

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

In the Matter of the Accusation Against:

Certificated Employees Listed in
Exhibit "A",

Respondents.

OAH No. 2011030914

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in Vista, California on April 19, 2011.

Melanie A. Peterson, Esq., Fagen, Friedman & Fulfrost, LLP, represented Myrna Vallely, Assistant Superintendent, Human Resources.

Jon Y. Vanderpool, Esq., Tosdal, Levine, Smith, Steiner & Wax, represented Respondents.

The matter was submitted on April 19, 2011.

SUMMARY OF PROPOSED DECISION

The Board of Education of the Vista Unified 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/or 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 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 Vista Unified School District (District).
2. On March 10, 2011, the District’s Board adopted Resolution No. 11-64 reducing or eliminating particular kinds of services for the 2011-2012 school year and establishing tie-breaker criteria.
3. On March 11, 2011, Myrna Vallely, the District’s Assistant Superintendent Human Resources (Assistant Superintendent), served Respondents with written notice that she recommended not to re-employ them in the 2011-2012 school year. In addition, the notice advised Respondents of the right to hearing and that a Request for Hearing must be delivered to the District’s office no later than “ten (10) days from the date of this preliminary notice”; failure to request a hearing in a timely manner would constitute waiver of the right to a hearing; a Request for Hearing form was included among the documents served on Respondents.
4. Respondents submitted a timely Request for Hearing to determine if there was cause for not re-employing them for the ensuing school year.
5. On March 25, 2011, the Assistant Superintendent made and filed an Accusation Against Certificated Employees. She served each individual who submitted a Request for Hearing with an Accusation, Notice of Defense, Notice of Hearing and related materials.
6. The District considered all Respondents served with Accusations and supporting documents entitled to a hearing regardless of whether Respondents filed Notices of Defense.
7. All prehearing jurisdictional requirements were satisfied.
8. Prior to conclusion of the hearing, the District rescinded layoff notices issued to Respondents Valentina Mendoza-Benitez, Natalie Vasquez, Alexander Houck, Kimberly Camplisson, Victoria Muedano, Mary Owen, Lance Parrow, Dennis Sosnowski, Brian Underhill, Roland Arias and Michelle Martin.
9. On March 10, 2011, the Board adopted Resolution No. 11-64 and thereby took action to reduce or eliminate the following particular kinds of certificated services commencing the 2011-2012 school year:

Particular Kinds of Service	Full Time Equivalent
K-8 Teaching Service	57.0
English Service	4.0
Social Studies Service	6.0
Mathematics Service	2.0
Physical Education Service	2.8
Foreign Language: Spanish Service	2.0
Foreign Language: French Service	1.8
Foreign Language: German Service	1.2

The proposed reductions totaled 76.8 full-time equivalent (FTE) positions.

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

11. The Assistant Superintendent was responsible for implementing the technical aspects of the layoff. She developed a seniority list for probationary and permanent certificated staff that included, site, name of the certificated employee, first date of paid service, status, assignment, credentials and subject description.

To assure the accuracy of information, the Assistant Superintendent notified certificated employees of seniority date, credentials and other data on file with the District and provided an opportunity for each certificated employee to challenge or update this information. If an employee questioned the information, the Assistant Superintendent (or her designee) researched the issue; if the employee's requested change was substantiated, the District records were modified.

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 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. Said individual was entitled to have the 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

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

13. In compliance with Education Code section 44955, subdivision (b), in order to determine the order of termination of employees with the same seniority date, the Board adopted “Tie Breaker Criteria”, to wit:

- “1. Scope of California credential (a regular credential, i.e., not an emergency permit) which allows the employee to teach in a classroom; the person with such a broader credential wins the tie.
2. If a tie still exists, the winner is that employee with the greater length of actual paid service (number of work days) in a public California school district in that other credential, within the last 10 years, other than as a day-to-day substitute or intern.
3. If a tie still exists, the winner is that employee with the greater length of prior paid service (number of work days) within any California public school district, within the current assignment in a contract position (including temporary contract) but not as a day-to-day substitute or intern.
4. If a tie still exists, the winner is that employee who possesses a doctorate degree.
5. If a tie still exists, the winner is that employee who possesses a master’s degree.
6. If a tie still exists, the winner is that employee with the earliest date of conferral of the master’s or doctorate.
7. If a tie still exists, a lottery would occur, with a VTA³ representative being invited to observe.”

14. The District used the seniority list to develop a proposed order of layoff. 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 displace or “bump” other employees.

³ Vista Teachers’ Association

15. Respondents Kathryn Stevens, Lanae Waldron and Allison Richtman⁴ each challenged her seniority date on file with the District. Each testified that she has had one or more prior temporary contracts with the District, and that the District released her at the conclusion of the temporary contract. None of the foregoing Respondents offered evidence to establish that the District improperly calculated her seniority date. Given the foregoing, the seniority date on file with the District was proper for Respondents Kathryn Stevens, Lanae Waldron and Allison Richtman.

16. The District retained Kelly Sellstrom (Sellstrom).

Sellstrom has a seniority date of August 15, 2007, and holds a multiple subject credential. For the 2010- 2011 school year, she is assigned as a resource teacher and literacy coach⁵.

The District did not reduce or discontinue the service of resource teacher and/or literacy coach nor did the District identify either as a service to be skipped and retained in the PKS resolution.

The Assistant Superintendent established that the District has a need to retain Sellstrom because she has demonstrated special skills and training to coordinate and implement the District's literacy programs (in elementary and middle schools) in a standardized manner. The District has 17 literacy coaches. She holds a "master's degree in education – language, literacy" and has 10 years experience as a site literacy coach.

Respondents Michelle Jennings (Respondent Jennings) and Tracy Pochodowicz (Respondent Pochodowicz) each contend that she improperly received a layoff notice because she is certificated and competent to perform the services for which Sellstrom is being retained. Respondents Jennings and Pochodowicz each holds a multiple subject credential, and each has a seniority date of August 15, 2007. Respondents Jennings and Pochodowicz each testified regarding her qualifications to perform the duties of a "lead" coach.

Neither Respondent Jennings nor Respondent Pochodowicz was assigned as resource teacher or literacy coach during the 2010-2011 school year. There is no evidence that either has experience as a literacy coach or "lead" literacy coach; there is insufficient evidence to establish that either is qualified to coordinate and implement some of the District's literacy programs.

⁴ Respondents Jenefer Grush, Meghann Larson and Sara Trejo have the same seniority date, status and challenge as Respondent Allison Richtman. If called to testify their testimony would have been the same as Respondent Allison Richtman's. For the reasons stated in Finding 15, there is no evidence that their seniority date was not properly calculated.

⁵ Literacy coaches provide training and resources to teachers at school sites.

The District properly retained Sellstrom in that (1) the District did not identify resource teacher or literacy coach as a particular kind of service to be reduced; (2) the District established a need for a certificated teacher qualified to serve as “lead” literacy coach; Sellstrom has special experience and education to perform this service. Insufficient evidence was offered to establish that any employee with the same seniority date or more senior to Sellstrom satisfies that competency for the position.

17. Some Respondents had the same seniority date. According to the evidence in the record, the District properly applied the tie breaker criteria to rank employees hired on the same date; under these criteria the District properly retained certain employees while Respondents were properly given notice that their services would no longer be required for the ensuing school year.

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 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 is retained to perform any services that any Respondent is 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 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 that 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 served on Respondents Valentina Mendoza-Benitez, Natalie Vasquez, Alexander Houck, Kimberly Camplisson, Victoria Muedano, Mary Owen, Lance Parrow, Dennis Sosnowski, Brian Underhill, Roland Arias and Michelle Martin is dismissed.

2. The Accusation on Respondents listed on Amended Exhibit “A” is sustained.

3. Notice shall be given to Respondents before May 15, 2011 that their services will not be required for the 2011-2012 school year because of the reduction or discontinuance of particular kinds of services.

DATED: April 27, 2011

VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

**VISTA UNIFIED SCHOOL DISTRICT
EXHIBIT “A”**

Almirol, Geoffrey
Arias, Roland
Berry, Lisa
Boian, Kristina
Borah, Jessica
Brousseau, Mandy
Buscemi, Kathleen
Cadondon, Natalie
Camplisson, Kimberly
Canny Gerent, Teresa
Chien, Yun
Couch, Alison
Davis, Angela
DeCosta, Michelle
Dobbs, Christie
Duncan, Reagan
Encinas, Marcia
Evans-Lavelle, Laura
Fukuda, Lisa
Gilbert, Tarah
Gora, Katherine
Griffin, Courtney
Grush, Jenefer
Guerrieri, Jolene
Hammel, Kerry
Hardwick, Kellie
Hendricks, Nicole
Houck, Alexander
House, Amanda
Humerez, Carola
Hunt, Katie
Ingoldt, Victoria
Ireland, Dawn
Jacobsen, Margaret
Jennings, Michelle
Kalve, Caroline
Kania, Laurie
Kay, Angela
Kim, Teresa
Kung, Danny

Larson, Meghan
Leduc, Courtney
Lissner, Kelsey
Love, Heather
Marks, Tamara
Martin, Michelle
McGregor, Christopher
McIntyre, Jolynn
Mendoza-Benitez, Valentina
Merrick, Ian
Mishler, Bree
Monson, Reed
Moran, Melanie
Moss, Jessleen
Mota, Emilia
Muedano, Victoria
Nolan, Hillary
Norton, Bryanna
Owen, Mary
Parrow, Lance
Peterman, Kelsie
Pochodowicz, Tracy
Quin, Jennifer
Reed, Jenny
Richtman, Allison
Roll, Sarah
Romine, Carrie
Romney, Becky
Ruggiero, Lauren
Salazar, Jennifer
Sanders, Dave
Schlapper, Danielle
Schuh, Robin
Sharp, Lucy
Sleiman-Stearman, Zein
Sosnowski, Dennis
Stevens, Kathryn
Stuckey, Matthew
Tebelman, Tiana
Townsend, Angela
Trejo, Sara
Underhill, Brian
Vasquez, Natalie
Vencill, Lisa
Wagner, Matthew

Waldron, Lanae
White, Megan
Willard, Dianne
Wood, Tammie
Yezarski, Jenna

**VISTA UNIFIED SCHOOL DISTRICT
AMENDED EXHIBIT “A”**

Almirol, Geoffrey
Berry, Lisa
Boian, Kristina
Borah, Jessica
Brousseau, Mandy
Buscemi, Kathleen
Cadondon, Natalie
Canny Gerent, Teresa
Chien, Yun
Couch, Alison
Davis, Angela
DeCosta, Michelle
Dobbs, Christie
Duncan, Reagan
Encinas, Marcia
Evans-Lavelle, Laura
Fukuda, Lisa
Gilbert, Tarah
Gora, Katherine
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Marks, Tamara
McGregor, Christopher
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Monson, Reed
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Moss, Jessleen
Mota, Emilia
Nolan, Hillary
Norton, Bryanna
Peterman, Kelsie
Pochodowicz, Tracy
Quin, Jennifer
Reed, Jenny
Richtman, Allison
Roll, Sarah
Romine, Carrie
Romney, Becky
Ruggiero, Lauren
Salazar, Jennifer
Sanders, Dave
Schlapper, Danielle
Schuh, Robin
Sharp, Lucy
Sleiman-Stearman, Zein
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