

BEFORE THE GOVERNING BOARD OF THE
KING CITY JOINT UNION HIGH SCHOOL DISTRICT

In the Matter of the Non-Reemployment of
Certain Certificated Employees,

Respondents.

OAH No. 2010030525

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in King City, California, on April 14, 2010.

Ingrid A. Meyers, Attorney at Law, Dannis Woliver Kelley, represented complainant John C. Bernard, Ed.D., State Administrator, King City Joint Union High School District.

Michelle A. Welsh, Attorney at Law, Stoner, Welsh and Schmidt, represented respondents Amanda Ball, Julianne Crone, Dale Garman, Chris Hanson, Stephen Hitchcock, Nancy Hunter, Melvia Kuchta, Linda McClure, Oscar Mendez, Tige Munoz, Norman Silva, Jessica Souza, Lacey Tankersley, Brandi Thomas, and Henry Wong.

There was no appearance by or on behalf of respondent Alison Wohlgemut.

The matter was submitted on April 14, 2010.

FACTUAL FINDINGS

1. John C. Bernard, Ed.D., issued the accusation in his capacity as State Administrator of the King City Joint Union High School District (district). In that capacity, Bernard also serves as the district's superintendent. An administrator was assigned to the district when the state agreed to loan the district \$13 million to help it avoid receivership.

2. Respondents are certificated employees of the district.

3. On March 10, 2010, the governing board of the district adopted Resolution 13:09/10 (revised) (the PKS resolution). In that resolution, the board determined that it is necessary to decrease certain programs and services no later than the beginning of the 2010-2011 school year. The resolution states that the particular kinds of services to be reduced or eliminated are as follows:

Art	1.00 FTE ¹
Photography	0.33 FTE
Business Law/Computers	0.17 FTE
Computer Literacy	2.67 FTE
Introduction to Computers	1.33 FTE
Spanish	1.67 FTE
Culinary Arts	0.83 FTE
Physical Education	2.33 FTE
Ag Cons/Wood/Mech	0.17 FTE
Ag Earth Science	0.17 FTE
Ag Floristry	0.67 FTE
Ag Intro to Ag Biology	0.17 FTE
Ag Mechanics	0.67 FTE
Ag Science	0.17 FTE
Ag Wood	0.17 FTE
Activities	0.33 FTE
Athletic Director release periods	<u>0.33 FTE</u>
Total	13.18 FTE

The resolution directs the superintendent to send appropriate notices to all employees whose positions may be lost by virtue of the board's action. The resolution authorizes the superintendent to deviate from seniority when terminating the services of certificated employees in the case of employees who possess the following:

1. Math credentials and/or authorizations
2. Science credentials and/or authorizations
3. Special Education credentials
4. Highly Qualified in subject area credentialed to teach grades 9 – 12.

4. Leaving aside respondent Tige Munoz, whose jurisdictional claim is addressed in Findings 8 through 19, all respondents were given written notice on or before March 15, 2010, of the superintendent's recommendation that their services will not be required for the 2010-2011 school year. The reasons for the recommendation were set forth in these preliminary layoff notices.

5. All respondents, including respondent Munoz, filed timely requests for hearing to determine if there is cause for terminating their services for the 2010-2011 school year. An accusation was served on all respondents. All respondents except respondent Wohlgemut filed or were deemed to have filed a timely notice of defense.

¹ "FTE" means "full-time equivalent."

6. Since the adoption of the PKS resolution, State Administrator Bernard has determined that, due to attrition, reassignments or other factors, the district will not need to eliminate 13.18 FTE, but can reduce that number to 10.36 FTE as follows:

Art	1.00 FTE
Business Law/Computers	0.17 FTE
Computer Literacy	2.67 FTE
Introduction to Computers	0.50 FTE
Spanish	1.00 FTE
Culinary Arts	0.83 FTE
Physical Education	2.00 FTE
Ag Cons/Wood/Mech	0.17 FTE
Ag Earth Science	0.17 FTE
Ag Floristry	0.67 FTE
Ag Intro to Ag Biology	0.17 FTE
Ag Mechanics	0.67 FTE
Ag Science	0.17 FTE
Ag Wood	<u>0.17 FTE</u>
Total	10.36 FTE

7. The district has rescinded the layoff notice it issued to Julianne Crone. She is no longer a respondent.

Respondent Munoz's Preliminary Notice

8. The district sent preliminary layoff notices to respondents by certified mail, using the address for each teacher that it had on file in the district's Human Resources office. State Administrator Bernard testified that, under district procedures, a teacher who wishes to change his address must inform the district's Human Resources office of the change in address. Bernard's testimony is credible and no contrary evidence was offered.

9. In July 2009, Munoz and his wife Megan, who is also a teacher employed by the district, moved from their home at 325 Monte Vista Place, King City, California 93930, to their new home at 44676 Earl Bernice Court, King City, California 93930. (Megan Munoz is not a respondent in this proceeding.)

10. On July 16, 2009, Munoz and his wife each completed and signed a "MCSIG Change Form," stating that their address had changed and stating their new address on Earl Bernice Court. "MCSIG" stands for Monterey County School Insurance Group; it appears that the district is a member of MCSIG. The form is used to change an employee's address with MCSIG.

11. On or about July 24, 2009, Megan Munoz brought the two MCSIG Change Forms to the district's business office and gave them to district employee Nancy Cole. The Change Forms were sent to MCSIG.

12. Megan Munoz testified that when she brought in the MCSIG Change Forms she also filled out and gave to Cole a “blue form” to change the Munozes’ address with the district payroll office; according to Munoz, Cole told her she would “send it over for me.” At hearing, Munoz testified that she felt she had done everything that was necessary to change her address and her husband’s address.

13. The blue form was not offered into evidence: Megan Munoz did not retain a copy of the blue form and the district’s file does not contain a blue form for the Munozes. The evidence clearly established, however, that the district payroll office did not change the Munozes’ address. Their W-2 forms for the 2009 tax year were sent to the old address on Monte Vista Place. Their monthly payroll warrants, which are issued on the last day of the month, continued to bear the Monte Vista Place address through February 2010. Although the Munozes receive their payroll warrants through interoffice mail, as opposed to the postal service, they must have been aware that they had not changed their address with the payroll office because their names, and the Monte Vista Place address, are printed prominently on the outside of the payroll warrant.

14. On March 12, 2010, the district sent to respondent Munoz, by certified mail, a preliminary layoff notice addressed to 325 Monte Vista Place. Munoz did not receive the preliminary layoff notice until some days after March 26, when he received a notice from the post office that there was a piece of certified mail being held for him. Someone at the post office had written Munoz’s new address on the envelope by hand, but the evidence did not establish that the new address was written on the envelope prior to March 15.

15. On March 15, 2010, Tim Swoverland, the president of the King City High School Teachers’ Association, came to respondent Munoz’s classroom and told him that he had been identified for layoff. Swoverland advised Munoz to sign a request for hearing, which Munoz did that day.

16. At some time after March 15 and before March 31, 2010, Megan Munoz went to the district’s Human Resources office and changed her address and her husband’s address to the Earl Bernice Court address. Respondent Munoz’s March payroll warrant, issued on March 31, bears the new address.

17. Under section 44949, an employee must be given written notice, no later than March 15, that his services will not be required for the ensuing year. (§ 44949, subd. (a).) A notice is “deemed sufficient when it is . . . deposited in the United States registered mail . . . and addressed to the last known address of the employee.” (§ 44949, subd. (d).)

18. Respondent Munoz contends that the district failed to give him timely written that his services will not be required for the 2010-2011 school year because the preliminary layoff notice, deposited in the mail on March 12, was not addressed to his “last known address.” The evidence fails to support Munoz’s contention. In July 2009 Munoz changed his address with MCSIG, not with the district. He did not change his address with Human Resources until some time between March 15 and March 31. When the district sent the

preliminary layoff notice to respondent Munoz on March 12, it sent the notice to respondent's last known address.

19. The district gave respondent Munoz timely written notice, prior to March 15, 2010, of the superintendent's recommendation that his services will not be required for the 2010-2011 school year.

Other issues

20. Respondent Linda McClure has a standard secondary credential which authorizes her to teach home economics, and she has a supplemental authorization that allows her to teach sociology and art. McClure is currently teaching economics, culinary arts and history. (The district states that McClure is misassigned as a history teacher; McClure herself is not sure she is authorized to teach history.) McClure has been identified for layoff because of the reduction in culinary arts.

McClure contends that she should be able to bump Kathryn Beilby, who is junior to her. Like McClure, Beilby holds a standard secondary credential. Unlike McClure, Beilby's subject authorization is in art, she has a supplemental authorization in industrial arts, and she has a clear designated subject vocational education credential in photography. Beilby is currently assigned to teach "Art/Photography." Beilby's assignment for the 2010-2011 school year is unknown.

