

**BEFORE THE
BOARD OF TRUSTEES OF THE
SANTA MARIA-BONITA SCHOOL DISTRICT
COUNTY OF SANTA BARBARA
STATE OF CALIFORNIA**

In the Matter of the District Statement of Reduction in Force

Against:

**AMANDA GREGORY, JANE MADDOX, and SHERIL VIAU,
Respondents.**

OAH No. 2022030922

PROPOSED DECISION

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on April 28, 2022.

Paul Z. McGlocklin, Esq., Atkinson, Andelson, Loya, Ruud & Romo, represented the Santa Maria-Bonita School District (District).

Justin M. Crane, Esq., The Myers Law Group, represented respondents Amanda Gregory, Jane Maddox, and Sheril Viau.

The parties presented witness testimony and documentary evidence. The record was closed and the matter was submitted for decision on April 28, 2022.

SUMMARY

The District's Board of Trustees (Board) resolved to reduce or eliminate three limited assignment teacher positions by the end of the 2021-2022 school year.

Respondents are the only three limited assignment teachers in the District, and the Assistant Superintendent for Human Resources notified them their services will not be required for the upcoming school year. All three respondents requested a hearing to determine if there was cause for the layoffs. The District proved there was, and respondents may therefore be notified their services will not be required for the upcoming school year.

FACTUAL FINDINGS

Background and Procedural History

1. The District serves just under 17,000 students at 17 elementary schools and 4 junior high schools. It currently employs permanent, probationary, temporary/categorical, and substitute certificated employees. Respondents are certificated permanent employees who are limited assignment teachers, a part-time position in which they fill different teaching roles as needed. Each of their positions is 0.462 full-time equivalent (FTE), and each of them currently works as an English Language Development (ELD) teacher at a different junior high school. Respondents are the only three limited assignment teachers in the District.

2. On February 23, 2022, the Board adopted Resolution No. 21-18 to reduce or eliminate 1.386 FTE limited assignment teacher positions, consisting of three positions at 0.462 FTE per position. The Board determined this action was necessary no

later than the end of the 2021-2022 school year based on the Interim Superintendent's recommendation that particular kinds of services be reduced or eliminated. The Board also determined the decision would require termination of certificated employees equal in full-time equivalents to the positions, and it directed the Interim Superintendent or a designee to send appropriate notices to all probationary or permanent employees possibly affected by the decision. The resolution stated that, unless permitted by law, "no employee will be terminated while a less senior employee is retained to render a service in a position for which the more senior employee is both certificated and competent for the entire assignment of the less senior employee (no fractional bumping)." (Exhibit 1.) "Fractional bumping" refers to splitting a full-time position held by a less senior employee to afford "bumping" rights to a more senior part-time employee.

3. On March 9, 2022, each respondent's school principal delivered a written notice from Bijou Beltran, Assistant Superintendent for Human Resources, that respondent's services would not be required for the upcoming school year. Beltran enclosed a copy of the Board's resolution and wrote, "You may avoid being laid off by exercising your right to 'bump' the least senior certificated employee in the District, serving in a position (1) for which you are credentialed and competent, and (2) whose position has an FTE equal to or less than the 0.462 FTE of the position you presently hold. In this case, the position you would 'bump' into is a 0.46154 FTE Teacher Tutor within the District." (Exhibit 2.) Teacher tutors provide supplemental services to students as needed within the District on a different schedule and at a different pay scale than limited assignment teachers. Beltran also stated respondents could request a hearing to determine if there was cause for not employing them as limited assignment teachers next year.

4. All three respondents requested a hearing. On March 30, 2022, the District filed a Statement of Reduction in Force requesting that the Board give notice to respondents that their services will not be required for the 2022-2023 school year. Beltran signed the pleading in her official capacity. Respondents were hand delivered notices enclosing the pleading, a blank Notice of Participation form, and copies of Education Code and Government Code statutes describing the teacher's hearing rights. Each teacher timely submitted a Notice of Participation to request a hearing, and the hearing was originally scheduled for April 14, 2022. On April 4, 2022, the District filed an unopposed motion to continue the hearing. The motion was granted, and the hearing was continued until April 28, 2022. The District provided timely notices to respondents of the original and continued hearing dates.

Hearing

DISTRICT'S CASE

5. Beltran has been the Assistant Superintendent for Human Resources since 2019. She testified the recommendation to eliminate the three limited assignment teacher positions originated in the District's Instructional Services Division. According to Beltran, the positions were determined not to meet the District's local control and accountability plan (LCAP). (See Ed. Code, §§ 52060, 52064 [describing LCAP requirements].) Beltran is unaware of how the positions did not meet the plan.

6. Beltran also testified the District has employed limited assignment teachers for at least 15 years, but respondents are the only remaining teachers in that position. The Board's resolution reflects that the District no longer wishes to continue employing limited assignment teachers. The District has five vacant and available teacher tutor positions, and each respondent was given the option to move into one

of the vacant positions in lieu of a layoff. Given the existing vacancies, the District would not have to lay off anyone if respondents became teacher tutors.

7. The District also presented a seniority list in support of the layoff decision. On the list, Gregory is ranked number 369 of 946 with a seniority date of August 8, 2011. Maddox is ranked number 613 with a seniority date of September 8, 2016, and Viau is ranked number 615 with a seniority date of March 3, 2017. Teacher tutors are the only other employees on the list with part-time (i.e., less than 1 FTE) positions. All the other teachers on the list are full time. There are full-time ELD teachers on the list who are less senior than respondents, but Beltran testified the District did not propose to lay them off because it was not using fractional bumping.

RESPONDENTS' CASE

8. Viau testified she was hired as a teacher tutor in January 2015. She became a limited assignment teacher in 2017. She has multiple subject, special education, and resource specialist credentials. She wants to remain a limited assignment teacher rather than return to a teacher tutor position.

9. Maddox testified she was hired as a teacher tutor in 2011. After that, she was a long-term substitute for two years, became a teacher tutor again, and then became a limited assignment teacher in 2016. She has a multiple subject teaching credential. She would be willing to switch to a full-time or job-share position, but returning to a teacher tutor position would be "taking a step down."

10. Gregory testified she started working as a teacher tutor in 2007. In 2011, she was offered a limited assignment teacher position. She has a multiple subject teaching credential. Gregory testified that returning to a teacher tutor position would

change her work hours and give her less time with her son than her limited assignment teacher position.

ANALYSIS OF EVIDENCE

11. The evidence indicates the Board's decision is reasonably based on the recommendation of the Interim Superintendent, which in turn came from the Instructional Services Division. The Board regularly considered and adopted the resolution, and the District gave prompt and detailed notices to respondents of the proposed layoffs and their rights. No evidence indicates the Board's decision is fraudulent, arbitrary, capricious, or an abuse of its discretion to govern the manner of teaching in the District.

12. Respondents argue the Board is not eliminating a particular kind of service but only eliminating the job title and position of limited assignment teacher, which they argue is not allowed in a layoff. But by eliminating the three positions, the District is eliminating a particular kind of service. Limited assignment teachers perform teaching services in a particular manner, and the proposed layoffs will change the manner and method of providing teaching services. While some services similar to what respondents perform will continue to be performed next year, different types of teachers will perform the services in different ways.

13. Each respondent testified she began working for the District earlier than their respective seniority dates on the District's seniority list. But the differences between the testimony and the list do not affect the proposed layoffs because teacher tutors are the only other teachers on the list who have less than full-time positions. No employee will be terminated while a less senior employee is retained to render a service in a position for which the more senior employee is both certificated and

competent for the entire assignment of the less senior employee to provide. The Board's resolution does not permit respondents to split a full-time position held by a less senior employee to afford fractional bumping rights to respondents, who do not work full time. Furthermore, no less senior teacher tutors need to be bumped because there are already vacant teacher tutor positions available for respondents to fill.

LEGAL CONCLUSIONS

1. "[W]henever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year" and a school district's governing board deems a resulting layoff to be necessary, "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." (Ed. Code, § 44955, subd. (b).) In such a layoff, "[e]xcept as otherwise provided by statute, the services of no permanent employee may be terminated 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." (*Ibid.*) "Essentially this language provides "'bumping"' rights for senior certificated and competent employees, and "'skipping"' authority for a district to retain 'junior employees who are certificated and competent to render services which more senior employees are not. [Citations.]'" (*Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 135, quoting *Alexander v. Board of Trustees* (1983) 139 Cal.App.3d 567, 571.)

2. "[N]o later than March 15 of the school year preceding dismissal, the district must give a notice (preliminary notice) to each certificated employee of the decision recommending he or she not be reemployed for the ensuing year, stating the

reasons therefore and the employee's entitlement to a hearing." (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 631-632 (*Allen*)). "The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year." (Ed. Code, § 44949, subd. (b).) If a hearing is requested, the school district files and serves a District Statement of Reduction in Force, which the employee answers with a Notice of Participation. (Gov. Code, §§ 11503, subd. (b), 11505.) "The hearing takes place before an administrative law judge who prepares a proposed decision which the board may or may not accept." (*Allen, supra*, 144 Cal.App.3d at p. 632; see Ed. Code, §§ 44949, 44955.)

3. "Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced." (Ed. Code, § 44949, subd. (c)(3).) If a governing board decides to terminate a teacher's services, "[n]otice of such termination of services shall be given before the 15th of May in the manner prescribed in Section 44949." (Ed. Code, § 44955, subd. (c).) But where, as here, "a continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in subdivision (c) that occur on or after the date of granting the continuance and the date prescribed in subdivision (c) of Section 44955 that occurs after the date of granting the continuance shall be extended for a period of time equal to the continuance." (Ed. Code, § 44949, subd. (e).) "Any employee not given the preliminary and final notices and the right to the hearing is deemed reemployed for the following year. [Citations.]" (*Allen, supra*, 144 Cal.App.3d at p. 632; see Ed. Code, §§ 44949, 44955.)

4. The layoff decision of a governing board need only be reasonable under the circumstances. (*Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 796, 807-808 (*Campbell*)). "In determining whether the decision of a school

board is reasonable as distinguished from fraudulent, arbitrary, or capricious, its action is measured by the standard set by reason and reasonable people, bearing in mind that such a standard may permit a difference of opinion on the same subject.’ [Citation.]” (*Id.* at p. 808.)

Analysis

5. The limited assignment teacher positions identified in the Board’s resolution are “particular kind[s] of service[s]” that may be reduced or eliminated as proposed. (Ed. Code, § 44955, subd. (b).) The proposed layoff of limited assignment teachers will change the manner and method of providing teaching services. While some services similar to what respondents perform will continue to be performed next year, the way in which they will be performed will change. The change in the types of teachers performing the services is a change in the particular kind of service within the meaning of Education Code section 44955. (See *Davis v. Berkeley School Dist.* (1934) 2 Cal.2d 770 [discontinuing the services offered by traveling art teachers in lieu of art instruction by regular departmental teachers was allowable]; *Fuller v. Berkeley School Dist.* (1934) 2 Cal.2d 152, 159 [dismissal of teacher in one of three types of kindergarten teacher positions was a discontinuation of a particular kind of service]; *Campbell, supra*, 76 Cal.App.3d at p. 812.)

6. The Board’s layoff decision is reasonable under the circumstances. (*Campbell, supra*, 76 Cal.App.3d at pp. 807-808.) The Board’s decision is based on a recommendation of the Interim Superintendent originating from the Instructional Services Division to reduce or eliminate the limited teacher assignment positions. The decision to reduce or eliminate a type of part-time teacher position in the District is within the Board’s discretion. No evidence indicates either the decision or the underlying recommendation is fraudulent, arbitrary, or capricious. Respondents’

disagreement with the Board's decision does not compel a conclusion that the decision is unreasonable. (See *Campbell, supra*, 76 Cal.App.3d at p. 808.)

7. The District satisfied the jurisdictional and notice requirements for the proposed layoffs.

8. No permanent or probationary employee with less seniority is being retained to render a service that respondents are certificated and competent to perform for the entire assignment of the less senior employee. Apart from teacher tutors, the teachers with less seniority than respondents all work full time. The Board's resolution does not permit respondents to split a full-time position held by a less senior employee to afford fractional bumping rights to respondents, who do not work full time. The decision not to allow fractional bumping is within the Board's discretion. (*Hildebrandt v. St. Helena Unified School Dist.* (2009) 172 Cal.App.4th 334, 344-345.) Furthermore, no teacher tutors with less seniority need to be bumped because there are already vacant teacher tutor positions available for respondents to fill.

9. The proposed layoffs are "related to the welfare of the schools and the pupils of the schools." (Ed. Code, § 44949, subd. (b)(3).) Eliminating positions based on the teaching needs of the District is related to the welfare of the schools and the pupils of the schools.

10. Based on the above, there is sufficient cause for not reemploying respondents as limited assignment teachers for the ensuing school year. (Ed. Code, § 44949, subd. (b).)

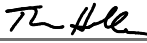
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ORDER

1. The District Statement of Reduction in Force is sustained.
2. Notice may be given to respondents Amanda Gregory, Jane Maddox, and Sheril Viau that their services will not be required for the 2022-2023 school year.

DATE: 05/12/2022


Thomas Heller (May 12, 2022 10:38 PDT)

THOMAS HELLER

Administrative Law Judge

Office of Administrative Hearings