

BEFORE THE
BOARD OF EDUCATION
SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force
Involving the Respondents Identified in
Appendix A.

OAH No. 2012030803

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 16, 2012, in San Bernardino, California.

Todd Robbins and David Robinette, Atkinson, Andelson, Loya, Ruud & Romo, represented San Bernardino City Unified School District (District).

Carlos Perez and Angela Serranzano, Reich, Adell, & Cvitan, represented 187 respondents identified in Exhibit A (Exhibit 20).¹

Respondent Guy Krant appeared and represented himself.

No appearance was made by or on behalf of respondents Nancy Arroyo, Desiree Dragna, and Jennifer Yates.

Both before and during the hearing the accusations served on Dane Bagnell, Vance Bee, Sabrina Billings, Tira Bunn, Jennifer Cals Southern, Cynthia Camper, Franciscus Combs, Mary De Guzman, Yosan Hailemariam, Vanessa Johns-King, Elizabeth Lipsey, Oana Matei, Manuela Moreno, Lori Paluzzi, Marlan Parker, Rachel Payan, Ashley Quinn, Erika Shuss, Scott Smith, James Soward, and Roxanne Williams were withdrawn and their layoff notices rescinded.

Oral and documentary evidence was received and the matter was submitted on April 16, 2012.

¹ Mr. Perez acknowledged on the record that he represented all persons present at the hearing except for Mr. Krant.

FACTUAL FINDINGS

Jurisdiction

1. Harold J. Vollkommer, Ed.D., made and filed the accusation in his official capacity as the District's Assistant Superintendent, Human Resources.

2. Respondents are identified on Appendix A, attached hereto and by this reference incorporated herein. All respondents are certificated employees of the District.

3. On March 6, 2012, the Board of Education of the San Bernardino City Unified School District (Board) adopted a resolution which reduced particular kinds of services and directed the superintendent to give appropriate notices to certificated employees whose positions would be affected by the action. The resolution identified 251 FTEs to be reduced.

EL Authorization Skip

4. In the resolution the Board "determined that due to a significant population of English language learners with specialized educational needs, a specific and compelling need exists to employ and retain certificated employees who have formal (not emergency) authorization to teach English Learner ("EL") students, as determined by the California Commission on Teacher Credentialing, and the special training and experience that comes" from having that authorization.

5. The resolution specifically noted that the "failure to staff a classroom containing one or more EL students with a certificated employee possessing an appropriate EL authorization is 'misassignment' subject to sanction by the County Superintendent of Schools." The resolution referenced laws pertaining to EL students and noted that the district's needs and its students' needs "should not and cannot be adequately served by concentrating EL students in particular classrooms in such a manner as to lessen the need for certificated employees with EL authorizations." The Board further determined that "EL authorizations are not required for school counselors, nurses, psychologists."

6. The resolution authorized the Board to deviate from the seniority list, i.e. "skip," if necessary pursuant to Education Code section 44955(d), those employees with appropriate EL authorizations. Under Education Code section 44955, subdivision (d)(1), a District may skip a junior teacher being retained for specified reasons. (*Bledsoe v. Biggs Unified School District* (2008) 170 Cal.App.4th 127, 131.) Junior teachers may be given retention priority over senior teachers only if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.) A junior employee possessing special competence can be retained over a senior employee lacking such competence. (*Alexander v. Delano Joint Union High School District* (1983) 139 Cal.App.3d 567.)

7. Dr. Vollkommer testified that thirty-four percent of students in the District are English language learners, making it necessary to offer them bilingual education. His testimony established that the needs of the District required it to skip the certificated employees with an EL authorization.

Bump Analysis

8. The Board also implemented a bump analysis to determine which employees could bump into a position being held by a junior employee. The resolution defined “competency” pursuant to Education Code section 44955, subdivision (b), for the purposes of bumping as “(1) possession of a valid credential in the relevant subject matter area; (2) for 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 (not emergency) EL authorization (if required by the position).”

Layoff Determinations

9. Consistent with the Board’s Resolution, the District identified certificated employees for layoff. The decision to reduce or discontinue a particular kind of service is matter reserved to the district’s discretion and is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.) A school district’s decision to reduce a particular kind of service must not be fraudulent, arbitrary or capricious. (*San Jose Teachers Association v. Allen* (1983) 144 Cal. App. 3d 627, 637.)

10. The District considered attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees. No evidence was presented that any known positively assured attrition was not considered. The District must issue final layoff notices before May 15, and when it does so it will take into account any additional attrition that has occurred. After that, further attrition will allow the District to rehire laid off employees. A question arose during the hearing regarding the vacancies created by the attrition which has occurred since March 15, but the district is not required to consider those vacancies for purposes of this hearing. (*San Jose Teachers Association v. Allen* (1983) 144 Cal. App. 3d 627.)

11. On or before March 15, 2012, the District timely served on Respondents a written notice that the Superintendent had recommended that their services would be terminated at the close of the current school year. The reasons for the recommendation were set forth in these preliminary layoff notices.

12. The District also issued precautionary layoff notices to ensure that it could reduce its force in sufficient numbers as ordered by the Governing Board. There was nothing improper in the District taking this precaution.

13. An accusation was served on each respondent. No evidence was introduced demonstrating that all prehearing jurisdictional requirements were not met.

Respondent Guy Krant's EL Issue

14. Krant challenged the District's use of EL authorization as it applied to him. Krant asserted that he has been unable to obtain that authorization because of his learning disability. Krant and his wife both testified in this hearing and explained that his learning disability affects his ability to process information requiring him to spend more time to learn new information. Krant requested he not be laid off and that the District provide him with more time to obtain his EL authorization.

Official Notice is taken of the Board's 2010 and 2011 layoff decisions. In 2010 the Board noted that in "January 2009 the District was informed by the California Department of Education that it failed to meet 'Adequate Yearly Progress' and failed to meet the '100 percent Highly Qualified Teacher requirement for three consecutive years as mandated by NCLB'" which resulted in the District being "placed into Level C of the Compliance, Monitoring, Interventions, and Sanctions Program for the 2008-2009 school year." Owing to that non-compliance report and the fact that one-third of the District's students were EL students, the District "established the need for EL employees in the District." Additionally, the Board determined that "the district adopted a policy in 2007 advising teachers of the need for EL training and its value to the district" and "even took the further step of sending letters in late summer 2009 to all employees who were not EL certified advising them to get that certification as it was most likely going to be used as a skipping criteria. The district even went so far as to allow teachers right up until the day before the hearing to submit proof of having obtained that certification, even going so far as to go to the local university the Saturday before the hearing so that those employees who completed the training on that day could submit proof at that location, without having to drive to the district's offices to submit proof. The evidence clearly established that the district went "above and beyond" to advise employees of the importance of the EL certification and provided them with ample opportunity to obtain it. The evidence did not establish that the district's competency criteria were arbitrary or capricious. (*San Jose Teachers Association v. Allen* (1983) 144 Cal. App. 3d 627, 637.)"

In 2011 the Board determined that Mr. Krant's layoff notice should be rescinded because he had "been diligent in his effort to comply with the requirement that he obtain EL authorization" and would have obtained his authorization "had not been for his dyslexia." The Board concluded that because "of his dyslexia, he needs additional time to obtain it." Further, the Board held that "the district must make a reasonable accommodation in an attempt to enable Mr. Krant to maintain his position as an art teacher. Mr. Krant has multiple learning disabilities. They constitute an impairment that substantially limits one or more of his major life activities. He requires much more time than most people require to complete tasks involving memory, assimilating information, and responding to information. He has a long record of this impairment." Moreover, the Board determined that Mr. Krant was "prepared to engage in an interactive and cooperative process with the district to determine

appropriate accommodations” and that the “law contemplates an interactive and cooperative process to determine appropriate accommodations.”

The evidence introduced in this hearing regarding Mr. Krant’s attempts after last year’s hearing to obtain his EL authorization demonstrated that essentially Mr. Krant waited for the District to contact him and advise him of what accommodations it would provide. He did little if anything to participate in the process yet was on clear notice that his job was at risk. The testimony of Mr. Krant and his wife established that they now blamed his assignment of an art history class as another reason that he did not have enough time to take the exam, yet he never advised the District or his principal until just shortly before this year’s layoff notices were served that he needed additional accommodations. Given the clear notice from the District about the importance of an EL authorization and that it would likely be used as a skipping criterion, no reasonable justification was offered by Mr. Krant why he sat back and did almost nothing since May 2011 to obtain his EL authorization. Given that he was well aware that his position was subject to layoff, the evidence established that he should have taken an active role in the process and that the District did not “drop the ball” as Mr. Krant asserted. Moreover, Mr. Krant’s testimony demonstrated that he passively sat back and waited. He expected the District to actively pursue the matter with him and that was an unreasonable expectation. Mr. Krant was afforded ample time to obtain his EL authorization and no reasonable explanation for his failure to do so was offered at this hearing.

Precautionary Layoff Issues

15. The District issued precautionary layoff notices to ensure that it could reduce its force in sufficient numbers as ordered by the Board. There was nothing improper in the District taking this precaution. Given the notices that were withdrawn, some of the employees who initially received a precautionary layoff notice are now being placed on the district’s final layoff notice list while others had their notices rescinded.

Thomas Arrington’s Credential Issue

16. Thomas Arrington holds a Single Subject Industrial Arts/Technology credential which entitles him to teach a variety of industrial arts courses. He teaches a certified automotive repair course at San Bernardino High School. He asserted that another teacher with the same credential but more seniority is bumping him, but that that teacher is a drafting instructor. Mr. Arrington asserted that one “does not take their car to a draftsman for repairs” and that his experience in the industry has resulted in the course receiving national certification which it will no longer have if he is released. While all that may be true, the Legislature did not discriminate between the types of courses that one with an Industrial Arts/Technology credential can teach and the District properly bumped the other employee into Mr. Arrington’s position.

Precautionary Layoff Issues

17. The District issued precautionary layoff notices to ensure that it could reduce its force in sufficient numbers as ordered by the Board. There was nothing improper in the District taking this precaution. Given the notices that were withdrawn, some of the employees who initially received a precautionary layoff notice are now being placed on the district's final layoff notice list while others had their notices rescinded.

Final Layoff List

18. The District is not retaining any employee with less seniority to perform a service that any respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

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

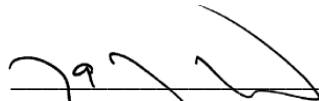
3. The decision to reduce or discontinue a particular kind of service is matter reserved to the district's discretion and is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

4. Because of the reduction of particular kinds of services, cause exists pursuant to Education Code section 44955 to give notice to respondents that their services will not be required for the 2012-2013 school year. The cause relates solely to the financial welfare of the schools and the pupils thereof within the meaning of Education Code section 44949. The District has identified the certificated employees who are providing the particular kinds of services that the Board directed be reduced or discontinued. It is recommended that the Board give respondents notice before May 15, 2012, that their services will not be required by the District for the school year 2012-13.

RECOMMENDATION

It is recommended that the Board give notice to the respondents whose names are set forth below that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2012-2013 school year.

DATED: April 23, 2012



MARY AGNĘS MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

Appendix A

RESPONDENTS

The following certificated personnel will receive a layoff notice:

1	Agha, Farah
2	Alas-Negri, Marisela
3	Alba, Maribel
4	Alcantar, Esmeralda
5	Amaya, Clarissa
6	Anderson, Brianna
7	Angulo, Elizabeth
8	Applegate, Valerie
9	Arreola, Fiorella A
10	Arrington, Thomas
11	Arroyo, Nancy
12	Baker, Cordell
13	Barajas, Esther
14	Barbu, Diana
15	Barron, Maria Aurora C
16	Berst II, Mark Allen
17	Beuler, Joyella Jane
18	Blacksher, Francine
19	Blacksher, Kristina
20	Boren, Alba Leticia
21	Bothum, Andrea
22	Bradbury, Edith
23	Brito, Liliana
24	Brothers, Danielle N
25	Brown, Eboni
26	Brown, Nicole R
27	Brown, Norma
28	Budnik, Chris
29	Cachu, Laura
30	Camargo, Veronica C.
31	Campbell, Kimberly Leanne
32	Carney, Amber
33	Carson, Wendi
34	Casanova, Belinda

36	Chavez, Patricia
37	Chea, Stacy
38	Chen, Susan
39	Chen, Thelma
40	Clobes, Rob J
41	Cobos, David
42	Coffman, Allison
43	Coleman, Damon
44	Cooney, Melody
45	Cooper, John
46	Cordova, Erika
47	Corral Cabral, Janett
48	Corsaro, Alyshea
49	Cowley, Sharon M
50	Craig, Sally Z
51	D'Alessandro, Alicia J.
52	Datema, Jodi
53	Dean, Cassandra
54	Dean, Kristen M
55	Delano, Matthew
56	DeLaTorre, Jorge E
57	Delucio, Gabriella
58	Denniston, Crystal
59	Diaz, Cathleen
60	Dorame, Eric
61	Dorame, Susan G
62	Doswell, Quinton
63	Dotson-Kelly, Erin
64	Dotson, Charlitha J.
65	Downing, Stephanie
66	Dragna, Desiree M
67	Duag, Elaine
68	Duran, Samuel
69	Eaton, Martha

35	Chao, Cham
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71	Elida Ceja
72	Ellison, Kelleigh
73	Enciso, Diana
74	Escalante Butterfield, Angel
75	Escareno, Donna J
76	Esparza, Robyn
77	Esquedea, Irene
78	Esquibel, Malissa
79	Estrada, Stephanie
80	Estrella, Briana J
81	Fletcher, Stephanie
82	Garcia, Diana
83	Garcia, Helen
84	Garner, Jessica
85	Glass, Daisy
86	Gomez, Paloma
87	Gonzalez, Erika
88	Gordon, Laura
89	Grajeda, Marie
90	Gueringer, Ronnie J
91	Guerrero, Yadira
92	Gutierrez, Heidi
93	Gutierrez, Mayra
94	Guzman, Liset
95	Hall, Aaron M
96	Hammer, JoAnn
97	Harnden, Joshua
98	Hernandez-Duarte, Norma
99	Herrin, Keiana
100	Hicken, Neil R
101	Higuera, Sonia
102	Hilburn, Deanna
103	Hill Jackson, Talena
104	Hill, Justin
105	Hollington, Colleen

70	Edmonds, Alicia
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106	Hose, Jamie
107	Hudson-Cousins, Shakirah Nar
108	Huerta, Marisela
109	Hunter, Marcia
110	Islam, Silvee
111	Jamieson, Amanda
112	Jimenez-Garcia, Maria
113	Jimenez, Guadalupe
114	Juarez, Ileana
115	Kohler, Christopher H
116	Kojder, Megan
117	Krant, Guy G
118	Kuld, Gregory
119	Ladson, Nicole D
120	Lambert, Martha A
121	Lawson, Meredith
122	Lemos, Whittney
123	Liu, Amber
124	Lopez, Diana
125	Lopez, Elizabeth
126	Lopez, Yvette Yamille
127	Luchsinger, Leah M
128	Luna, Felicia
129	Luong, Thach
130	Macias, Julia
131	Maluenda, Janelle
132	Manansala, Edward Callera
133	Manjarrez, Amanda
134	Mao, Elisa
135	Maraj, Vijay
136	Marshall, Renita
137	Martin, Marrina R
138	McElroy, Aurora V
139	McGee, Arlene
140	Meaca, Marisol

141	Medina, Edwin J
142	Melendez, Suyapa
143	Mena Lisella, Nancy
144	Mendoza, Nora
145	Merino, Kevin Anthony
146	Moneta, Katie
147	Moore, Megan
148	Mora, Viridiana
149	Moreno, Denise
150	Morrison, Mary T
151	Muller, Thomas St. Francis
152	Murrillo, Albert
153	Navarro, Diana
154	Neuscheler, Scott Thomas
155	Ortega, Paulette
156	Oyas, Charles
157	Palaszewski, Meghan
158	Palhegyi, Margaret
159	Parker, Marlan L
160	Parks, Candace
161	Parrish, Janet
162	Patterson, Richard H
163	Pehl, Adriana
164	Pepe, John
165	Perez, Dennis B
166	Perez, Jeannette
167	Perryman, Adrian
168	Pinon, Enriqueta
169	Ponsler, Shawn
170	Potter, Jessica
171	Quezada, Rosalinda Vera
172	Quintero, Yeraldin
173	Raef, Teresa
174	Ramirez, Melissa Yong
175	Ramirez, Veronica

176	Renoir, Eugene
177	Reyes, Nancy V
178	Reza, Victoria
179	Rios, Erika
180	Robles, Rebecca Alexandra
181	Rodriguez, Sonia
182	Romero, Jesse
183	Ruffin, Cameron
184	Ruiz, Stefanie
185	Salcido, Denise
186	Samano, Erika Aguilera
187	San Angelo, Phillip Anthony
188	Sanchez, Sam
189	Sanz, Lizette
190	Sargent, Kimbre
191	Sassaman, Sandra
192	Schmidt, Amy
193	Schrock, Kayla
194	Scott, Patricia
195	Simko, Rebecca
196	Skinner, Christopher
197	Smith, Kelsey
198	Smith, Kevin K
199	Smith, Vanee
200	Solis, Jessica M
201	Sorrell, LaTonya
202	Spooner, Kimberlee
203	Stanton, Chelse
204	Sweetnam, Heidi
205	Tabler, Joeleinn J
206	Thomas, Erica Kim
207	Thompson, NaChe
208	Tonn, Sierra Diane
209	Torres, Oscar
210	Turner, Susan

211	Vasquez, Deborah
212	Verduzco, Georgina
213	Veronick, Sara
214	Villalobos, Maria
215	Wagner, Christina V
216	Walters, Kelly
217	Warren, Bonnie S. A.
218	White, Christopher
219	Wilkerson, Marcus
220	Williams, Erika
221	Williams, Nyesha Danielle
222	Wolfe, Mona L
223	Yates, Jennifer Lynn
224	Younglove, Gina
225	Zavala, Agustin
226	Zavala, Cynthia