

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

In the Matter of the Accusation Against:

RESPONDENTS LISTED IN
EXHIBIT "A"

OAH No. 2013040004

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in Barstow, California, on April 24, 2013.

Todd M. Robbins, Esq., Atkinson, Andelson, Loya, Ruud & Romo, represented James Davis, Assistant Superintendent-Personnel Services, Barstow Unified School District.

Angela C. Serranzana, Esq., Reich, Adell & Cvitan, represented Respondents who are listed in Exhibit "A".

The matter was submitted on April 24, 2013.

SUMMARY OF PROPOSED DECISION

The Board of Education of Barstow Unified School District determined to reduce or discontinue particular kinds of services provided by credentialed employees for budgetary reasons. The decision was not related to the competency and dedication of the employees whose services are proposed to be reduced or eliminated.

Barstow Unified School District staff carried out the Board of Education's decision by using a selection process involving review of credentials and seniority, "bumping," and breaking ties between/among employees with the same first dates of paid probationary service. The selection process was in accordance with the requirements of the Education Code.

FACTUAL FINDINGS

1. Respondents listed on Exhibit “A” (Respondents) are certificated employees of the Barstow Unified School District (District).

2. Jeff Malan, Superintendent (Superintendent), notified the District’s Governing Board (Board) of his recommendation that the District reduce or discontinue particular kinds of services for the 2013-2014 school year.

3. On March February 26, 2013, the Board adopted Resolution No. 25, reducing or eliminating particular kinds of services for the ensuing school year, establishing “competency” criteria, and establishing criteria for resolving ties among certificated employees with the same date of first paid probationary service. The Board directed the Superintendent or designated representative to send notices to all employees possibly affected by the reduction or elimination of particular kinds of services.

Resolution No. 25 provides that the following particular kinds of certificated services will be reduced or eliminated for the 2013-2014 school year:

Elementary K-6 Teaching Services	12	F.T.E.
High School Math Teaching Services	2	F.T.E.
High School English Teaching Services	1	F.T.E.
Middle School Social Studies Teaching Services	1	F.T.E.
Middle School Language Arts Teaching Services	1	F.T.E.
High School Counseling Services	1	F.T.E.
TOTAL CERTIFICATED POSITIONS	18	F.T.E.

The proposed reductions totaled 18.00 full-time equivalent (FTE) positions.

4. The Board established “competency” criteria in Resolution No. 25, which states:

¶ . . . ¶

D. The “competency” as described in Education Code section 44955(b) for the purposes of bumping shall necessarily include: (1) possession of a valid credential in the relevant subject matter area; (2) fur bumping a holder of a Single Subject credential in a departmentalized course in grades 7-12, an equivalent Single Subject credential authorizing service in all grades 7-12; (3) “highly qualified status under the No Child Left Behind Act in the area to be assigned (if required by the position); and (4) an appropriate EL authorization (if required by the position).

- E. That as between certificated employees with the same seniority date, the order of termination shall be determined solely by the Board-adopted criteria.

¶¶ . . . ¶¶

The Board established the “competency” criteria for purposes of bumping or displacing more junior employees with senior employees who were competent and credentialed to hold the position held by the junior employees. There is no evidence that the competency criteria were arbitrary or capricious or otherwise invalid.

5. On February 26, 2013, the Board adopted Resolution No. 26, “Resolution to Adopt Criteria for Resolving Ties in Seniority Related to Certificated Layoffs”, which included clear instructions for implementation of the criteria. The order of termination was based on the needs of the District and its students.

6. On March 8, 2013, Jim Davis, Assistant Superintendent – Personnel Services (Assistant Superintendent), served permanent and probationary certificated Respondents with “Notice of Recommendation that Services Will Not Be Required”, the reasons for the Board’s action, an Accusation, a blank “Request for Hearing and Notice of Defense” form and relevant sections of the California Education Code and California Government Code. In addition, the Director advised Respondents of the right to hearing, that a Request for Hearing was required to be delivered to “the Board of Trustees c/o James Davis, Assistant Superintendent-Personnel Services” no later than March 22, 2013, and that the failure to request a hearing would constitute waiver of the right to hearing.

7. Each Respondent submitted a timely Request for Hearing and Notice of Defense to determine if there was cause for not re-employing him or her for the ensuing school year.

8. The District served each Respondent with a Notice of Hearing setting the hearing for April 24, 2013, in accordance with Government Code section 11509.

9. The Assistant Superintendent was responsible for implementing the technical aspects of the layoff. The District developed a seniority list for probationary and permanent certificated staff that included, among other matters, the name of the certificated employee, seniority date, status, assignment, credentials and whether the teacher is highly qualified.

