

BEFORE THE
GOVERNING BOARD
CENTINELA VALLEY UNION HIGH SCHOOL DISTRICT
COUNTY OF LOS ANGELES
STATE OF CALIFORNIA

In the Matter of the Layoff of:

David Bedell and other
certificated employees of the Centinela
Valley Union High School District,

Respondents.

OAH Case No. 2012070223

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on July 26, 2012, in Lawndale, California.

Carly A. Dadson, Attorney at Law, represented Bob Cox (Cox), Assistant Superintendent, Human Resources, Centinela Valley Union High School District (District).

Lawrence B. Trygstad, Attorney at Law, represented Respondents David Bedell, Nicole Elliott McGuffie, Guadalupe Gamboa (Gamboa), John Guilfoyle, Shakira Holt, Juan Salcedo, Thomas Teichmann, and Angela Tseng Perry, who are collectively referred to as Respondents.

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2012-2013 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2012-2013 school year.

The District rescinded the preliminary layoff notices issued to Caryn Charles (Charles) and Nathan Cooke.

Oral and documentary evidence, and evidence by oral stipulation on the record, was received at the hearing, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Assistant Superintendent Cox filed the Accusation in his official capacity.

2. Respondents are certificated employees of the District.

3. During the 2011-2012 school year, the District received revenue from the State of California based on its average daily attendance (ADA). The District's base revenue limit per unit of ADA was \$7,480.97. However, because of the State's fiscal crisis the Legislature and the Governor reduced this amount by a deficit factor adjustment of .80246, or \$1,477.79, and by a trigger reduction of \$63.59, and the District only received an actual, or funded, revenue limit of \$5,939.59 per unit of ADA for the school year.

4. The Budget Act for the State of California 2012-2013 fiscal year was enacted on or about June 26, 2012. The base revenue limit per unit of ADA for the 2012-2013 school year is projected to be \$7,723.97, which includes a 3 percent cost of living adjustment of \$243 per unit of ADA. However, the District's budget was reduced by a deficit adjustment of \$1,720.28, based on a deficit factor adjustment of .77728, and the cost of living adjustment was removed, leaving the actual revenue limit per unit of ADA at \$6,003.69. The resulting figure constitutes an increase in revenue limit per unit of ADA of \$64.10, or 1.08 percent, over the comparable figure for the 2011-2012 school year.

5. The District projects that if the additional revenues are not approved by the voters in the November 2012 election trigger reductions of \$457 per unit of ADA will reduce the revenue limit per unit of ADA to \$5,562.69, or \$376.90 (6.06%), less than the revenue limit per unit of ADA received during the 2011-2012 school year.

6. On July 5, 2012, the Governing Board of the District (Governing Board) accepted the recommendation of Assistant Superintendent Cox, and adopted Resolution Number 12-13/001, reducing or discontinuing the following services for the 2012-2013 school year in light of the decreased revenue projections:

<u>Service</u>	<u>FTE¹ Reduction</u>
Music	1.0
Business	3.0
Physical Education	1.0
Social Studies	1.0
Spanish	3.0
English	<u>1.0</u>
Total	10.0

¹ Full-time equivalent position.

7. On or about July 6, 2012, the District provided notice to the Governing Board and to Respondents that Respondents' services will not be required for the 2012-2013 school year because the total revenue limit per unit of ADA would not increase by 2 percent over the total revenue limit per ADA for the 2011-2012 school year and because, as a result, the Governing Board had determined that it was necessary to reduce particular kinds of services. Respondents thereafter filed timely requests for hearing.

8. On or about July 17, 2012, the District issued the accusation, and served it and other required documents on Respondents during the period of March 14, 2012 to March 22, 2012. Respondents thereafter filed timely notices of defense.

9. In Resolution Number 12-13/001, the Governing Board set a schedule of notice and hearing, as required by Education Code section 44955.5.² The notices were served and the hearing was held in accordance with the schedule. The remaining dates on the schedule are August 7, 2012 for the Administrative Law Judge to issue a proposed decision, an undetermined date between August 7 and 14, 2012 for the Governing Board to meet to consider the proposed decision, and August 14, 2012 for service of the final notices.

10. All prehearing jurisdictional requirements have been met.

11. The services set forth in factual finding number 6 are particular kinds of services which may be reduced or discontinued within the meaning of section 44955.

12. The District seeks to reduce or discontinue the services set forth in factual finding number 6 because the total revenue per unit of ADA for the 2012-2013 school year did not increase by at least 2 percent and the Governing Board determined that, as a result, it was necessary to reduce particular kinds of services. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

13. The reduction or discontinuation of services set forth in factual finding number 6, in the context of less than 2 percent growth in total revenue limit per unit of ADA and the need to continue providing services to students with available funds, is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

14. In Resolution 12-13/001 the Governing Board exempted from layoff certificated employees with science credentials and qualifications. Respondents did not challenge the exemption or present evidence that they held science certificates.

² All further references are to the Education Code.

15. a. On July 5, 2012, the Governing Board adopted Resolution 12-13/003, setting forth its tie-breaking criteria for employees with the same seniority date. The following criteria were applied in the order of priority to determine the order of seniority among those certificated employees with the same date of first paid service in a probationary position: fully credentialed; English-Learner authorization; multiple credentials; National Board certification; advanced degrees; units for salary beyond Bachelor's Degree; and verified teaching experience in K-12 public school districts outside the District.

b. The criteria have remained essentially unchanged over the past four years, with two exceptions. The order of priority was changed in one or two of the preceding four years, depending on the District's needs. More significantly, the District changed the seventh criterion from a lottery to teaching experience outside the District. Cox testified that he had recommended the change, and the Governing Board accepted his recommendation, because he desired seniority to be determined by criteria that reflected on the professional experience and qualifications of the teachers rather than by a random draw.

16. The change in tie-breaking criteria impacted one of the Respondents, Gamboa. Gamboa and Charles share the same seniority date, August 25, 2011. In the seniority list prepared for the Spring 2012 layoff, Gamboa had a lower seniority number than Charles, indicating greater seniority, by virtue of the lottery draw. Application of the current criteria reversed the order, and Charles had the lower seniority number. While both received preliminary layoff notices, Charles's notice has been rescinded because of her lower seniority number.

17. Gamboa presented evidence that she actually started working for the District in a probationary capacity on August 8, 2011. Her department chair called Gamboa and said it would be good for her to come in to receive training, to meet other Department staff and collaborate on projects, and to prepare lessons for the upcoming school year. Gamboa participated in these activities on August 8, 9, 10, and 11, 2011, from 9:00 a.m. until 2:00 p.m. Gamboa was paid \$38 per hour, which, as Cox testified, is the rate paid to all teachers who participate in training, collaborations, or conferences. Gamboa's regular rate of pay at the start of the 2011-2012 school year was \$54.11 per hour. Charles did not participate in the training or other activities during this period. New employee training was conducted on August 15, 2011.

18. With the exception of Respondent Gamboa, the District did not retain any certificated employee junior to any Respondent to render a service which any Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. The instant proceeding was conducted pursuant to section 44955.5, which incorporates the requirements contained in sections 44949 and 44955. The statute provides: "(a)

During the time period between five days after the enactment of the Budget Act and August 15 of the fiscal year to which that Budget Act applies, if the governing board of a school district determines that its total revenue limit per unit of average daily attendance for the fiscal year of that Budget Act has not increased by at least 2 percent and if in the opinion of the governing board it is therefore necessary to decrease the number of permanent employees in the district, the governing board may terminate the services of any permanent or probationary certificated employees of the district, including employees holding a position that requires an administrative or supervisory credential. The termination shall be pursuant to sections 44951 and 44955 but, notwithstanding anything to the contrary in Sections 44951 and 44955, in accordance with a schedule of notice and hearing adopted by the governing board. . . .”

2. Jurisdiction for the subject proceeding exists pursuant to sections 44949, 44955, and 44945.5, by reason of factual finding numbers 1 through 10.

Respondents argue that the statutory trigger for use of 44955.5 has not been met because the base revenue limit per unit of ADA actually rose by 3 percent. In evaluating this argument, the language of the statute must be scrutinized. In this regard, words in the statute must be given their plain and commonsense meaning in order to effectuate the legislative intent. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 775; *California Teachers Assn. v. Governing Bd. of Rialto Unified School District* (1997) 14 Cal.4th 627, 632-633; *Steketee v. Lintz, Williams & Rothberg* (1985) 38 Cal.3d 46, 51-52.) Section 44955.5 refers to “total revenue limit,” and not to a “base minimum limit” or to any other accounting starting point for the calculation of revenue. The statute must be read to refer to revenue actually received, not to that which could be hypothetically available. Moreover, such construction is consistent with the legislative intent apparent in the statute to give governing boards some options if revenues do not increase above the 2 percent threshold.

In this case, the District is not projected to actually receive a 3 percent increase in total revenue limit per unit of ADA, but a smaller increase after budgetary adjustments are made. As set forth in factual finding numbers 3 and 4, the projected total revenue limit per unit of ADA for the 2012-2013 school year is expected to increase by 1.08 percent over that received for the 2011-2012 school year, which is less than the 2 percent statutory threshold.

3. The District argues that its total revenue limit per unit of ADA may actually decrease if the voters fail to approve revenue increases on November 6, 2012. However, such outcome is not yet certain and cannot serve to invoke the layoff trigger in section 44955.5. Nevertheless, because such additional shortfall is a possibility, it is a factor that has been considered in evaluating whether the Governing Board abused its discretion in undertaking the layoffs.

4. Respondents also challenge the wisdom of reducing certificated staff instead of using reserve funds to retain the teachers. The court in *Campbell Elementary Teachers*

Association, Inc. v. Abbott (1978) 76 Cal.App.3d 796, 808, provided the following guidance to evaluate a district's exercise of its discretion: " '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.' (*Arthur v. Oceanside-Carlsbad Junior College Dist.* (1963) 216 Cal.App.2d 656, 663.) " With respect to the specific facts before it, the court noted that while the district wanted to keep as many certificated employees as possible, it faced many financial uncertainties. The district also desired to maintain maximum flexibility in determining staffing for the ensuing school year in light of available resources and educational needs. The governing board met and consulted with its business manager regarding the district's financial position. In these circumstances, the court concluded, the governing board's decision to reduce particular kinds of services was not arbitrary or capricious.

In the instant case, as in *Campbell*, the District provided sufficient evidence to establish it had not abused its discretion, which evidence was not contradicted. While the District has a \$3.5 Million reserve fund, its expenses are expected to exceed its revenues, and it expects to use any sums above the required reserve minimum level to meet its operating expenses for the 2012-2013 school year. Moreover, the deficit could be greater if voters do not approve additional funding in November 2012. In these circumstances, the District's decision to choose to undertake a layoff is not arbitrary or capricious.

5. The services listed in factual finding number 6 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 6 and 11.

6. Cause exists under sections 44949, 44955, and 44955.5 for the reduction of the particular kinds of services set forth in factual finding number 6, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 18.

7. Respondents argue that the District may not change the seniority list once it is established, but presented no authority in support of their position. Rather, section 44955 requires that "As between employees who first rendered service to the district on the same date, the governing board shall determine the order of termination solely on the basis of the needs of the district and the students thereof. . . ." Because of its focus on the needs of the district and its students, which needs may change from layoff to layoff, the statute must be construed to vest discretion in governing boards to select criteria for breaking ties at the time of a particular layoff consistent with the needs of the District and its students at the time of the particular layoff.

8. Respondent Gamboa asserts that her true seniority date is August 8, 2011. As set forth in factual finding number 17, she attended training, and engaged in collaborative and preparatory tasks with other teachers in her department, starting on August 8, 2011. The District argues that Gamboa should not receive credit for this date because she was not working “in a probationary capacity” until the first day of school.

The seniority date of a certificated employee is defined as the date the employee “first rendered paid service in a probationary capacity.” (§ 44845.) In giving these words their plain and commonsense meaning in order to effectuate the legislative intent, it is evident that the statute requires crediting a certificated employee with the seniority date on which he or she was first paid to render service in a probationary capacity. However, the statute does not expressly require a particular salary rate or schedule, a particular type of service in a probationary capacity, or that the service be “mandatory.”

It is undisputed that Respondent Gamboa was hired as a probationary employee for the 2011-2012 school year. Respondent Gamboa was hired to teach Spanish, and her department chair asked her to come to work to be trained and to prepare for the upcoming school year. Respondent Gamboa was paid for her work, and such payment constitutes her first paid service in a probationary capacity. No evidence was presented to indicate that Respondent Gamboa was a temporary employee prior to the first day of school or that the term of her employment contract starts on the first day students are present in school. Accordingly, Respondent Gamboa’s seniority date is August 8, 2011.

If the date on which the employee first rendered paid service in a probationary capacity is incorrect, the employee’s seniority date must be adjusted to reflect the earlier first date of probationary service. (*Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260, 1273.) Accordingly, the seniority date of Respondent Gamboa must be adjusted to reflect her earlier first date of paid service in a probationary capacity.

Once her seniority is adjusted, Respondent Gamboa has more seniority than a certificated employee retained to render a service for which Respondent Gamboa is certificated and competent to render, namely, Charles. Therefore, cause does not exist to terminate the services provided by Respondent Gamboa.

9. Cause exists to terminate the services provided by Respondents David Bedell, Nicole Elliott McGuffie, John Guilfoyle, Shakira Holt, Juan Salcedo, Thomas Teichmann, and Angela Tseng Perry for the 2012-2013 school year, by reason of factual finding numbers 1 through 18 and legal conclusion numbers 1 through 6.

ORDER

The Accusation is sustained in part and the District may notify Respondents David Bedell, Nicole Elliott McGuffie, John Guilfoyle, Shakira Holt, Juan Salcedo, Thomas Teichmann, and Angela Tseng Perry that their services will not be needed during the 2012-2013 school year due to the reduction of particular kinds of services.

DATED: July 31, 2012

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings