

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

In the Matter of the Reduction in Force of:

Certain Certificated Employees of the
Compton Unified School District,

Respondents.

OAH Case No. 2017040015

PROPOSED DECISION

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, heard this matter on May 3, 2017, in Compton, California.

Little Mendelson, P.C., by Adam J. Fiss, Attorney at Law, represented the Compton Unified School District (District).

Leticia Acevez, Rodney Curry, Raymond Guzman, Jamie Puckett, and Ronald Suazo (collectively, Respondents) are certificated employees of the District.

Schwartz, Steinsapir, Dohrmann & Sommers LLP, by Michael R. Feinberg, Attorney at Law, represented all Respondents except for Ronald Suazo. All Respondents were present except for Jamie Puckett and Ronald Suazo.

The hearing in this matter was initially scheduled for April 27, 2017. The parties thereafter submitted a stipulation and order to continue the hearing, thereby extending the deadlines set forth in applicable Education Code sections. In accordance with the stipulation and order, this Proposed Decision shall be submitted to certificated employees who are Respondents and the governing board of the District by May 15, 2017, and the governing board may have until May 22, 2017, to provide final notices to employees that their services will not be required for the ensuing year. (Ed. Code, § 44949, subd. (e).)

Evidence was received and argument was made at the hearing, and the matter was submitted for decision on May 3, 2017.

FACTUAL FINDINGS

1. Abimbola Williams-Ajala is the Assistant Superintendent, Human Resources, for the District. Dr. Ajala filed Statements of Reduction in Force in her official capacity. Dr. Ajala and her staff were responsible for implementation of the technical aspects of the layoff.

2. Respondents are certificated employees of the District.

Board Resolutions

3. On February 22, 2017, the Board of Trustees (Board) of the District adopted Resolution No. 16/17-51 (Reduction Resolution), which proposed a layoff of 8.0 full-time equivalent (FTE) certificated employees. Specifically, the Reduction Resolution provided for the reduction or discontinuance of the following particular kinds of service by no later than the beginning of the 2017-2018 school year:

PARTICULAR KINDS OF SERVICES	NUMBER OF FULL TIME EQUIVALENT (FTE)
<u>7th GRADE TO 12th GRADE</u>	
Health Science	3.00
<u>Subtotal – 7th to 12th Grade</u>	<u>3.00</u>
<u>ROP/CTE</u>	
Wood Tech 1A, 1B, 2A, 2B, 3A & 3B	1.60
Photography 1A, 1B & Commercial photography	.80
Fashion Clothing/Clothing	1.40
Graphic Tech/Print Occupation	1.00
Publication Art	.20
<u>Subtotal – ROP/CTE</u>	<u>5.00</u>
<u>TOTAL FTE REDUCTIONS – ALL PROGRAMS</u>	<u>8.00</u>

4. The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under Education Code section 44955.

5. The decision by the Board to reduce or discontinue services was neither arbitrary nor capricious, but rather was a proper exercise of the District's discretion. The reduction and discontinuation of services 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 Board.

6. The goal of ROP services is that students will learn skills that will enable them to succeed in the labor market. The District decided to reduce or discontinue ROP services as set forth in the Reduction Resolution based on its review of labor market trends to ensure that ROP

classes are aligned with those trends. The District also considered survey results measuring students' interest in ROP classes and courses.

7. On February 22, 2017, the Board, in Resolution No. 16/17-50 (Tie-Break Resolution), adopted tie-breaking criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date, based on the needs of the District and its students. The Tie-Break Resolution sets forth criteria 1 through 6. The criteria are applied in numerical order to employees with the same seniority date until the tie is broken. If employees are still tied after criterion 6, the District will break the tie by utilizing a lottery.

March 15 Layoff Notices

8. The Reduction Resolution directed the Superintendent or a designee to send appropriate notices to all employees affected by the reduction and elimination of particular kinds of services in accordance with the Education Code and to afford the employees all rights they are entitled under the law.

9. (A) By March 15, 2017, the District served each of Respondents and certificated employee Carl Martin with written notice that it had been recommended that notice be given to them pursuant to Education Code sections 44949 and 44955 that their services would not be required for the next school year. Each written notice set forth the reasons for the recommendation.

(B) The written notice sent to employee Carl Martin was "precautionary," in that the District did not have sufficient information at the time to determine whether a more senior employee could "bump" Martin from his assignment. As discussed in Findings 14 and 15, below, the District has since determined that no senior employee can "bump" Martin from his assignment.

(C) The District did not serve layoff notices corresponding to the 3.0 FTE reduction in Health Sciences because there were no certificated employees teaching that subject during the 2016-2017 school year.

10. Respondents submitted timely written requests for a hearing to determine if there is cause for not reemploying them for the 2017-2018 school year. Employee Carl Martin did not request a hearing and thereby waived his right to a hearing; he cannot contest the recommendation of his non-reemployment by the District. (Ed. Code, § 44949, subd. (b).)

11. On April 14, 2017, the District served Respondents with a Statement of Reduction in Force along with other required accompanying documents and a blank Notice of Participation form. On April 20, 2017, a Joint Notice of Participation was filed on behalf of Respondents. Prior to the hearing, the District rescinded the layoff notice issued to respondent

Jamie Puckett. The Statement of Reduction in Force shall be dismissed as to respondent Jamie Puckett.

The Seniority List and the Layoff

12. The District created a seniority list. That seniority list took into account a number of factors, including each certificated employee's first date of paid service, present assignments, credentials, permanency status, and other pertinent information.

13. The District properly considered all known attrition, resignations, and retirements in determining the number of layoff notices to be delivered. The District determined that attrition in the 2016-2017 school year did not affect this layoff because none of the attrition, resignations, and retirements involved ROP teachers.