10. The Assistant Superintendent used the seniority list to develop a proposed order of layoff to determine the least senior employees currently assigned in the various services that were being reduced. Then, the District determined whether the least senior employees held credentials in another area that would entitle them to “bump” other junior employees. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions and determined the impact on incumbent staff in inverse order of seniority. Then, the District checked the credentials of affected individuals and whether they could “bump” other employees. Once the District determined the teachers

who were subject to the reduction in force, the final list was drafted, and layoff notices were sent.

11. After layoff notices were sent, the District learned that the seniority date identified on its seniority list for Amy Carson (Carson)¹ was erroneous.

The Assistant Superintendent testified that the mistake was made because the District did not comply with Education Code section 44848²; Carson was originally hired around 2000; she resigned her employment with the District and then returned to the District in 2006;³ her seniority date in the seniority list was her original date of hire but it should have been her second date of hire; the correct seniority date for Carson is August 21, 2006. She holds Multiple Subject credential and is assigned to teach kindergarten/first grade during the 2012-2013 school year. Considering the Board's resolution for reduction of services, she should have received a layoff notice but did not because of the District's mistake regarding the determination of her seniority date.

The Assistant Superintendent testified that the mistake has been corrected; as a consequence of the mistake, the District rescinded the layoff notice to Lakeysa Mattis⁴, the most senior elementary teacher impacted by the District's error in calculating Carson's seniority date (and not serving her with a preliminary layoff notice); in addition, though he has a good faith belief that the remainder of the seniority list is accurate, the Assistant Superintendent represented that the District would audit its seniority list in the future.

¹ Amy Carson is identified on the District's seniority list as #220.

² Education Code section 44848 states:

When any certificated employee shall have resigned or been dismissed for cause and shall thereafter have been reemployed by the board, his date of employment shall be deemed to be the date on which he first accepted reemployment (if reemployed before July 1, 1947) or rendered paid service (if reemployed after June 30, 1947) after his reemployment.

When an employee's services are terminated for lack of enrollment or discontinuance of service or are otherwise interrupted in a manner declared by law not to constitute a break in service, his original order of employment shall stand.

³ No evidence was offered regarding specific dates of hire, termination or rehire.

⁴ Lakeysa Mattis is identified on the District's seniority list as #212. Her seniority date is September 23, 2005. Among other things, she holds a Multiple Subject credential and is assigned to teach fifth grade during the 2012-2013 school year.

Respondents argued that the District reduced or eliminated certain certificated services in 2010, that the issue regarding Carson's seniority date arose at that time, and that they were promised that the date would be corrected during the layoff hearing but it was not. As a result, Carson was improperly retained again. However, no Respondent testified or established that, but for the mistake regarding Carson's seniority date, he or she would not have received a layoff notice.

Respondents questioned the accuracy of the District's seniority list. There is no dispute that there was a mistake on the District's seniority list regarding Carson's seniority date. The District took appropriate action to rectify the mistake. The Assistant Superintendent described the process that the District currently uses to insure the accuracy of the seniority list. He testified that any and all appropriate changes are made that are brought to the District's attention. There is no evidence to the contrary. Therefore, insufficient evidence was offered to establish that the seniority list is not otherwise accurate.

12. The services that the Board proposed to reduce were "particular kinds of services" that can be reduced or discontinued within the meaning of Education Code section 44955. The Board's decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious but constituted a proper exercise of discretion.

13. The Board's reduction or discontinuance of particular kinds of services related to the welfare of the District and its pupils. The reduction or discontinuance of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Board.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in these sections are satisfied.

2. 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 vs. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. Cause exists under Education Code sections 44949 and 44955 for the Barstow Unified School District to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuance of particular kinds of services is related solely to the welfare of the schools and the pupils thereof.

4. The services of no permanent employee may be terminated while any probationary employee, or any employee with less seniority, is retained to render a service

that the permanent employee is certificated and competent to render. Junior employees may be given retention priority over senior employees only if they possess special skills or capabilities that their more senior counterparts lack. Under the statutory scheme, a senior employee whose position is discontinued has the right to transfer to a continuing position he is certificated and competent to fill, and in so doing may displace or “bump” a junior employee. (*Poppers v. Tamalpais Union High School Dist.* (1986) 184 Cal.App.3d 399, 405.)

5. No employee with less seniority than any Respondent is being retained to perform a service that any Respondent is certificated and competent to render.

6. All arguments not addressed herein are not supported by the evidence and/or the law and therefore rejected.

ORDER

1. The layoff notice issued to Respondent Lakeysha Mattis is rescinded, and the Accusation served on her is withdrawn.

2. Except as provided in paragraph one of this Order, the Accusation served on Respondents listed on Exhibit “A” is sustained. Notice shall be given to these Respondents before May 15, 2013 that their services will not be required for the 2013-2014 school year.

3. Notice shall be given in inverse order of seniority.

DATED: May 3, 2013

VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings