

BEFORE THE
GOVERNING BOARD
OF THE
MORENO VALLEY UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2010031047

Respondents listed in Appendix A.

PROPOSED DECISION

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Moreno Valley, California on April 29, 2010.

Melanie A. Petersen and Kelley A. Owens, Fagen Friedman & Fulfroest LLP, Attorneys at Law, represented the Moreno Valley Unified School District.

Carlos R. Perez, Reich, Adell & Cvitan, APLC, Attorneys at Law, represented the respondents listed in Appendix A, except for those listed immediately below.

No appearance was made by or on behalf of respondents Karina Paredes and Donna Solomon.

The matter was submitted on April 29, 2010.

FACTUAL FINDINGS

1. Henry H. Voros, Assistant Superintendent, Human Resources of the Moreno Valley Unified School District, made and filed the accusation dated March 26, 2010, in his official capacity as the designee of Rowena T. Lagrosa, Superintendent of Schools.

2. Respondents¹ are certificated district employees.

¹ The district initially identified 123 certificated employees as respondents designated for layoff. By reason of attrition, subsequent dismissal or otherwise, by the conclusion of the hearing there remained 102 respondents, whom the district seeks to lay off. These are named in Appendix A.

3. On March 9, 2010, the Governing Board of the Moreno Valley Unified School District adopted Resolution 2009-10-43, determining that it would be necessary to reduce or discontinue particular kinds of services at the end of the current school year. The board determined that the particular kinds of services that must be reduced for the 2010-2011 school year were the following full time equivalent (FTE) positions:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
Elementary Teacher K-5	111
Continuing Education Teacher	0.60
School Counselor	4.90
Teacher on Assignment	1.00
Teacher – Title I – Elementary Level	2.00
Teacher – ELD/Specialist	3.60

The proposed reductions totaled 123.10 FTE positions.

4. The board further determined in Resolution No. 2009-10-43 that “for the purpose of assignment and reassignment to a language arts, math, science, or social studies position for middle school instruction, those persons assigned or reassigned to a language arts, math, science, or social science middle school instruction position shall possess a single subject credential or supplementary authorization in language arts, math, science, or social science.”

5. The board directed the superintendent or her designee to determine which employees’ services would not be required for the 2010-2011 school year as a result of the reduction of the foregoing particular kinds of services. The board further directed the superintendent or her designee to send appropriate notices to all certificated employees of the district who would be laid off as a result of the reduction of these particular kinds of services.

6. On or before March 15, 2010, the district timely served on respondents a written notice that the superintendent had recommended that their services would not be required for the upcoming school year, an accusation, and related jurisdictional documents. The notice set forth the reasons for the recommendation. The notice advised respondents of their right to a hearing, that each respondent had to deliver a request for a hearing in writing to the person sending the notice by the date specified in the notice, a date which in each case was more than seven days after the notice was served, and that the failure to request a hearing would constitute a waiver of the right to a hearing.

The recommendation that respondents be terminated from employment was not related to their competency as teachers.

7. Respondents timely filed written requests for hearing and notices of defense. All pre-hearing jurisdictional requirements were met.

8. Respondents are probationary or permanent certificated employees of the district.

9. The services the board addressed in Resolution No. 2009-10-43 were “particular kinds of services” that could 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 and constituted a proper exercise of discretion. No particular kinds of services were lowered to levels less than those levels mandated by state or federal law.

10. 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.

11. The board considered all positively assured attrition, including resignations, retirements and requests for transfer, in determining the actual number of necessary layoff notices to be delivered to its employees.

12. Lori Georg is a middle school sixth grade core teacher.² She has a clear multiple subject credential with a supplementary authorization in English. She believes that she is qualified to bump Gina Beloit, Ana McCauley, Marie Caouki, and Bonnie McMillan. Georg also testified that in 2005, she signed a document reflecting that she was NCLB (No Child Left Behind) compliant to teach middle school language arts beyond the sixth grade level.

Beloit and McCauley presently teach sixth grade core, and were within the initial group of elementary teachers designated for layoff, but were able to bump more junior middle school language arts teachers because they are both NCLB compliant in middle school language arts, i.e., they are highly qualified to teach that subject through the eighth grade. Caouki and McMillan presently teach middle school language arts and are also NCLB compliant in middle school language arts. The district agreed that in 2005, Georg was highly qualified to teach middle school language arts. However, the California Commission on Teacher Credentialing (CCTC) subsequently changed the requirements for NCLB compliance, so that Georg is now no longer highly qualified to teach seventh and eighth grade English. Instead, she is only NCLB compliant for grades K to 6.