14. (A) The District reviewed its records and the seniority list to determine which employees might displace or "bump" other junior employees. The results of the Board's bumping analysis are reflected in the Notes contained in the annotated seniority list received in evidence as Exhibit 11.

(B) A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or 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 v. Richmond Unified School District* (1975) 13 Cal.3d 469; Ed. Code, § 44955, subd. (b).)

(C) The Reduction Resolution established competency criteria for determining whether a senior employee could be reassigned to a position held by a more junior employee as provided under Education Code section 44955. The competency criteria are: (1) possession of a current valid credential to teach the assigned subject matter; (2) experience teaching the subject for at least one year or the equivalent of one year during the past 10 years; and (3) possession of all appropriate certifications, as determined by the District and state law, to hold the position (e.g., EL Certification, CLAD, registered nursing license). The criteria are reasonable. (See *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 557.)

15. (A) Respondent Leticia Acevez (#751)¹ has a seniority date of August 29, 2006. She is an ROP teacher at Dominguez High School and employed in a 1.0 FTE position teaching clothing, fashion clothing, and commercial photography. She holds clear CTE credentials in fashion and interior design, and arts, media and entertainment, and preliminary designated subjects in commercial photography and fashion merchandising. Acevez was identified for layoff by the District to account for a 0.4 FTE reduction in commercial

¹ The number in the parenthetical following the name of a respondent or employee indicates their position on the seniority list.

photography and a 0.6 FTE reduction in clothing/fashion clothing.

(B) Employee Carl Martin (#1143) has a seniority date of October 25, 2016. Martin is an ROP teacher at Willowbrook Middle School, Roosevelt Elementary School, and Clinton Elementary School. He is employed in a 1.0 FTE position teaching performing arts and music. He holds a preliminary CTE credential in arts, media, and entertainment.

(C) Respondent Aceves contends that she should be entitled to bump into the portion of Martin's position identified as "visual arts" on the seniority list, because photography is a type of visual art. Although the seniority list shows Martin's assignment as "visual arts" and music (e.g., Exh. 11), Martin actually teaches performing arts and music. Respondent Aceves does not satisfy the Board's competency criteria to bump into part of Martin's position because she does not have experience teaching performing arts for at least one year or the equivalent of one year during the past 10 years. The District properly identified respondent Aceves as an employee subject to layoff. The precautionary layoff notice issued to Martin shall be rescinded.

16. Respondent Ronald Suazo (#1119) has a seniority date of September 20, 2016. Suazo is an elementary school teacher at Kelly Elementary School, where he teaches photography. He holds a preliminary CTE credential in arts, media and entertainment, and information communication technology. Suazo is subject to layoff due to being bumped from 0.6 FTE of his position by Martin Byrdson (#11), who is a more senior employee credentialed and competent to teach photography, and due to the remainder of Suazo's position accounting for a 0.4 FTE reduction in photography.

17. Respondent Raymond Guzman (#789) has a seniority date of October 9, 2006. He is an ROP teacher at Dominguez High School. He is employed in a 1.0 FTE position teaching Wood Tech 1B, 2B, and 3B. He holds a clear designated subject credential in carpentry. The District properly identified Guzman as an employee subject to layoff to account for a 1.0 FTE reduction in Wood Tech.

18. Respondent Rodney Curry (#115) has a seniority date of September 9, 1996. He is an ROP teacher at Dominguez High School. He is employed in a 1.0 FTE position teaching Print Occupation and Graphic Tech. He holds a clear designated subjects credential in Printing and Graphics Occupation. The District properly identified Curry as an employee subject to layoff to account for a 1.0 FTE reduction in Graphic Tech/Print Occupation.

19. Respondents Acevez, Guzman and Curry contend that the District's decision to reduce ROP services does not promote the welfare of the District and its students. They contend that ROP courses lead students to achieve real careers after high school and described how some of their former students are succeeding in the labor market and have started their own businesses because of skills learned in ROP classes. Respondents contend that their ROP

courses are in fields where jobs are not in decline, and they contend there is no problem with enrollment or student interest in their classes. Respondents' contentions amount to improper second-guessing of the Board's decision to reduce or discontinue ROP services. (See Legal Conclusion 3(B), below.) The District, through the testimony of Dr. Ajala, sufficiently explained the basis and rationale for its decision to reduce ROP services.

20. No certificated employee junior to any respondent was retained by the District to render a service for which any respondent was certificated and qualified to render.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. The services identified in the Reduction Resolution are particular kinds of services that could be reduced or discontinued under Education Code section 44955.

3. (A) The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

(B) Boards of education hold significant discretion in determining the need to reduce or discontinue particular kinds of services, which is not open to second-guessing in this proceeding. (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167.) Such policy-making decisions are not subject to arguments as to the wisdom of their enactment, their necessity, or the motivations for the decisions. (*California Teachers Assn. v. Huff* (1992) 5 Cal.App.4th 1513, 1529.) Such decisions and action must be reasonable under the circumstances, with the understanding that "such a standard may permit a difference of opinion." (*Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The process of implementing layoffs is a very flexible one and that school districts retain great flexibility in carrying out the process. (See *Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 769; *Zalec v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838.)

4. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. The District identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued.

5. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.


ORDER

1. The Statement of Reduction in Force is sustained as to respondents Leticia Acevez, Rodney Curry, Raymond Guzman, and Ronald Suazo. Notice may be given to said respondents that their services will not be required for the 2017-2018 school year because of the reduction or discontinuance of particular kinds of services.

2. The District shall rescind the precautionary layoff notice issued to Carl Martin.

3. The Statement of Reduction in Force for Jamie Puckett is dismissed.

DATED: May 11, 2017


ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings