

BEFORE THE
GOVERNING BOARD OF THE
BASSETT UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the District Statement of
Reduction in Force Against:

OAH No. 2019030446

CERTIFICATED EMPLOYEES OF
THE BASSETT UNIFIED SCHOOL
DISTRICT,

Respondents.

PROPOSED DECISION

Administrative Law Judge Thomas Heller, State of California, Office of
Administrative Hearings, heard this matter in La Puente, California on April 22, 2019.

Michael E. Wolfsohn, Esq., Leal Trejo, PC, represented Bassett Unified School
District (District).

Respondents are 38 certificated employees of the District whose names are listed on
Attachment A. Hannah S. Weinstein, Esq., Rothner, Segall & Greenstone, represented all of
the respondents except Melissa Ann Mccutcheon, who did not appear either personally or
through counsel.

The matter was submitted on April 22, 2019.

SUMMARY

The Governing Board of the District (Board) resolved to reduce or discontinue
particular kinds of services and a corresponding number of full-time equivalent positions for
the 2019-2020 school year, and sent layoff notices to the 38 respondents. All of the
respondents except Mccutcheon requested a hearing on whether there was cause for the
layoffs. The District rescinded 27 of the layoff notices at the start of the hearing, but
requests approval to lay off the remaining 11 respondents. The District proved there was
cause for the 11 layoffs, and its request will therefore be granted.

FACTUAL FINDINGS

Background

1. The District provides educational services to students at seven school sites. Its student enrollment has been in decline in recent years, leading to reductions in revenue and deficit spending. Financial projections for the 2019-2020 and 2020-2021 school years predict that the District's funding reserves will not meet the state minimum reserve amount despite cost-cutting measures other than layoffs.

2. Superintendent Debra French recommended that the Board reduce or discontinue particular kinds of services (PKS) of the District. On February 26, 2019, the Board adopted Resolution No. 15-19 to reduce or discontinue particular kinds of services and a corresponding number of full-time equivalent (FTE) positions by the beginning of the 2019-2020 school year "as a result of declining enrollment and a review of and modification to student services," as follows:

Position	PKS Reduced or Discontinued
Teacher Specialist: 21st Century Learning & Innovation Specialist	2 FTE
Teacher Specialist: Early Literacy Specialist	2 FTE
Teacher Specialist: Instructional Technologist Intervention Specialist	1 FTE
Teacher Specialist: Instructional Coach & Interventionist	1 FTE
Teacher on Special Assignment (TOSA): Technology/IET	1 FTE
Teacher Specialist	1 FTE
P.E. Teacher – High School	1 FTE
Librarian	1 FTE
English Teacher – High School	2 FTE
Science Teacher, Continuation High School	1 FTE
Science/Physics Teacher – High School	1 FTE
Social Science Teacher – Middle School	1 FTE
Math Teacher – High School	1 FTE
Math Teacher – Continuation High School	1 FTE
TOTAL	17 FTE

(Exhibit E.)

3. The Board directed the Superintendent or her designee to send all appropriate notices to employees whose positions were affected, and to take all other actions necessary to implement the resolution. The Board also adopted "tie-breaking" criteria to distinguish among any employees who had the same start date, and "skipping" criteria to retain employees who were credentialed and working in certain special education and counseling positions and had training and experience that more senior employees did not have.

4. On February 27, 2019, the District notified the 38 respondents via registered mail and personal delivery that their services would not be required for the 2019-2020 school year due to a reduction in force based on budgetary constraints. The notices also advised respondents that they could request a hearing to determine if there was cause to lay them off. All of the respondents except Mccutcheon requested a hearing, and Tomiko Lee-Nolasco, the District's Interim Executive Director of Human Resources, filed a District Statement of Reduction in Force in her official capacity on March 19, 2019. The District Statement of Reduction in Force alleged there was cause for the layoffs due to the Board's determination to reduce or eliminate particular kinds of services, which resulted from the District's current fiscal obligations and deficits.

Hearing

5. At the start of the hearing, the District rescinded 27 of the layoff notices, leaving 11 remaining respondents: Jorge Corona Avila, Viviana N. Bravo, Amy Kawai Chan, Adam Aien Elmi, Jessica Roxana Estrada, Larry Wayne Hatfield, Maria Jose Koreen, Yuri Yaewon Lee, Marlo Leon, Carina Maldonado Olander, and Melissa Ann Mccutcheon. The District still seeks to reduce or discontinue 17 FTE positions, but retirement and other attrition will allow some employees who would otherwise be subject to layoff to fill in elsewhere.

6. The District and all of the remaining respondents except Mccutcheon stipulated that all notices to and from the District concerning the layoffs and hearing were timely and appropriate, and that the District's seniority list of certificated employees was accurate. As noted above, Mccutcheon did not request a hearing or appear at it personally or through counsel. The District's evidence in support of the layoffs included the layoff notices, seniority list, Board resolution, District Statement of Reduction in Force, budgetary projections for future school years, proofs of service, and other supporting documents. In addition, the District called Monika Arora, its Director of Fiscal Services, to testify about the District's financial condition and expected inability to meet the state minimum reserve amount absent the layoffs. Arora also testified that some sites in the District were determined to be overstaffed, and that determination was reflected in the 17 FTE positions to be reduced or discontinued.

7. The District also called Lee-Nolasco to testify about the selection of the 38 respondents who received layoff notices. Her testimony established that the District followed the seniority list, and that none of the remaining 11 respondents met the Board's skipping criteria or could "bump" (i.e., displace) a less senior teacher from his or her position. Lee-Nolasco's testimony also established that the District initially identified 38 employees for layoff as a precaution to allow for possible bumping of less senior teachers.

8. In response, none of the remaining respondents asserted any error concerning the District's determination of their seniority, application of the skipping criteria, or possible bumping of other teachers. Instead, the 10 respondents who appeared argued that the layoffs were not really based on a decision to reduce or discontinue particular kinds of services, but

rather on a decline in the District's average daily attendance that required calculations of the specific decline and a corresponding percentage of certificated employees. (See Ed. Code, § 44955, subd. (b).) They also argued that the District sent out too many layoff notices, violating their due process rights by creating uncertainty about who would really be laid off. In addition, they argued that the District's decision to lay off two teachers at the continuation high school was arbitrary and capricious, because the resulting increase in class sizes would be detrimental to students. Jessica Estrada, a teacher at the continuation high school, testified the students there succeed due to small class sizes, and that increased class sizes could reduce the graduation rate.

Discussion

9. The evidence established that the District properly identified the 11 remaining respondents for layoff based on the seniority list and the positions to be reduced or discontinued. It also established that the District gave the remaining respondents proper notice of the proposed layoffs. In addition, the evidence established that the Board's decision to reduce or discontinue particular kinds of services was reasonable under the circumstances and related solely to the welfare of the schools and the pupils of the schools.

10. Respondents' argument that the Board's decision was really based on a decline in average daily attendance that required calculations of the specific decline and a corresponding percentage of certificated employees was unpersuasive. (See Ed. Code, § 44955, subd. (b).) The resolution was expressly based on the Board's decision to reduce or discontinue particular kinds of services, not on a decline in average daily attendance, which was not mentioned in the resolution. Respondents rely on the reference to "declining enrollment" in the resolution to argue otherwise, but that reference alone does not prove the Board acted for a reason other than the one stated in the resolution.

11. In addition, the evidence established that the District acted reasonably in sending out 38 initial layoff notices for the 17 FTE positions to be reduced or discontinued. Lee-Nolasco persuasively testified the District did so to accomplish the purposes of the resolution while allowing for possible bumping of less senior teachers. Respondents argued that the layoff notices to 38 employees created uncertainty about who would be laid off, but presented no evidence concerning that argument.

12. Furthermore, no evidence suggested the Board's decision to reduce or discontinue the particular positions it selected was arbitrary or capricious. The testimony of Arora and Lee-Nolasco established that those positions were selected reasonably with reference to budgetary constraints and staffing needs. Estrada's testimony that laying off two teachers at the continuation high school would be inadvisable reflects a disagreement with the Board's decision, but not arbitrary or capricious action by the Board.

LEGAL CONCLUSIONS

Legal Standards

1. “Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, whenever the governing board determines that attendance in a district will decline in the following year as a result of the termination of an interdistrict tuition agreement as defined in Section 46304, whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, or whenever the amendment of state law requires the modification of curriculum, 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.” (Ed. Code, § 44955, subd. (b).)

2. In such a layoff, “[e]xcept as otherwise provided by statute, the services of no permanent employee may be terminated . . . 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.” (Ed. Code, § 44955, subd. (b).) “Essentially this language provides “bumping” rights for senior certificated and competent employees, and “skipping” authority for a district to retain ‘junior employees who are certificated and competent to render services which more senior employees are not. [Citations.]” (*Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 135, quoting *Alexander v. Board of Trustees* (1983) 139 Cal.App.3d 567, 571.)

3. “A board’s decision as to reduction or discontinuation of a particular kind of service is not tied in with any statistical computation, such as reduction in the number of students.” (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635 (*Allen*).) Instead, “[t]he number of terminations made necessary by PKS reductions depends totally upon the district’s decision as to how many services to reduce. Put another way, the language of section 44955 that the governing board of a school district ‘may terminate the services of not more than a corresponding percentage of the certificated employees of said district’ is only applicable to [average daily attendance] terminations based upon an actual reduction in attendance. Where the governing board determines to discontinue or reduce a particular kind of service, there is no way to calculate a ‘corresponding percentage,’ hence it is within the discretion of the board to determine the amount by which it will reduce a particular service.” (*Id.* at pp. 635-636.)

4. “[N]o later than March 15 of the school year preceding dismissal, the district must give a notice (preliminary notice) to each certificated employee of the decision recommending he or she not be reemployed for the ensuing year, stating the reasons therefore and the employee’s entitlement to a hearing.” (*Allen, supra*, 144 Cal.App.3d at pp. 631-632.) “The employee may request a hearing to determine if there is cause for not

reemploying him or her for the ensuing year.” (Ed. Code, § 44949, subd. (b).) “If an employee fails to request a hearing . . . , his or her failure to do so shall constitute his or her waiver of his or her right to a hearing.” (*Ibid.*)

5. If a hearing is requested, the school district files and serves a District Statement of Reduction in Force, which the employee answers with a Notice of Participation. (Gov. Code, §§ 11503, subd. (b), 11505.) “The hearing takes place before an administrative law judge who prepares a proposed decision which the board may or may not accept. The board’s final decision to terminate and notice to the employee of that decision (final notice) must be made by May 15. Any employee not given the preliminary and final notices and the right to the hearing is deemed reemployed for the following year. [Citations.]” (*Allen, supra*, 144 Cal.App.3d at p. 632; see Ed. Code, §§ 44949, 44955.)

6. The layoff decision of a governing board must be reasonable under the circumstances. (*Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 796, 807-808 (*Campbell*).) “‘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.’ [Citation.]” (*Id.* at p. 808.)

Discussion

7. The District satisfied the jurisdictional and notice requirements for the proposed layoffs. (Factual Findings 2-6, 9.)

8. Respondent Mccutcheon waived her right to a hearing by failing to request one. (Factual Finding 4; Ed. Code, § 44949, subd. (b).)

9. The services identified in the Board’s resolution are “particular kind[s] of service[s]” that may be reduced as proposed. (Ed. Code, § 44955, subd. (b).)

10. The Board’s layoff decision was reasonable under the circumstances. (Factual Findings 9-12; see *Campbell, supra*, 76 Cal.App.3d at pp. 807-808.)

11. No permanent or probationary employee with less seniority is being retained to render a service that the employees to be laid off are certificated and competent to perform. None of the respondents asserted otherwise. (Factual Findings 7-8.)

12. The proposed layoffs are related solely to the welfare of the schools and the pupils of the schools. (Factual Finding 9; Ed. Code, § 44949, subd. (b)(3).)

13. Respondents’ arguments against the layoffs are unpersuasive. First, the Board did not have to calculate the specific decline in average daily attendance or a corresponding percentage of certificated employees, because the proposed layoffs are based on a Board decision to reduce or discontinue particular kinds of services. (Factual Findings 9-10; see

Allen, supra, 144 Cal.App.3d at pp. 635-636.) Second, the District's decision to send the layoff notices to 38 respondents was reasonable, given the possibility that some of them could bump into the positions of less senior employees. (Factual Finding 11.) No evidence or legal authority indicates this was a due process violation. Third, the District's decision to lay off two teachers at the continuation high school was not arbitrary or capricious. (Factual Finding 12.) Estrada's difference of opinion with the Board did not establish that it was. (See *Campbell, supra*, 76 Cal.App.3d at p. 808.)

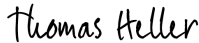
14. Based on the above, there is sufficient cause for not reemploying the 11 remaining respondents for the ensuing school year. (Ed. Code, § 44949, subd. (b).)

ORDER

1. The District Statement of Reduction in Force is sustained as to the following 11 certificated employees: Jorge Corona Avila, Viviana N. Bravo, Amy Kawai Chan, Adam Aien Elmi, Jessica Roxana Estrada, Larry Wayne Hatfield, Maria Jose Koreen, Yuri Yaewon Lee, Marlo Leon, Carina Maldonado Olander, and Melissa Ann Mccutcheon.

2. Notice may be given to the above-named employees that their services will not be required for the 2019-2020 school year.

DATED: May 6, 2019

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THOMAS HELLER
Administrative Law Judge
Office of Administrative Hearings

ATTACHMENT A

LIST OF RESPONDENTS

1. Acero, Ignacio
2. Acosta, Jacqueline
3. Albay Yenney, Dave
4. Arreola, Amy Marlyn
5. Avila, Jorge Corona
6. Bravo, Viviana N.
7. Chan, Amy Kawai
8. Correll, Cynthia
9. Covington, Thomas Scott
10. Elmi, Adam Aien
11. Estrada, Jessica Roxana
12. Figueroa, Maria E.
13. Flores, Yvonne Dorine
14. Gonzalez, Elena Reveles
15. Gutierrez, Jesus
16. Hatfield, Larry Wayne
17. Henderson, Tamara L.
18. Herrera-Lopez, Aura
19. Hutchins, Rebecca Michelle
20. Jephcott, Michael Andrew
21. Koreen, Maria Jose
22. Lee, Yuri Yaewon
23. Lee, Leslie T.
24. Leon, Marlo
25. Ly, Robin Huynh
26. Maldonado Olander, Carina
27. Mc Candliss, William Bernard
28. Mc Donough, Jennifer Jolene
29. Mccutcheon, Melissa Ann
30. Morales, Giuliana Maria
31. Moreno, Lolbette
32. Nelson, Alyssa Lauren
33. Puente, Belinda Grace
34. Rohde, Katie E.
35. Sakuma, Carin Noel
36. Tamayo, Krystle Lorraine
37. Tapia, Jessica Ivonne
38. Torres, Luz