

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

In the Matter of the Reduction in Force of
Certain Certificated Teachers Employed by
the Carlsbad Unified School District,

OAH No. 2008030381

Respondents.

PROPOSED DECISION

Stephen E. Hjelt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Carlsbad, California, on April 30, 2008.

Melanie A. Petersen and Kerrie Taylor, Attorneys at Law, represented the Carlsbad Unified School District.

Jon Y. Vanderpool, Attorney at Law, represented 103 of respondent certificated employees of the Carlsbad Unified School District who received preliminary layoff notices as indicated in the record. Respondent Cathy Francois appeared and represented herself.

No appearance was made by or on behalf of the remaining certificated employees of the Carlsbad Unified School District who received notice of the recommendation that their services would not be required for the 2008-2009 school year.

The matter was submitted on April 30, 2008.

FACTUAL FINDINGS

The Carlsbad Unified School District

1. The Carlsbad Unified School District (the District) is located near the Pacific Ocean in northern San Diego County. The District provides educational services and supports to approximately 10,500 students from Kindergarten through twelfth grades. The District operates nine elementary schools, three middle schools, and one comprehensive high school. There is also one alternative school providing services to students from Kindergarten through twelfth grade. The District employs approximately 565 certificated employees.

2. The District is governed by an elected five-member Board of Trustees. The Board's Chief Executive Officer is John A. Roach, Ed.D., the Superintendent of Schools. Dr. Roach is supported by an administrative staff including Torrie Norton, the Assistant Superintendant of Personnel Services.

The Fiscal Crisis – Economic Layoffs

3. Proposition 13 limited the imposition of property taxes and reduced a major source of assured revenue for funding public education in California. Since Proposition 13, public school districts have looked primarily to the State of California and to other governmental entities for funding.

A school district cannot determine the level of state funding it will receive until the state budget is chaptered, an event usually occurring in late June. Before then, a school district's governing board must take steps to make certain that ends meet if a worst-case financial scenario develops. California's current economic crisis has made budgeting problems far more complicated than they were before.

A school board's legal obligation to balance its budget often requires that some teachers, administrators and/or other certificated employees be given preliminary layoff notices, warning them that their services will not be required for the next school year. Under Education Code section 44949, preliminary layoff notices must be given to affected certificated employees no later than March 15.

The economic layoff statutes found in the Education Code generally require the retention of senior employees over more junior employees and the retention of permanent employees over probationary employees and other employees with less seniority. A public school district may deviate from the general rule requiring termination in reverse order of seniority only if it can demonstrate that identifiable junior employees possess a credential, special training or experience necessary to teach a course of study or to provide services which more senior employees do not possess.

The District's Response

4. By early 2008, the District's administration (as well as the administrators of most other school districts) was well aware of the State of California's massive economic problems. As a result of the financial crisis and the Governor's proposed budget, the District projected an estimated budget deficit of about \$4.5 – \$6 million for the 2008-2009 school year. The District was required to look into ways to meet the budget deficit.

Under the Superintendent's direction, budgetary cuts were considered across the board including the elimination and reduction of particular kinds of services provided by the District's certificated employees. On February 27, 2008, Dr. Roach presented to the Board a recommendation concerning the reduction and elimination of particular kinds of services in the approximate amount of 187.6 FTEs (full time equivalent positions).

5. On February 27, 2008, the Board adopted Resolution #16-0708 recommending a reduction in particular kinds of services provided by District for the 2008-2009 school year, together with the adoption of tie-breaking criteria. The Board's adoption of the resolution and tie-breaking criteria was based on the welfare of the schools and their pupils.

6. Resolution #16-0708 provided:

**RESOLUTION #16-0708
RESOLUTION OF INTENTION TO
DISMISS CERTIFICATED EMPLOYEES**

On motion of Member Tanner, seconded by Member Rodman, the following resolution is adopted:

WHEREAS, the Board of Trustees of the Carlsbad Unified School District has determined that it shall be necessary to reduce or discontinue the particular kinds of services of the District as itemized in Exhibit "A" at the close of the current school year; and

WHEREAS, it shall be necessary to terminate at the end of the 2007 - 2008 school year, the employment of certain certificated employees of the District as a result of this reduction or discontinuance in particular kinds of services;

THEREFORE BE IT RESOLVED, that the Superintendent of the Carlsbad Unified School District is directed to send appropriate notices to all employees whose services shall be terminated by virtue of this action. Nothing herein shall be deemed to confer any status or rights upon temporary or categorically funded project certificated employees in addition to those specifically granted to them by statute.

BE IT FURTHER RESOLVED, that the Board of Trustees of the Carlsbad Unified School District, this 27th day of February, 2008, hereby adopted Resolution #16-0708.

7. Exhibit A to the resolution set forth a list of the particular kinds of services being reduced and the extent of the reductions measured by FTEs as follows:

**RECOMMENDED REDUCTION IN 2008-2009 PROGRAMS/SERVICES FOR
CARLSBAD UNIFIED SCHOOL DISTRICT**

The Superintendent recommends that the Governing Board adopt a resolution to reduce the programs and services for 2008 - 2009 as follows:

<u>Services</u>	<u>Number of Full-Time Equivalent Positions</u>
1. Administrators	
Principals	13.0
Assistant Principals	7.0
Directors	4.0
Coordinators	1.0
2. Counselors	14.6
3. Librarians	2.2

4. Nurses	1.8
5. Teachers on Special Assignment	3.0
6. Athletic Director	.6
7. Opportunity	1.0
8. Math	4.0
9. English	5.0
10. Elementary Teaching Services CSR Elimination Grades K, 1,2,3	54.0
11. Secondary Teaching Services CSR Elimination Grade 9 Math/English	6.8
12. Health	2.2
13. School Success	2.2
14. P.E.	.4
15. Dance	.2
16. Peer Advocates	.2
17. Advanced Communication	1.2
18. AVID	.6
19. French	2.0
20. German	1.2
21. ASL	.6
22. Digital Photo	2.0
23. Activities Director (ASB)	1.0
24. Music	1.0
25- Wood	6.0
26. ELD Courses	1.0
27. Science	3.0
28. Social Science	2.0
29. Art	5.0
30. Theater/Drama	2.0
31. Multi Media	2.2
32. ROP Small Engines	1.0
33. ROP Cabinet Making	.2
34. ROP Architectural Design	.4
35. ROP Drafting	.6
36. ROP Law Enforcement	.4
37. Study Skills	8.0

8. The Board's tie-breaking criteria provided:

CARLSBAD UNIFIED SCHOOL DISTRICT
DETERMINATION OF TIE-BREAKING CRITERIA FOR 2008 - 2009

Pursuant to provisions of Education Code section 44955, the Board of Education is required to determine the District needs should it become necessary to determine the order of termination for employees who first rendered paid service to the District on the same day.

For the 2008 - 2009 school year only, to meet the requirements of Education Code section 44955, the Board of Education determines the needs of the District and the students by establishing the following tie-breaking criteria:

The following rating system shall be applied in determining the order of termination of certificated employees:

- A. Number of teaching and/or special service credentials. Rating: +1 per credential
- B. Number of supplementary authorizations. Rating: +1 per supplementary authorization
- C. Earned degrees beyond the BAIBS level. Rating: +1 per degree
- D. National Board Certification Rating: +1 per certification
- E. CLAD (Crosscultural Language Acquisition Development) and/or SDAIE (Specially Designed Academic Instruction in English) Certificate Rating: +1 per certification

TIE-BREAKING PROCEDURE

In the event that common day hires have equal qualifications based on application of the above criteria, the District will then break ties by utilizing a lottery.

The District's tie-breaking criteria were to be applied to certificated employees with the same date of hire were scheduled to be terminated. The tie-breaking criteria were prepared specifically to meet the needs of the District and the students.

9. Before preliminary layoff notices were served, the administrative staff circulated a certificated seniority list that contained the names of all credentialed employees, ordered in longevity from the most senior employee to the most junior employee; the site where the employee provided services; the subject/grade level in which services were provided; the employee's full time employment status (a "1.0 FTE" indicated full time employment); the employee's credential(s) information; the employee's seniority date (i.e., the employee's first date of paid service with District on a probationary basis); the employee's hire date; and the employee's tenured status (i.e., permanent, probationary 2 or probationary 1). Employees were invited to review the seniority list and to respond to the administrative staff with any changes or corrections.

10. On or before March 15, 2008, each certificated employee who is party to this proceeding was given a letter and notice that the Board had recommended that his or her services with the District would be terminated at the conclusion of the current school year. The letter stated the reduction in the District's workforce was due to California's serious budget shortfall. A notice advised each respondent that his or her services would be

terminated at the close of the current school year, that the reasons for the termination were set forth in the Board's resolution (which was enclosed), that the employee had the right to request a hearing to determine if there was cause for termination, and specified dates on which the request for hearing had to be filed.

11. Most of the certificated employees served with the preliminary layoff notice requested a hearing. An accusation packet was thereafter served on the 110 certificated employees who requested a hearing. The District determined that all respondents who were served with the Accusation packet were entitled to a hearing even if a Notice of Defense was not filed.

All jurisdictional requirements were met for the respondents in this proceeding, except for Anthony Castro.

The Administrative Hearing

12. On April 30, 2008, the record in the administrative hearing was opened. It was stipulated that the Accusations filed against Jennifer Cockerham, Heather Embrey, Teanna Evans, Lorelei Kelleher, Jaime Kennedy, Leslie LaMontagne, Odile Ponsolle, and Patrick Shinnefield were withdrawn; the Accusations against these employees were dismissed. Jurisdictional documents were presented. Respondents filed a joint amended notice of defense. The District gave an opening statement. An opening statement was given on behalf of all respondents represented by counsel. A written stipulation to jurisdictional facts was filed, sworn testimony and documentary evidence was received, closing arguments were given, the record was closed and the matter was submitted.

Service on Anthony Castro

13. Anthony Castro, a permanent employee with a seniority date of August 2, 2004, was not properly served with required notices. Under the Education Code, he must be deemed reemployed.

The Particular Kinds of Services

14. The services identified by the Board for reduction or elimination in Exhibit A (Factual Finding 7) were particular kinds of services that could properly be reduced and discontinued. The reduction and elimination of those services was neither arbitrary nor capricious, and the reduction or elimination of those services constituted a matter well within the proper exercise of the Board's discretion. The layoff related to the welfare of the District, the schools, and the students. No services were reduced below levels required by federal and state laws. Nursing services were eliminated, but the District proposes to provide mandated health services through independent contractors on an as needed basis.

The Seniority List

15. With a few exceptions which do not impact the layoffs in this matter but which possibly could affect the order of rehiring (the order of rehiring is not at issue in this matter), the District's seniority list was accurate. The preponderance of the evidence did not establish that the certificated employees who were the subject to direct and cross-examination were improperly classified. Nevertheless, the District should be available to make corrections to the District's seniority list, as may be appropriate following this hearing upon verification of the new information provided. Specifically, the District should review and verify the credential of respondent Jeff Simon.

The District's Layoff Procedure

16. The Board's resolution called for the elimination or reduction of about 187 FTEs in particular kinds of services. Using the Board's resolution and the District's seniority list, the District's staff identified the most junior employees providing the particular kinds of services identified in the resolution. For those employees who were displaced, the District attempted to determine if the displaced employee could "bump" a more junior employee by providing a particular kind of service that the displaced senior employee was credentialed and competent to provide.¹ The Board's tie-breaking criteria established a method by which employees having the same seniority date could be ranked for layoff purposes. However, the use of the tie-breaking procedure was not necessary to resolve any dispute related to the layoffs in this matter. Through the tedious step-by-step elimination process, the District correctly determined which certificated employees should receive preliminary layoff notices. No permanent or probationary employee with less seniority will be retained to render a service any respondent is certificated and competent to provide.

Respondents' Contentions

17. Respondents contended the District retained the services of several junior employees to provide services more senior employees who were laid off were credentialed and competent to provide. The evidence did not support this contention. No junior employee was retained over a more senior employee.

Respondents suggested that the District may have failed to afford permanent status to some employees who were classified as probationary employees, or may not have provided a correct seniority date for employees who had worked under emergency permits or as teacher interns, or may not have afforded employees providing services in categorically funded programs the seniority rights to which they were entitled. No evidence established that any mistake in classifying any certificated employee had any impact in this layoff proceeding. Any error in classification that might impact a certificated employee's rehiring rights was not at issue in this proceeding and was moot.

¹ A senior teacher whose position is discontinued has the right to transfer to a continuing position that he or she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who holds that position.

There was a concern that the retention of Anthony Castro, a permanent employee with a seniority date of August 2, 2004, who was not properly served with mandated layoff notices, required that all employees senior to Mr. Castro be retained under the plain language of Education Code section 44955, subdivision (b). This argument is sometimes referred to as the "domino effect." However, there was no evidence presented to suggest that Mr. Castro's retention was the result of anything more than a clerical error, and on that basis actual prejudice was not shown. The appropriate remedy is to lower the FTE held by Mr. Castro by one position.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied as to those respondent certificated employees identified herein.

2. A school board's decision to reduce or discontinue particular kinds of services (PKS) need not be tied to any statistical computation, such as a reduction in the number of students. The number of terminations through PKS reductions depends totally upon the decision about how many services to reduce. A board may consider the school district's economic circumstances in making the determination to eliminate particular kinds of services. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627.)

A school board may "reduce services" by eliminating certain types of service or by reducing the number of district employees providing such services. The decision to reduce or discontinue a particular kind of service is not unfair or improper simply because a school board made a decision it was empowered to make. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

3. Education Code section 44955, subdivisions (b) and (c), sets forth a general rule requiring school districts to retain senior employees over more junior employees and to retain permanent employees over temporary employees. Any exception to this general rule must be based on statute. For employees hired on the same date, Education Code section 44955, subdivision (d) provides:

"(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws."

4. Seniority determines the order of dismissals; between employees with the same first date of paid service, the order of termination is determined on the "basis of the needs of the district and its students." Senior employees are given "bumping" rights and will not be terminated if junior employees are being retained to render services that the more senior employee is certificated and competent to render. (*Alexander v. Board of Trustees* (1983) 139 Cal.App.3d 567.)

A senior teacher whose position is discontinued has the right to transfer to a continuing position that he or she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who holds that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.)

5. As a result of the District's lawful reduction of particular kinds of services, cause exists under Education Code section 44955 for the District to give notice to all respondents who were previously served with preliminary layoff notices that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2008-2009 school year, except for those respondents identified in the stipulation resulting in the dismissal of the Accusations.

This conclusion is based on all Factual Findings and on all Legal Conclusions.

RECOMMENDATIONS

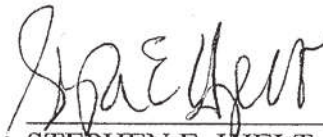
1. It is recommended that the reduction in force for the position held by Anthony Castro be reduced by one FTE.

2. It is recommended that the Board dismiss the Accusations filed against Anthony Castro, Jennifer Cockerham, Heather Embry, Teanna Evans, Lorelei Kelleher, Jaime Kennedy, Leslie LaMontagne, Odile Ponsolle, and Patrick Shinnefield.

3. It is recommended that the Board give notice to all respondents previously served with a preliminary layoff notice that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2008-2009 school year including Christine Andrews, Lane Baima, Jennifer Barrie, Laurel Basic, Krista Berntsen, Corey Bess, Ashley Bitner, Daniel "Jake" Blackburn, Anne Blakely, Roger Brown, Robert Brown, Kathryn Browne, Paul Clark, Ashley Cotter, Kate Dendy, Jessica Dooley, Kelli Dow, Gina Fogarty, Stephanie Fogarty, Linda Fornelli, Kelly Foulk, Cathy Francois, Kim Fuentes, Jessica Fuller, Gina Garcia, Jennifer Glassey, Alicia Granberg, Marina Hall, Sarah Hasty, Darien Hawley, Lillian Hebert, Joanne Hemmings, Heather Hirschkooff, Craig Hobart, Ashley Houser-Hartman, Cynthia Irwin, Joy Jansen, Hun Kaplowitz, Donna Kirsch, Kevin Knoll, Rosemary Kolden, Walter Konieczko, Jessica Koren, Dawn Kramer, Michelle

Kuehner, Christine Kunkel, Carol LaBreche, Syndi Lyon, Rod Lyon, Lisa Martin, Philip Martinez, Denise Maulden, Blake Maxon, Kelly McCabe, Corey McCann, Melanie McGinnis, Courtney Mehring, Marissa Meinhardt, Kelly Momeyer, John Moreno, Angelika Moschner-Arganda, Christine Moser Kohn, Chelsea Murray, Stephanie Nasser, Kathy Nienhaus, Christy Owen, Nicole Paynter, Amanda Phillipe, Judith Pounds, Anjali Pujji, Joseph Purser, Julia Redfield, Renae Ringen, Anna Lisa Robusto, Jamie Rushing, Tamara Salvaggio, Treda Sanchez, Melony Schroh, Olivia Schulenberg, Debra Schwend, Triesta Shuck, Jeff Simon, Scott Southerland, Jenesa Stayton, Holly Stipe, Kelly Szabo, Vincente Tamayo, Marisa Tatar, Margaret Tessier, Kim Thorne, Marin Tinnerstet, Kristin Tomkinson, Michele Tsutagawa Ward, Aven Valenty, Keith Van Asdalan, Anne Van Hollebeke, Pam Venable, Jill Ward, Brooke Williamson, Erin Wilson, Susan Woolley, and Sharon Zak.

DATED: 5-5-08



STEPHEN E. HJELT

Administrative Law Judge

Office of Administrative Hearings