Accordingly, the district’s determination that Georg could not bump into a middle school language arts position was proper.

13. Norma Hines teaches middle school language arts. She has a multiple subject credential and subject matter authorization in English. She was bumped by a more senior

² Core teachers teach two different subjects to the same group of students. In Georg’s case, the two subjects are language arts and social studies. In contrast, other middle school teachers, who teach at grades seven or eight, teach single subjects, such as language arts.

elementary teacher who holds a multiple subject credential and supplementary authorizations in English and Spanish.

Hines believes she can bump a more junior employee, Laura Luna, who teaches high school English, has a multiple subject credential, supplementary authorization in English, and special board authorization to teach secondary English granted pursuant to Education Code section 44263. Hines also noted that she has passed her CSET (California Subject Examinations for Teachers) exam in secondary English and is in the process of completing the final course she needs to achieve a single subject credential in English. With her subject matter authorization, Hines is presently NCLB compliant to teach English through ninth grade, but is not at this time (i.e., until passing her course) highly qualified to teach high school English beyond ninth grade. In contrast, Luna, by virtue of her section 44263 authorization, is highly qualified to teach high school English.

Hines also expressed concern that she was bumped by an employee, Juan Borja-Duarte, who is not himself NCLB compliant, but who only has a supplementary authorization to teach English. In contrast, Hines has the more difficult to achieve subject matter authorization. However, the supplementary authorization that Borja-Duarte holds is sufficient for teaching middle school English.³

Based on the foregoing, the district's determination that Borja-Duarte could bump Hines, but that Hines could not bump Luna, was proper.

14. Alma Bissot teaches at the elementary school level. Bissot holds a clear multiple subject credential and a supplementary authorization in English. She believes that she can bump Elizabeth Wilmot and Bonnie McMillan, middle school language arts teachers who, like Bissot, each have multiple subject credentials and supplementary authorizations in English. Both Wilmot and McMillan are highly qualified to teach in their middle school assignments. Bissot, on the other hand, though highly qualified to teach in her present assignment, is not highly qualified to teach at the middle school level.

15. No certificated employee junior to any respondent was retained to perform any services which any respondent was 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 those sections were 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

³ In any event, for reasons not specified in the record, Borja-Duarte was ultimately designated for layoff as well.

proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved.” (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. Pursuant to section 44995, 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.) 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. (*Santa Clara Federation of Teachers, Local 2393 v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843; *Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 134-135.)

The district has an obligation under section 44955, subdivision (b), to determine whether any permanent employee whose employment is to be terminated in an economic layoff possesses the seniority and qualifications which would entitle him/her to be assigned to another position. (*Bledsoe v. Biggs Unified School Dist.*, *supra*, at 136-137.)

4. The decision to reduce or discontinue a particular kind of service is not tied in with any statistical computation. It is within the governing authority’s discretion to determine the amount by which a particular kind of service will be reduced or discontinued as long as the district does not reduce a service below the level required by law. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636.) A school district has wide discretion in setting its budget and a layoff decision will be upheld unless it was fraudulent or so palpably unreasonable and arbitrary as to indicate an abuse of discretion as a matter of law. (*California Sch. Employees Assn. v. Pasadena Unified Sch. Dist.* (1977) 71 Cal.App.3d 318, 322.)

5. School districts have broad discretion in defining positions within the district and establishing requirements for employment. This discretion encompasses determining the training and experience necessary for particular positions. Similarly, school districts have the discretion to determine particular kinds of services that will be eliminated, even though a service continues to be performed or provided in a different manner by the district. (*Hildebrandt v. St. Helena Unified School Dist.* (2009) 172 Cal.App.4th 334, 343.)

6. Education Code section 44263 provides:

“A teacher licensed pursuant to the provisions of this article may be assigned, with his or her consent, to teach a single subject class in which he or she has 18 semester hours of coursework or nine semester hours of upper division or graduate coursework or a multiple subject class if he or she holds at least 60 semester hours equally distributed among the 10 areas of a diversified major set forth in Section 44314. A three-semester-unit variance in any of the required 10 areas may be allowed. The governing board of the school district by resolution shall provide

specific authorization for the assignment. The authorization of the governing board shall remain valid for one year and may be renewed annually.”

7. A preponderance of the evidence sustained the charges set forth in the accusation. 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 discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof. 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 be directed be reduced or discontinued. It is recommended that the board give respondents notice before May 15, 2010, that their services are no longer required by the district.

ADVISORY DETERMINATION

The following advisory determination is made:

The accusations served on respondents are sustained. Notice may be given to respondents before May 15, 2010, that their services will not be required because of the reduction or discontinuation of particular services as indicated.

DATED: _____

DONALD P. COLE
Administrative Law Judge
Office of Administrative Hearings

Appendix A

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|----------------------------------|-------------------------------|
| 1. Sima Abramson | 45. Jennifer Laramie |
| 2. Marisol Acosta | 46. Amanda Martinez |
| 3. Brandon Annette | 47. Christine McCoy |
| 4. Juana Arriaga | 48. Sandra Merletti-Van Damme |
| 5. Jennifer Baker | 49. Karla Michel |
| 6. Rebecca Beigle | 50. Jessica Molletti |
| 7. Alma Bissot | 51. Patricia Mota-Cornejo |
| 8. Mychelle Blandin | 52. Veronica Murga |
| 9. Rebecca Buckhoff | 53. Joseph Ochoa |
| 10. Blanca Chiquita | 54. Karina Paredes |
| 11. Norma Cordova | 55. Jawad Pearson |
| 12. Araceli Cruz | 56. Nicole Phillips |
| 13. Michelle Dotterer | 57. Linda Prows |
| 14. Adam Flores | 58. Justin Rice |
| 15. Lori Georg | 59. Rebeca Sanchez |
| 16. Guadalupe Gonzalez-Rodriguez | 60. Rosalba Henneman |
| 17. Kathy Green | 61. Laura Hernandez |
| 18. Jose Gutierrez | 62. Veronica Herrera |
| 19. Jason Guttirez | 63. Norma Hines |
| 20. Alma Abrego | 64. Tiffani Johnstone |
| 21. Felicia Akuamoah | 65. Maria LaBrie |
| 22. Salvador Arias | 66. Angelica Lepe |
| 23. Norma Avila | 67. Rhea-Ann Matibag-Howard |
| 24. Jamie Balancio | 68. Thomas Medina, Jr. |
| 25. Maria Bennett | 69. April Mertz |
| 26. Kristen Blades | 70. Lorena Michel-Jasso |
| 27. Juan Borja-Duarte | 71. Allison Montejano |
| 28. Tania Cabrera | 72. Estela Munoz Gomez |
| 29. Angelica Cordova | 73. Juliana Murray |
| 30. Jennifer Covington | 74. Terrence Outlaw |
| 31. Randy Dargitz | 75. Edma Payne |
| 32. Timothy Finfrock | 76. Isabel Perez |
| 33. Christopher Fuerte | 77. Lizeth Piskulich |
| 34. Esmeralda Gonzalez | 78. Natividad Quintanar |
| 35. Gisela Gracian-Olmos | 79. Tanya Reed |
| 36. Ileana Gutierrez | 80. Susanna Rodriguez |
| 37. Victoria Gutierrez | 81. Deborah Saravia |
| 38. Marvin Hall | 82. Darlene Schmittle |
| 39. Cathy Harriman | 83. Gabriela Serrato |
| 40. Jacqueline Heredia | 84. Rachel Smith |
| 41. Ana Luisa Hernandez-Wauran | 85. Jeffrey Soria |
| 42. Adriana Hidalgo | 86. Kristina Strathman |
| 43. Margie Holland-Matthews | 87. Erika Torres |
| 44. Kathryn Kulsick | 88. Todd Toulouse |

89. Merri Turngren
90. Arlene Vega
91. Alisha Warth
92. Karon Woolsley
93. Yesenia Serrano
94. Cynthia Smith
95. Donna Solomon
96. Kirstine Spencer
97. Shari Sutherlin
98. Zenaida Torres
99. Tera Trotter
100. Antonio Vega
101. Xaviera Villegas
102. Eltonia Williams