Section 44955, subdivision (b), provides that "the services of no permanent employee may be terminated . . . while any . . . employee with less seniority is retained to render a service which said permanent employee is certificated and competent to render." Although Beilby is junior to McClure, McClure did not establish that Beilby is being retained to render a service that McClure is certificated and competent to provide. In addition, State Administrator Bernard testified that no junior employee is being retained to render services that a senior employee is certificated and competent to render. The evidence fails to establish that Beilby is being retained to provide services that McClure is certificated and competent to render.

21. Respondent Nancy Hunter teaches business at King City High School. She testified that she has recently been approved or recommended for a Career Technical Education credential, which would qualify her to bump junior teachers who teach computer classes. The evidence failed to establish, however, that Hunter has been issued such a credential, or that there are positions held by junior employees who are providing services that she is certificated and competent to provide.

22. At hearing, the teachers affected by the reductions in physical education asserted that they had not been offered physical education positions held by less senior employees at Ventana High School, the district's continuation school. State Administrator Bernard testified that teachers cannot be assigned to the continuation school without their written consent and, at the time of hearing, the district had not sought or obtained the consent

of any of the teachers who were served with preliminary layoff notices. Bernard stated, however, that if any of the affected teachers give their written consent, they will be afforded any rights they possess under section 44955, subdivision (b), to bump into positions in the continuation school.

23. Respondent Dale Garman is an art teacher at Greenfield High School. He holds a single subject credential in art. His seniority date is August 20, 2002. Garman received a layoff notice because the PKS resolution calls for a 1.0 FTE reduction in art.

Garman asserts that while the PKS resolution identifies a 1.0 FTE reduction in art, the district has noticed two 1.0 FTE art teachers for layoff, himself and Chris Hanson. Of the two, Garman is senior. The evidence did not establish whether the district overnoticed for the 1.0 FTE reduction in art, or whether Hanson's layoff notice was based on the reduction of a different service. Whatever the district's reason for noticing Garman and Hanson, the district's layoff may not exceed the reductions authorized by the PKS resolution, and the district may not retain Hanson to render services that Garman is certificated and competent to render.

Garman asserts next that he should be skipped because he is a highly qualified teacher under No Child Left Behind. Under section 44955, subdivision (d)(1), the district "may" deviate from terminating teachers in order of seniority if (among other things) "the district demonstrates a specific need for personnel to teach a specific course or course of study . . . and that the [teacher] has special training and experience necessary to teach that course or course of study . . . which others with more seniority do not possess." In this case, the district has not chosen to deviate from seniority in the order of layoff and has not demonstrated a specific need for Garman to teach a course or course of study. Garman is not entitled to be skipped.

24. Respondent Henry Wong teaches business at Greenfield High School. He has a single subject business credential. Wong contends that he should be skipped because he is a highly qualified teacher in economics. The district, however, has not chosen to deviate from seniority in the order of layoff and has not demonstrated the need to retain Wong to teach a specific course or course of study. Wong is not entitled to be skipped.

25. Respondent Oscar Mendez teaches Spanish and Advanced Literature Spanish at Greenfield High School. He has a single subject Spanish credential. Mendez believes that he is qualified to teach English Language Development courses that the district may offer next year. The reemployment rights of Mendez and the other respondents, however, are not at issue in this proceeding.

26. Respondent Munoz teaches economics and computers. It was his impression prior to hearing that he was being laid off from his entire 1.0 FTE position. It was established, however, based on the testimony of State Administrator Bernard, that Munoz is being retained as to his economics classes and is being laid off only from that part of his position devoted to teaching computers.

27. Any contentions raised by respondents and not discussed above have been found to be without merit and are hereby rejected.

28. No junior employee is being retained to render a service that any of the respondents are certificated and competent to provide.

LEGAL CONCLUSIONS

1. All prehearing notice and jurisdictional requirements have been met.

2. Cause for the elimination of 13.18 FTE positions exists in accordance with Education Code sections 44949 and 44955. Cause further exists to give respondents notice that, to the extent shown in the layoff notices sent them, their services will not be required for the 2010-2011 school year. This cause relates to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

Notice may be given to respondents that, to the extent shown in the layoff notices sent them, their services will not be required for the 2010-2011 school year.

DATED: _____

DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings