

**BEFORE THE
JOINT MANAGEMENT BOARD OF THE
EAST SAN GABRIEL VALLEY REGIONAL OCCUPATIONAL
PROGRAM AND TECHNICAL CENTER
STATE OF CALIFORNIA**

In the Matter of the Reduction in Force of:

**CERTIFICATED TEACHERS OF EAST SAN GABRIEL VALLEY
REGIONAL OCCUPATIONAL PROGRAM AND TECHNICAL
CENTER,**

Respondents

OAH No. 2020040049

PROPOSED DECISION

Eileen Cohn, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, conducted a telephonic hearing of this matter on April 29, 2020, in Los Angeles County, CA.

Katelyn E. Trottier and Christopher D. Keeler, Attorneys at Law, represented East San Gabriel Valley Regional Occupational Program and Technical Center (complainant ROP or ROP). Annet Johnson, Director, Human Resources, ROP, was also present.

Respondent's Erica Medina-Blake (respondent Blake) and Jenice Garcia (respondent Garcia) were self-represented. Respondent Jennifer L. Carreno, who was present at the prehearing conference, withdrew her Request for Hearing/Notice of

Participation prior to the hearing, and did not appear.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on April 29, 2020.

SUMMARY

The Joint Managing Board (Board) of the ROP has decided to reduce or discontinue particular kinds of services and has given Respondent and others notice of its intent not to reemploy them for the 2020-2021 school year as certificated employees.

Respondents both possess active clear Career Education Technical Credentials issued by the California Commission on Teacher Credentialing (CTC) in the area of Health Science Medical Technology (HSMT).

The Board determined a reduction in force (RIF) was required for budgetary reasons. A total of the equivalent of 11.3 persons needed to be reduced, which were equivalent to a RIF of 23 individuals working in positions, including part-time positions. Respondents were bumped from their position by more senior certificated employees, but they were not in a position to bump more junior certificated employees. Respondent Garcia was bumped from her position by Ms. Carreno, who was also subject to the RIF and was bumped by a more senior certificated employee with the appropriate certification and credentials to teach her assigned subject area.

Respondent Blake challenged her release on the ground that she was qualified to teach areas of study assigned by any individual certified as an HSMT, including

those more junior than her teaching sports physical therapy. However, based upon the evidence of the requirements of teaching a high-quality ROP Program, in addition to their certification, certificated employees are selected for particular kinds of teaching services, based on their education and work experience. As such, respondent Blake was not entitled to bump a more junior certificated employee with an HSMT certification, but who also had educational credentials and work experience in the area of sports therapy.

Respondent Garcia did not contest her seniority or her rights to bump any other certificated employee. Nevertheless, the Board appropriately applied seniority and the bumping rights of Ms. Carrena to her position.

Complainant ROP's RIF is upheld.

FACTUAL FINDINGS

Jurisdictional Matters

1. Complainant followed the appropriate procedures to facilitate the RIF, notify the respondents of the RIF, the basis for the RIF, their rights and the opportunity to be heard. Respondents timely challenged the RIF and filed a Notification of Participation. The parties stipulated to jurisdiction and jurisdiction was supported by the exhibits. (Exs. 3, 4, 5, 6, and 7.)

2. All prehearing requirements have been met.

Background

3. Complainant ROP is independent of the school districts it serves and its certificated employees are not members of those school districts, but ROP employees. The ROP teaches over 6000 students and currently has 118 certificated employees. Complainant was formed by a Joint Powers Agreement between several school districts for the purpose of operating and maintaining an independent regional occupation program and post-secondary (including adult) career technical education, vocational education and advanced training. (Ex. 16 A.) It also provides educational services for expelled students. Certificated employees of the ROP are not included in computing the services required of a permanent employee of the school district. Complaint ROP derives its authority to operate as an independent body, with independent legal rights, including the ability to enter contracts and employ its own teachers, from Education Code section 52301 in combination with Government Code sections 6507 and 6508.

4. In the past, ROP employees were uniformly treated as “temporary employees,” but based upon recent case law limiting the application of that term to certificated employees in general,¹ the ROP has referred to its certificated employees as permanent probationary zero, or “prob zero” certificated employees.

5. Regardless of their status at the ROP, the evidence established that complainant ROP implemented the RIF by seniority, with exceptions, for bumping, in a

¹ *Stockton Teachers Association CTA/NEA v. Stockton Unified School District* (2012) 204 Cal. App.4th 446.

manner similar to school districts. The key difference for the ROP's "prob zero" certificated employees is that their seniority has been solely determined by their status with the ROP, not by their comparative seniority with certified employees in school districts which contract with the ROP.

6. Respondent Blake is a certificated employee of the ROP. She obtained her Career Education Technical Credential from the CTC in the subject area of HSMT in 2014, and her credential is set to expire, if not renewed, February 1, 2022. Her date of hire at the ROP is September 4, 2012. She teaches Health Careers and Introduction to Emergency Medical Services (EMS). Her highest degree of education is a Master of Arts.

7. Respondent Garcia is a certified employee of the ROP. She obtained her Career Education Technical Credential from the CTC in the subject area of HSMT in 2014, and her credential is set to expire, if not renewed, February 1, 2022. Her date of hire at the ROP is August 14, 2018. Her highest degree of education is a Masters of Arts.

Reduction in Force

8. (A) The ROP followed the procedure required of school districts for RIF even though technically its certificated employees are not permanent employees of any school district, but certificated hourly employees, or permanent "prob zero" employees of the ROP. (See *supra*, factual findings 3-5; Ex. 16B, pp. 2&3.)

(B) The ROP seeks to reduce or discontinue particular kinds of services that may be reduced or discontinued under Education Code section 44955. Except as otherwise provided by law, the services of a permanent employee may not be

terminated under the provisions of Education Code section 44955 while any probationary employee, or any other employee with less seniority, is retained to render a service which the permanent employee is certificated and competent to render. (Legal Conclusion 3.)

(C) The services which the ROP seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955.

9. (A) On February 27, 2020, the Board of the ROP adopted Resolution No. 1920-01, "Resolution to Approve the Reduction or Elimination of Particular Kinds of Services" (Resolution.) It determined it was "necessary at the end of the 2019-2020 school year to terminate the employment of certain certified employees of the ROP as a result of this reduction or elimination of particular kinds of services." The Resolution provides that "no permanent employee will be terminated while any probationary employee, or any other person with less seniority, is retained to render a service which said permanent employee is certificated and competent to render." (Ex. 2.)

(B) The Board approved a total of 11.3 full-time equivalent positions as part of the Resolution. A total of 23 part-time positions were subject to the layoff.

(C) The following particular kinds of services were identified:

PARTICULAR KIND OF SERVICE	FULL-TIME EQUIVALENT (FTE)
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Sports Physical Therapy Teacher	1.2
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Early Childhood Education Teacher	0.2
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Veterinary Science Teacher	0.2
Integrated Academic Instructor (MPA)	2.0
Counselor (MPA)	0.8
Medical Assistant Program Director	1.0
EMT Instructor and Program Director	1.0
TOSA — EMT Clinical Director	0.4
TOSA — Nursing Assistant Program Director	0.4
Nursing Assistant Teacher	2.2
Home Health Aide Teacher	0.2
Medical Insurance Billing and Coding Teacher	1.0
Pharmacy Tech Teacher & Program Director	1.1
HVAC Instructor	1.0
AAS Adjunct Faculty	0.4
Certificated Lead - Child Development Program & Childcare Center	1.0

10. In compliance with the Board's resolution and the Education Code, the ROP created a seniority list of all its certified employees. The ROP followed the CDE's and the CTC's guidance on the education and work experience required for a high-quality occupational and technical program.

11. (A) Annet Johnson, Director of Human Resources of the ROP testified about the process for determining who was subject to the RIF. She carefully referenced the exhibits which formed the basis of the ROP's identification of the certificated employees, and described the process in detail. Ms. Johnson was respectful of the hardships imposed by the RIF to its certificated employees and respondents. She answered questions from the ROP's counsel and respondents, with the same tone and consideration. Her testimony was supported by the evidence submitted and her experience at the ROP. As such, her testimony was credible and given great weight.

(B) According to CDE guidelines, a highly-quality ROP program utilizes subject-matter teachers, who not only are appropriately credentialed, have achieved an education which enhances their teaching of that subject-matter, but who also have work experience in the subject matter area. (Ex. 8.)

(C) The ROP followed the Resolution for elimination of particular kinds of services according to seniority. Despite referencing the guidelines imposed by the CDE and the CTC, no certificated junior employee was retained to perform a particular kind of service which could be performed by a more senior certificated employee.

Bumping

12. (A) Based upon the CDE and CTC standards, the ROP looked at the particular kinds of services subject to elimination and reviewed whether any more

senior certificated employees had the necessary credentials, education and job experience to “bump” a junior certificated employee in a position that was not being eliminated.

(B) The ROP identified the most senior certificated employee (SCE), with a start date of 2004, who is assigned a particular kind of service, the nurse assistant pre-certification post, that is being eliminated. This SCE is also certified as an HSMT but is a licensed vocational nurse (LVN) and, as such, has the necessary experience to also teach the medical assistant program taught by the most junior employee certificated as an HSMT, respondent Garcia, who possesses a Masters of Arts degree. Based on her seniority, the SCE bumped respondent Garcia.

(C) Ms. Carreno bumped respondent Blake. Ms. Carreno is assigned as the medical assistant program director, a particular kind of service being eliminated. Both Ms. Carreno and respondent Blake are certified as HSMTs, and both have Masters of Arts degrees. Ms. Carreno was hired in 2012 and respondent Blake was hired in 2015. Respondent Blake teaches health careers, a subject Ms. Carreno is also qualified to teach. Based upon her seniority, Ms. Carreno bumped respondent Blake.

(D) The SCE’s bump into respondent Garcia’s position and Ms. Carreno’s bump into respondent Blake’s position did not change the ROP’s determination of whether Ms. Carreno, respondents Garcia or Blake would be subject to the RIF. All were subject to the RIF.²

² Whether or how the order in which these specific certificated employees are bumped impacts when or if they are rehired should the Board, partially

Respondent Garcia

13. (A) Respondent Garcia testified and submitted a written statement which was identical to her testimony. (Ex. G-A.) Her qualifications and skill as a certified teacher were not questioned by the ROP. On the contrary, the ROP through the testimony of its witness, Ms. Johnson, and the opening statement of its counsel, made clear that the ROP valued its teachers, and did not want to lose them, but unfortunately had to implement the RIF due to budget challenges.

(B) Respondent Garcia understood she was subject to the RIF based upon employment seniority. However, she hoped to be reconsidered for her position based upon her "credentials, experience, empathy, compassion and dedication" to the education of disadvantaged students with "alternative learning styles." She noted her excellent relationships with staff, students and families, the excellence of her teaching health occupations in a health academy, her ability to adjust to on-line learning and prepare students for final exams, her strength at collaborating with "industry partners" including the City of Hope, to provide student with internships, clinical rotations, and her strength as a "tech savvy" teacher to design lesson plans, conferencing and discussion posts, to connect with and train students. Respondent Garcia has over 10 years of teaching experience and although her tenure at the ROP is relatively short, having started in 2018, her experience at the ROP expanded the scope and depth of her teaching skills. (Ex. G-A.)

or fully rescind its RIF resolution. However, the order of rehire is outside the scope of this decision.

Respondent Blake

14. (A) Respondent Blake challenged the ROP's failure to apply bumping criteria which would allow her to take the position of more junior certificated employees, particularly those teaching sports physical therapy.

(B) Respondent Blake has been working for the ROP for six years. Blake teaches Health Careers and Introduction to Emergency Medical Services. Within the Health Careers course, she provides an overview of most of the subject specializations taught at the ROP. Sports physical therapy is one of the subject areas she covers in her course. There are more junior employees certificated as HSMTs who are engaged in sports-related physical therapy coursework, who are not subject to the RIF.

(C) Ms. Johnson, referenced the CDE and CTC guidelines and established that there were no certificated employees junior to respondent Blake that could be bumped. (Exs. 8-12.) The more junior certificated employees had educational specialties as athletic trainers (AT), and direct work experience where they were engaged directly with student sports.

LEGAL CONCLUSIONS

1. The party asserting a claim or making charges in an administrative hearing generally has the burden of proof. (*Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155.) As no other law or statute requires otherwise, the standard of proof in this case requires proof by a preponderance of the evidence. (Evid. Code, § 115.)

Therefore, the ROP bears the burden of establishing cause to affirm the proposed layoff decisions by a preponderance of the evidence.

2. All notices and other requirements of Education Code sections 44949 and 44955 were met. Therefore, jurisdiction was established for this proceeding as to Respondent by reason of findings 1-2.

3. The ROP is independent of the school districts it serves, is not technically a school district, and its certificated employees generally are not permanent employees by reason of finding 3. However, for the purpose of the RIF, the ROP treated its certificated employees as "prob zero" employees and applied the same seniority criteria utilized by school districts, by reason of findings 3-5. Generally, a school district cannot terminate the services of a permanent or probationary employee for causes other than those specified in the Education Code. (Ed. Code § 44955, subd. (a).) Education Code section 44955, subdivision (b), authorizes a school district to terminate the services of permanent or probationary teachers under the following circumstances and subject to the following conditions:

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.

4. A school district has significant discretion to reduce services within the meaning of Education Code 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.) Such policy-making decisions are not subject to arguments as to the wisdom of their enactment, their necessity, or the motivations for the decisions. (*California Teachers Assn. v. Huff* (1992) 5 Cal.App.4th 1513, 1529.) Such decisions and actions must be reasonable under the circumstances with the understanding that "such a standard may permit a difference of opinion." (*Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831, 845.) The process of implementing layoffs is very flexible and school districts retain great flexibility in carrying out the process. (*Zalec v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838.

5. According to Education Code § 44955, subdivision (b), a school district is prohibited from terminating the services of a permanent employee while retaining any probationary employee, or any other employee with less seniority, to render a service

which the permanent employee is “certificated and competent to render.” (Legal Conclusion 6.) Accordingly, if a school district notifies a senior teacher that his or her position is subject to reduction or discontinuance, the senior teacher has the right to transfer to a continuing position which he or she is certificated and competent to fill. Junior teachers may be given retention priority over senior teachers if the junior teacher possesses the special training and experience that is necessary but is not possessed by their more senior colleagues. (Ed. Code, § 44949, subds. (b) and (d)(1); *Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399.)

6. The term “certificated” is defined by the provisions of the Education Code pertaining to credentials, but “competent” is not specifically defined. School districts have broad discretion to establish competency standards for purposes of exercising bumping rights, limited by a reasonableness standard. (*Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 564-65.) Competency may be defined in terms of skills and special qualifications for a position. (*Forker v. Board of Trustees* (1994) 160 Cal.App.3d 13.) The ROP followed the criteria set forth by the CDE and CTC in determining the competency of its certificated employees in its application of bumping criteria, by reason of findings 6-7, 10-12, and 14. As such, SCE, the more senior certificated employee who was competent to perform the particular kinds of services, performed by the most junior certificated employee, bumped respondent Garcia. Ms. Carreno, was more senior than respondent Blake, and Ms. Carreno was competent to perform the particular kinds of services of Ms. Blake. However, respondent Blake could not bump ROP’s more junior HSMT certificated employees, because respondent Blake did not share the same educational credentials or work experience a in the area of sports physical therapy, according to the CDE and CTC guidelines.

7. No evidence was presented to show that the ROP made any decisions with respect to a senior employee's bumping rights that were fraudulent, arbitrary, or capricious. To the extent respondent Blake asserted any bumping rights by her testimony, the evidence does not establish that she had the necessary education specialization or work experience consistent with CDE and CTC guidelines to teach in a position of a more junior certificated employee whose position was not being reduced or eliminated. Respondent Garcia did not expressly object to the RIF on the grounds of her seniority. Nevertheless, the evidence also established that no junior certificated employee was being retained with similar expertise and work experience as required by the CDE and CTC guidelines.

8. The ROP proved by a preponderance of the evidence that it fulfilled the requirements of Education Code section 44955 and had cause to reduce the number of certificated employees due to the reduction or discontinuation of particular kinds of services by reason of findings 3-14. The Board's decision to reduce or eliminate the identified services set forth in finding 9 was neither arbitrary nor capricious in that the decision relates solely to the welfare of the ROP and its pupils within the meaning of Education Code section 44949.


9. By reason of the findings and legal conclusions herein, the ROP met its burden of proof and may notify respondents their services will not be required for the 2020-2021 school year.

ORDER

1. The Statement of Reduction in Force is sustained.

2. The ROP may notify respondent Erica Medina-Blake and Jenice Garcia that their services will not be required for the 2020-2021 school year due to the reduction of particular kinds of services.

DATE: May 6, 2020

DocuSigned by:

EILEEN COHN

Administrative Law Judge

Office of Administrative Hearings