

BEFORE THE
GOVERNING BOARD
OF THE
CAJON VALLEY UNION SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Certificated Employees Listed in Exhibit
“A,”

Respondents.

OAH No. 2010020612

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in El Cajon, California on April 14, 2010.

Anthony P. De Marco, Esq., Atkinson, Andelson, Loya, Ruud & Romo represented Kari S. Hull, Assistant Superintendent of Personnel Services.

There was no appearance by or on behalf of Respondents Rebecca Chui, Kathryn Connolly, Ana Hernandez, Kristen Luck, Nora Menzies, Marcos Michel, Jacklyn Pike, Lindsay Pugh, Lauren Sauer, Christina Shields, Teresa Simms and Kellyn Thompson.

Fern M. Steiner, Esq., Tosdal, Levine, Smith, Steiner & Wax, represented all Respondents, with the exception of those listed in the foregoing paragraph.

The matter was submitted on April 14, 2010.

SUMMARY OF PROPOSED DECISION

The Board of Education of the Cajon Valley Union School District determined to reduce or discontinue particular kinds of services provided by teachers for budgetary reasons. The decision was not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

District staff carried out the Board’s decision by using a selection process involving review of credentials and seniority, “bumping,” “skipping” and breaking ties between/among

employees with the same first dates of paid service. The selection process was in accordance with the requirements of the Education Code.

FACTUAL FINDINGS

1. Respondents listed on Exhibit “A” (Respondents) are probationary or permanent certificated employees of the Cajon Valley Union School District (District).

2. On March 2, 2010, Janice Cook, the District’s Superintendent (Superintendent) notified the District’s Governing Board (Board) of her recommendation to reduce or discontinue services for the ensuing school year and stated the reasons for her recommendation.

3. On March 2, 2010, the Board adopted the Superintendent’s recommendation and thereby took action to reduce or eliminate the following particular kinds of services, commencing the 2010-2011 school year. Further, the Board directed the Superintendent or her designee to send the appropriate notices to all certificated employees of the District who would be laid off as a result of the reduction of the particular kinds of services.

4. On March 3, 2010, the Superintendent served permanent and probationary certificated employees with written notice that she recommended not to re-employ them in the 2010-2011 school year and stated the reasons therefor. In addition, the notice advised Respondents of the right to hearing, that the request for hearing must be delivered to the District’s office no later than March 12, 2010, and that the failure to request a hearing would constitute waiver of the right to a hearing.

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

6. On March 17, 2010, the Superintendent made and filed an Accusation for lay-off of certificated employees. She served each individual who submitted a Request for Hearing with an Accusation, Notice of Defense, Notice of Hearing and related materials.

In response, Respondents submitted a timely Notice of Defense.

Travis Lee is a certificated employee who received a layoff notice, did not file a timely Request for Hearing and/or Notice of Defense and appeared at the hearing. The District had no objection to his presence at but objected to his participation in the hearing.

Christina Duncan, Katherine O’Donoghue and Jacob Ruth are certificated employees of the District; each received a layoff notice, filed a timely Request for Hearing, did not file a Notice of Defense and appeared at the hearing. The District waived objection to their participation in the hearing.

7. All prehearing jurisdictional requirements were satisfied.

8. On March 2, 2010, the Board adopted Resolution number 03-10-848 JC, ordering the release of temporary certificated employees from their temporary assignment in order to effectuate the reduction of particular kinds of services. Nevertheless, the District noticed temporary certificated employees and allowed them to participate in the hearing. There is no dispute that the employment of all temporary certificated employees will be terminated at the conclusion of the 2009-2010 school year.

9. There was no appearance by or on behalf of Respondents Rebecca Chui, Kathryn Connolly, Ana Hernandez, Kristen Luck, Nora Menzies, Marcos Michel, Jacklyn Pike, Lindsay Pugh, Lauren Sauer, Christina Shields, Teresa Simms and/or Kellyn Thompson.

10. Prior to conclusion of the hearing, the District rescinded layoff notices previously issued to Respondents Dyana Bible, Nicole Bradshaw, Jenny Finnegan, Timothy Staninger and Robert Wade.

11. On March 2, 2010, the Board adopted Resolution No. 03-10-847 JC and thereby took action to reduce or eliminate the following particular kinds of certificated services commencing the 2010-2011 school year as follows:

Type of Service	FTE
6 Grade, Core Instruction	3.5
6-8, Newcomers	2.9
Art	1
ASB	0.2
AVID	1.4
Band	0.2
Career Explorations	0.2
Computer Animation	0.4
Counseling	1
Creative Writing	0.2
Drama	0.6
Early Admission to Kindergarten	3.36
English	4.8
English Language Development	2
Facilitator, English Learner	1.5
Facilitator, Title I	1.2
Geography	0.4
History	2.8
Hourly Support Teachers	28
Instructional Coach	1.9
Intervention, 6-8	1
K-5 Classroom Instruction	27.3
K-5, Bilingual Classroom Instruction	5
Life Skills	0.2
Math	2
Music	0.3
Physical Education	4.3
Publications	0.2
Science 7	2
Spec. Ed: Adaptive P.E.	0.6

Spec. Ed: Community Day	
Spec. Ed: RSP	
Spec. Ed: Reading Coach	0.5
Spec. Ed: DHH	0.3
Spec. Ed: M/M	3
Sports Leadership	0.2
Support Teacher	4.65
Support Teacher, Art	0.8
Support Teacher, Bilingual	0.45
Support Teacher, CSR	0.9
Support Teacher, EL	0.9
Support Teacher, ELA	2.3
Support Teacher, High Point	0.45
Support Teacher, Intervention	0.45
Support Teacher, Life Lab	0.4
Support Teacher, Music	0.4
Support Teacher, Newcomers	1.8
Support Teacher, P.E.	0.4
Support Teacher, REACH	0.45
Support Teacher, Read 180	1.35
Tech Arts	1
TOTAL FTE	123.16

The proposed reductions totaled 123.16 full-time equivalent (FTE) positions.

12. The District considered all positively assured attrition in determining the actual number of final layoff notices to be delivered to its certificated employees.

13. Kari Hull, the District's Assistant Superintendent, Personnel Services (Assistant Superintendent) was responsible for implementing the technical aspects of the layoff. The District developed four different seniority lists. The seniority list for noticed certificated employees contained, among other matters, the teacher's name, seniority date, status, site, assignment, English Language Certification (if any) and credential(s).

The seniority date was based on the first date of paid service rendered in a probationary position.¹ A teacher hired as a probationary employee who worked as a substitute or temporary employee for at least 75 percent of the school days during the previous year and who had performed the duties normally required of a certificated employee of the school district was deemed to have served a complete school year as a probationary employee if that individual was employed as a probationary employee for the following school year. The individual was entitled to have that earlier year counted as a year of probationary service. The prior year was "tacked" on for seniority purposes but only one year could be tacked.²

¹ Education Code section 44845.

² Education Code section 44918.

14. In reducing or eliminating particular kinds of services, the services of no permanent employee may be terminated while retaining any employee with less seniority to render a service which said permanent employee is certificated and competent to render.³

The District used the seniority list for permanent and probationary certificated employees to develop a proposed order of layoff and a “bumping” list to determine the least senior employees currently assigned in the various services being reduced. The District then 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. The District then checked the credentials of affected individuals and whether they could “bump” other employees.

In general, certificated employee layoffs occur in order of seniority. However, statutorily authorized exceptions apply in cases where “special training or experience” is necessary to teach a particular course or provide a particular service which others with more seniority do not possess.⁴

15. Certain junior employees with specialized education and training who were hired after other more senior Respondents were skipped and retained by the District. Among other things, these junior employees hold a Special Education (Mild/Moderate and/or Moderate/Severe) Credential or Administrative Credential.

16. Some employees named as Respondents have the same seniority date. By adoption of Resolution No. 03-19-847 JC, dated, the Board adopted tie-breaker criteria to determine the order of termination of employees with the same seniority date. The Board determined their order of termination solely on the basis of needs of the District and its students. Under these criteria the District properly retained certain employees while the Respondents were properly given notice that their services would not be required for the ensuing school year. With the exception of “Completion of International Baccalaureate Training”, the tie-breaker criteria are the same as last year. As such, for those employees who have the same seniority date and again received layoff notices, the District did not apply tie-breaker criteria unless there had been a change of circumstances.

17. As a result of reduction or elimination of particular kinds of services and/or bumping, the following Respondents will experience a partial reduction of position.

- For the 2009-2010 school year, Respondent Laura Graham has a 1.0 FTE position. For the ensuing school year, her position will be reduced by .30 FTE; she will retain .70 FTE position.

³ Education Code section 44955, subdivision (b).

⁴ Education Code section 44955, subdivision (d).

- For the 2009-2010 school year, Respondent Casey Lange has a 1.0 FTE position. For the ensuing school year, her position will be reduced by .40 FTE; she will retain .60 FTE position.
- For the 2009-2010 school year, Respondent Rachel Conroy has 1.0 FTE position. For the ensuing school year, her position will be reduced by .40 FTE; she will retain .60 FTE position.
- For the 2009-2010 school year, Respondent Nina Tubbs has a .80 FTE position. For the ensuing school year, her position will be reduced by .65 FTE; she will retain .15 FTE position.
- For the 2009-2010 school year, Respondent Robert Bush has a .80 FTE position. For the ensuing school year, his position will be reduced by .50 FTE; he will retain .30 FTE position.

18. The services that the District 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.

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

20. No certificated employee junior to any Respondent was retained to perform services which any Respondent was certificated and competent to render.

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 Cajon Valley Union 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. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he/she is certificated and competent to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. (*Lacy vs. Richmond Unified School District* (1975) 13 Cal. 3d 469.)

5. The District has the discretion to determine whether teachers are certificated and competent to hold the position for which said teachers have been skipped and retained. (*King v. Berkeley Unified School District* (1979) 89 Cal.App.3d 1016) Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers, Local 2393 v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831)

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

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

ORDER

1. The Accusation against Respondents Dyana Bible, Nicole Bradshaw, Jenny Finnegan, Timothy Staninger and Robert Wade is dismissed.

2. The Accusation against Respondent Laura Graham is sustained.

Notice shall be given to Respondent Laura Graham that her position will be reduced by .30 full-time equivalent for the 2010-2011 school year because of the reduction or discontinuance of particular kinds of services.

3. The Accusation against Respondent Casey Lange is sustained.

Notice shall be given to Respondent Casey Lange that her position will be reduced by .40 full-time equivalent for the 2010-2011 school year because of the reduction or discontinuance of particular kinds of services.

4. The Accusation against Respondent Rachel Conroy is sustained.

Notice shall be given to Respondent Rachel Conroy that her position will be reduced by .40 full-time equivalent for the 2010-2011 school year because of the reduction or discontinuance of particular kinds of services.

5. The Accusation against Respondent Nina Tubbs is sustained.

Notice shall be given to Respondent Nina Tubbs that her position will be reduced by .65 full-time equivalent for the 2010-2011 school year because of the reduction or discontinuance of particular kinds of services.

6. The Accusation against Respondent Robert Bush is sustained.

Notice shall be given to Respondent Robert Bush that his position will be reduced by .50 full-time equivalent for the 2010-2011 school year because of the reduction or discontinuance of particular kinds of services.

7. Except as provided in the foregoing paragraphs 1, 2, 3, 4, 5 and 6 of this Order, the Accusation served on Respondents listed on Amended Exhibit "A" is sustained. Notice shall be given to Respondents listed on Amended Exhibit "A" before May 15, 2010 that their services will not be required for the 2010-2011 school year because of the reduction or discontinuance of particular kinds of services.

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

DATED: _____

VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings