

BEFORE THE GOVERNING BOARD OF THE
VALLEJO CITY UNIFIED SCHOOL DISTRICT
COUNTY OF SOLANO, CALIFORNIA

In the Matter of the Non-Reemployment of:

CERTAIN CERTIFICATED EMPLOYEES,

Respondents.

OAH No. 2010031587

PROPOSED DECISION

This matter was heard before Diane Schneider, Administrative Law Judge, State of California, Office of Administrative Hearings, in Fairfield, California, on April 27, 2010.

Lawrence M. Schoenke, Attorney at Law, Dannis, Woliver and Kelley, 71 Stevenson Street, Nineteenth Floor, San Francisco, California, represented the Vallejo City Unified School District.

David Weintraub, Attorney at Law, Beeson, Tayer & Bodine, 1404 Franklin Street, Fifth Floor, Oakland, California, represented all respondents listed in Attachment B.

There was no appearance by or on behalf of respondents Janet Black, Trudi Cheever, Donna Chin, Rachael Ford, Anne Griffin, Kirsten Morgan, Mary Elizabeth O'Connell, Heather Patereau, Linda Peterson, and Charlotte Sanchez.

FACTUAL FINDINGS

1. Reynaldo Santa Cruz made and filed the Accusations in his official capacity as Superintendent of the Vallejo City Unified School District (district).

2. On March 3, 2010, the district's Governing Board adopted Resolution No. 2461, which sets forth the board's determination that it will be necessary for the district to reduce or discontinue particular kinds of services (PKS) for the 2010-2011 school year, for a total of 106.96 full-time equivalent (FTE) certificated positions. (Resolution No. 2461 is set forth in Attachment C.)

3 All notices were timely and properly served. All notices and other jurisdictional requirements contained in Education Code sections 44949 and 44955 have been provided or satisfied.

4. The certificated employees who requested a hearing are identified in Attachment A. The respondents represented by Mr. Weintraub are identified in Attachment B. The following respondents were neither present nor represented at the hearing: Janet Black, Trudi Cheever, Donna Chin, Rachael Ford, Anne Griffin, Kirsten Morgan, Mary Elizabeth O'Connell, Heather Patereau, Linda Peterson, and Charlotte Sanchez.

5. Prior to the hearing, the district rescinded the layoff notices issued to Danielle Brever and Irmozine Petite.

6. Resolution No. 2461 contains skipping criteria. It provides:

BE IT FURTHER RESOLVED that the District may deviate from terminating certificated employees in order of seniority, based on a specific need for personnel who possess special training and/or experience, or competency, necessary to teach specific courses, programs or courses of study or to provide specific services, which others with more seniority do not possess, as follows;

1. **Instruction of English Language Learners:** Possession of either of the following:
 - a) Cross-Cultural language Academic Development Certificate (CLAD) or
 - b) As of February 1, 2010, possess a current emergency CLAD permit through the 2009- 2010 school year or obtaining a CLAD certificate during the 2009-2010 school year, prior to the expiration of the emergency CLAD permit.
2. **Vallejo Charter School:** Special training in the Expeditionary Learning Program, and experience teaching at the Vallejo Charter School at least one (1) year within the last three (3) years and being Highly Qualified in assigned subject matter.
3. **Special Education Program:** (Professional Clear, Life, General, Preliminary Credentials, District/University Intern Credential, and/or authorizations.)

4. **Math Program:** (Professional Clear, Life, General, and Preliminary Credentials. Standard Secondary Credential, with a major/minor and/or supplementary authorization, Single Subject Credential, with a major/minor, District/University Intern Credential, and/or supplementary authorization.)
5. **California Partnership Academy:** The California Department of Education will support the movement of all teachers identified within the California Partnership Grants, both academic and career tech credentialed teachers who have been identified as the core team of teachers for each of the three CA Partnership Academies from Hogan High School to other high schools.

7. The only skipping criterion applied by the district was number five, pertaining to the California Partnership Academy (CPA). Pursuant to skipping criterion number five, Nona Cohen-Bowman, Director of Human Resources, Vallejo City Unified School District, skipped all of the CPA core teachers with the exception of respondent Gerard Lobo. Lobo teaches social science in the Biotechnology Academy, which is a CPA at Hogan High School. Cohen-Bowman testified that she did not skip Lobo because he did not attend training provided to CPA teachers from February 28 to March 2, 2010, in Southern California.¹ Cohen-Bowman also stated that she did not skip Lobo because she needed to find a position for a social science teacher from another school. Cohen-Bowman reassigned this social science teacher to Lobos' core social science position in the CPA at Hogan High School.

8. Respondent Lobo contends that as a core teacher in the CPA at Hogan High School, he falls squarely within the CPA skipping criterion. He claims that the district acted unreasonably and arbitrarily when it skipped all of the core teachers in the CPA at Hogan High School except him. Lobo acknowledges that he missed the training in Southern California. He argues, however, that because attendance at trainings is not mentioned in the CPA skipping criterion, the district may not refuse to skip him based upon his failure to attend training.

9. Lobo is correct. The district erred when it applied the skipping criterion to all core teachers in the CPA at Hogan High except Lobo. By virtue of his core teaching position at CPA, Lobo met the skipping criterion in the CPA skipping criterion. Lobo's failure to

¹ Lobo was unable to attend this training because he was on family leave following the birth of his first child.

attend training does not provide a basis for excluding him from the teachers who were skipped, because the CPA criterion does not mandate attendance at trainings. Under these circumstances, the district's decision to skip all core teachers in the CPA at Hogan High except Lobo was unreasonable and arbitrary.

10. The reduction or discontinuation of services is related to the welfare of the district and of its pupils.

11. Any contentions raised by respondents and not discussed above are found to be without merit and are hereby rejected.

12. No junior employee is being retained to render a service that any of the respondents are certificated and competent to perform.

LEGAL CONCLUSIONS

1. The services identified in Attachment C are particular kinds of services that may be reduced or discontinued under Education Code section 44955. The board's decision to reduce or discontinue the identified services complied with the guidelines set forth in Education Code section 44955. The board's decision was neither arbitrary nor capricious, and was a proper exercise of its discretion.

2. Based upon the matters set forth in Factual Findings 7 through 9, the district applied the CPA skipping criterion in an arbitrary fashion when it skipped all but one teacher, respondent Lobo, who met the skipping criteria. (*See Campbell Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 808.) Cause, therefore, does not exist to give notice to respondent Gerard Lobo that his services will not be required for the 2010-2011 school year.

3. Cause exists because of the reduction or elimination of particular kinds of services pursuant to Education Code section 44955 to give notice to respondents listed in Attachment A, other than Gerard Lobo, that their services will not be required for the 2010-2011 school year. The cause relates to the welfare of the schools and the pupils thereof within the meaning of section 44949.

ORDER

1. Notice may not be given to respondent Gerard Lobo that his services will not be required for the 2010-2011 school year.

2. Notice may be given to the remaining respondents identified in Attachment A that their services will not be required for the 2010-2011 school year because of the reduction or discontinuation of particular kinds of services.

DATED: _____

DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings

List of Attachments

Attachment A: List of Respondents

Attachment B: Respondent's represented by Mr. Weintraub

Attachment C: Resolution No. 2461