

**BEFORE THE
GOVERNING BOARD OF THE
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

**In the Matter of the Teacher Reduction in Force for:

CERTAIN CERTIFICATED EMPLOYEES, Respondents.**

OAH No. 2021040008

PROPOSED DECISION

Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter via video conference on April 22, 2021, from Sacramento, California.

Erin Hamer and Katherine Holding, Attorneys at Law, of Lozano Smith, represented the Sacramento City Unified School District (District).

Lesley Beth Curtis and Eric Lindstrom, Attorneys at Law, of Langenkamp Curtis & Price, represented Lissa Alvarado, James Ballenger, Lori Blankenship, Daniel Cacho, Roderick Calvin, Patricia Carrillo, Bonnie Chufar, Zachary Cuda, Jorje Cruz, Hong-An Doan, Lorraine Doll, Linda Franco, Mallory Hallford, Zachary Hill, Tania Huerta-Espinoza, Kristen Hughes, Howard Hume, Amy Hutton, Lynell Johnson, Judy Lim, Alyssa Mattson, Colleen McClain, Alexandra Mondragon, Tiffany Pletz-Planchon, Nicola Peruzzi, Lina Pittman, Ruth Rosa, Francoise Schmitt, Jamie Schwartz, Karen Scinto, Maria Sevilla, Britney Thompson, Wesley Tite, Tamara Toby, Bao Vang, Paul Von Lahr, and Jaime Wolf (represented respondents).

Respondents Amanda Casteel and Antonia Rozakis represented themselves.

Oral and documentary evidence was received on April 22, 2021. The record was left open to allow the represented respondents an opportunity to review the updated seniority list and lodge objections, if any. The record was closed and the matter submitted for decision on April 23, 2021.

ISSUES

The only issues presented at hearing are whether there is jurisdiction over respondent Roderick Calvin and what respondent Wesley Tite's seniority date is. Once those two issues are determined, the represented respondents and the District agreed to stipulations that precluded the need for a hearing.

FACTUAL FINDINGS

1. In total, the District identified 132.05 fulltime equivalent (FTE) positions to be eliminated for the 2021/2022 school year. After accounting for attrition and vacant positions, the District identified 39 certificated employees whose positions were being eliminated, or were otherwise subject to layoff. This matter was called for hearing on April 22, 2021. At the start of hearing, the represented respondents and the District stated they had reached an agreement, but there were outstanding jurisdictional and seniority matters to address that bore on the agreement. Evidence was received only to the extent they bore on these preliminary matters. This Proposed Decision is limited to those legal issues.

2. Respondents Rozakis and Casteel were given the opportunity to participate in the hearing and to meet individually with District counsel to discuss any possibilities for settlement. Each stated she understood her options and that each had a right to proceed with hearing. Following a brief settlement discussion with District counsel, these respondents knowingly and voluntarily withdrew their requests for hearing. The District indicated these respondents will receive final layoff notices.

Jurisdiction: Roderick Calvin

3. The District presented evidence its human resources department mailed respondent Roderick Calvin a preliminary layoff notice (notice) to his address of record on March 11, 2021, via certified mail. On March 23, 2021, the notice was returned to the District. No one had signed for the certified mail and someone wrote on the front of the envelope "Not Here."

4. Respondent Calvin did not dispute the envelope was sent to his address of record. He testified he receives other mail from the District at that address. He stated his mother is home at that address "100 percent of the time." He warned his family a letter may be coming from the District, and he does not know why he did not receive the certified mail.

5. Because respondent Calvin did not receive the layoff notice, he did not return a timely request for a hearing. He stated that he would have done so had he

received the notice. At hearing, the District rescinded respondent Calvin's layoff notice, unrelated to this jurisdictional matter.¹

6. The District argued that mailing the preliminary notice by certified mail to respondent Calvin's address of record satisfied the service requirement. The District's assertion is supported by the Education Code. Education Code section 44949, subdivision (d), states:

Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.

7. Additionally, Education Code section 44955 states that if an employee "is not given the notices . . . " he "shall be deemed reemployed" for the following school year. The language here is important as it refers to an employee being given the notices, rather than an employee receiving the notices. The District "gave" respondent Calvin his preliminary notice.

8. The District met its statutory requirement to send respondent Calvin his preliminary notice by registered mail to his address of record. Respondent Calvin did not dispute his address of record. The mail was sent to the correct address, no one

¹ The District acknowledged the rescission makes this issue moot, but requested these written findings.

signed for it, and someone wrote “not here” on the envelope. For these reasons, there is no jurisdiction over respondent Calvin.

Seniority: Wesley Tite

9. The District’s recorded seniority date for respondent Wesley Tite is March 1, 2021. Respondent Tite presented evidence that he started with the District as a substitute teacher at Rosemont High School on October 19, 2020. Respondent Tite worked in the same classroom from October 19, 2020, through the time of his hire as a fulltime probationary employee on March 1, 2021. Respondent Tite argued his actual seniority date should reflect his initial start date of October 19, 2020.

10. Mr. Tite taught for two districts in the 2020/2021 school year. He worked on a part-time basis for the District. From October 19, 2020, through October 30, 2020, he worked five days per week for the District. From November 2, 2020, through February 26, 2021, he worked three days per week for the District: Monday through Wednesday. He then prepared a plan for a substitute to implement on Thursdays and Fridays. During this time, he worked Thursdays and Fridays for another school district. In January 2021, he interviewed for and was offered a full-time position for the classes he was currently teaching on a part-time basis for the District. On February 26, 2021, his contract ended with the second district, which allowed him to transition from his part-time position to full-time.

11. Respondent Tite believed he was the teacher of record for the classroom. He assigned grades, created the lesson plan, and had control of the “Google classroom” website for the classes he taught. After the first two weeks when he began his three-day per week schedule, he drafted plans for the substitute teachers who taught on Thursdays and Fridays.

12. Respondent Tite testified he was teaching “under a substitute contract,” that he believed had been renewed from the prior school year. He was paid a per-diem rate from October through February. On March 1, 2021, after he signed the full-time contract, he was paid on the “normal pay scale for full-time teachers.”

13. Respondent Tite argued he was working in the same classroom for the majority of the school year and was not a “substitute” under the Education Code. Education Code section 44017 states, in relevant part: “governing boards of school districts shall classify as substitute employees those persons employed in positions requiring certification qualifications, to fill positions of regularly employed persons absent from service.” The District needed a full-time teacher in respondent Tite’s position. There was no “regularly employed person” for whom he was filling a position.

14. A probationary employee is an employee in a position requiring certification qualifications “who [has] not been classified as permanent employees or as a substitute.” There is an exception for temporary or substitute employees in Education Code section 44918, subdivision (a):

Any employee classified as a substitute or temporary employee, who serves during one school year for at least 75 percent of the number of days the regular schools of the district were maintained in that school year and has performed the duties normally required of a certificated employee of the school district, shall be deemed to have served a complete school year as a probationary employee if employed as a probationary employee for the following school year.

15. No evidence was presented at hearing that respondent Tite worked “at least 75 percent of the number of days” of the school year. The evidence showed respondent Tite was hired as a substitute, worked under a substitute contract, and was paid per diem as a substitute. On March 1, 2021, he began his permanent, full-time position with the District, which is his appropriate seniority date.

STIPULATIONS BETWEEN REPRESENTED RESPONDENTS AND THE DISTRICT

16. Once the above matters were determined, the parties entered into agreements regarding the remaining issues on the record. The following are a recitation of the parties’ agreement placed on the record on April 22, 2021.

17. The parties withdrew all motions in limine, supporting documentation, and requests for official notice. Represented respondents will send a letter to the District Superintendent withdrawing its April 19, 2021 Cease and Desist letter.

18. The District recorded respondent Jaime Wolf’s seniority date as September 21, 2020. At hearing, respondent Wolf presented evidence she was in the same classroom on a fulltime basis as a long-term substitute teacher since the beginning of the 2020/2021 school year. The District stipulated it will amend respondent Wolf’s seniority date to reflect this service. Her new seniority date is September 1, 2020.

19. About 30 thirty minutes prior to the start of hearing, the District provided an updated teacher seniority list. The updated list contained names that were not on the previous list and impacted some of the represented respondents’ positions. The parties stipulated that the District is not currently aware if any other change was made

that would impact the represented respondents, but believed there were none. The parties agreed the represented respondents would compare the outdated seniority list with the updated list and inform OAH by close of business Friday, April 23, 2021 of any issues that may need to be heard. OAH received no update in the given time.

20. The parties stipulated that the following teachers will teach in the 2021/2022 school year under the stated credentials:

- Ashley Hankins will use her Special Education credential;
- Edmund Lynch will use his science credential; and
- Jennifer Escobar will use her English credential.

21. At hearing, the District rescinded the layoff notices for the following teachers:

Daniel Cacho; Roderick Calvin; Patricia Carrillo; Karen Scinto;
Jorje Cruz; Zachary Cuda; Mallory Hallford; Zachary Hill;
Tanya Huerta-Espinoza; Tracy Fleming; Amy Hutton; Lynell
Johnson; Francoise Schmitt; Jamie Schwartz; Maria Sevilla;
Britney Thompson; Katherine Townson; and Bao Vang.

22. The District will issue final layoff notices to the following represented respondents, who agreed to withdraw their requests for a hearing:

Lissa Alvarado, James Ballenger, Lori Blankenship, Bonnie
Chufar, Hong-An Doan, Lorraine Doll, Linda Franco, Kristen
Hughes, Howard Hume, Judy Lim, Alyssa Mattson, Colleen
McClain, Alexandra Mondragon, Tiffany Pletz-Planchon,

Nicola Peruzzi, Lina Pittman, Ruth Rosa, Karen Scinto,
Wesley Tite, Tamara Toby, Paula Von Lahr, and Jaime Wolf.

RECOMMENDATIONS

1. This court has no jurisdiction over respondent Roderick Calvin.
2. Respondent Wesley Tite's seniority date of March 1, 2021 is affirmed.

DATE: April 28, 2021

Heather M. Rowan

Heather M. Rowan (Apr 28, 2021 15:13 PDT)

HEATHER M. ROWAN

Administrative Law Judge

Office of Administrative Hearings