Instruction
1.0	High School Social Science Teaching Services
1.0	High School English Teaching Services
1.0	Elementary PE Teacher

11. Board Resolution number 34-07, adopted on March 11, 2008, established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. It provided that the order of termination shall be based on the needs of the District and the students in accordance with the criteria stated therein. More specifically, the tie-breaker criteria provide for reference to be made for certain credentials, certificates, authorizations, permits, degrees, salary steps, college credits, and other factors, in an established order of priority to determine who has the higher seniority within the shared date of first paid service.

12. Assistant Superintendent Stepenoski stated that Resolution 33-07 was required by the District's fiscal crisis and need to reduce services to balance its budget for the welfare of the District and its students. More specifically, the Board received information about the

next state budget leading the Board to believe that, for school year 2008-2009, it would experience a budget shortfall of approximately \$7 million.

13. The decision to reduce services was not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

The Seniority List and the Lay Offs

14. The District maintains a seniority list which contains employees' seniority dates (first date of paid service), current assignments and credentials.

15. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. The District then determined whether these least senior employees held credentials in another area and were entitled to displace, or "bump," other employees who were less senior to them. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and whether they could "bump" other employees.

16. The District used information from the seniority list and personnel files to apply the tie-breaker criteria of Resolution 34-07.

17. The services identified in Resolution 33-07 are particular kinds of services that could be reduced or discontinued under Education Code section 44955. The Board's decisions to reduce or discontinue the identified services were neither arbitrary nor capricious, and were a proper exercise of its discretion. The decisions were based on the welfare of the District and its pupils.

18. The District identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

LEGAL CONCLUSIONS AND DISCUSSION

1. Education Code² section 44945, subdivision (a), states in pertinent part:

"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 . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefor."

² All citations are to the Education Code.

2. Section 44955 provides, in pertinent part:

“(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 . . . 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) . . . [S]ervices of such employees shall be terminated in the reverse order in which they were employed, as determined by the board in accordance with 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. . . .

“(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

“(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a

specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess."

3. Sections 44949 and 44955 establish jurisdiction for this proceeding. The notice and jurisdictional requirements set forth in sections 44949 and 44955 were met. (Factual Findings 3 through 6.)

4. A District may reduce services 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.)

5. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949. (Factual Findings 3 through 18.)

//

//

//

//

//

//

//

//

6. 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.) Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.)

ORDER

1. Notice may be given to employees occupying 28.5 full-time equivalent certificated positions that their services will not be required for the 2008-2009 school year because of the reduction and discontinuance of particular kinds of services. Such notices may be given to the following seven employees: Debbie Haro, Julie Just, Cathy Latty, Michelle Manning, Linda Ordin, Marianne Pall and Brittany Stone.

2. Notice shall be given in inverse order of seniority. Each Respondent shall receive such a notice.

3. The Accusations are dismissed as to Respondents Robin Stidham and Janet Svoboda, and no final layoff notices may be sent to them.

DATED: May 21, 2008.

DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings