

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

In the Matter of the Employment Status of
the Certificated Employees of the Hesperia
Unified School District Who Were Served
with a Preliminary Layoff Notice,

OAH No. 2008030518

Respondents.

PROPOSED DECISION

Stephen E. Hjelt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Hesperia, California, on April 25, 2008.

Tristan G. Pelayes, Attorney at Law, represented the Hesperia Unified School District.

Carlos Perez, Attorney at Law, represented respondents, certificated employees, Cheryl Ferrato, Kimberly Franklin, Cynthia Gonzalez, Brenda Guillen, Sarah Hale, Aiko Thomas, Teri Muzquiz, Shannon Erath, Kelley Farnham, Heidi Martinez, and Jonna Eyre.

No appearance was made by or on behalf of the other certificated employees of the Hesperia Unified School District who were served with a preliminary layoff notice.

The matter was submitted on April 25, 2008.

FACTUAL FINDINGS

The Hesperia Unified School District

1. The Hesperia Unified School District (the District) is the largest school district in California's high desert, providing educational services and supports to nearly 22,000 students who live within the District's boundaries, an area covering 141 square miles. The District operates 15 elementary schools, three middle schools, two comprehensive high schools, two continuation high schools, and various educational programs for learners of all

ages. The District recently broke ground for a third high school (Oak Hills High School), which is scheduled to open in the 2009/2010 school year.

2. The District is governed by an elected five-member Board of Governors. The Board's Chief Executive Officer is Mark A. McKinney, who is the Superintendent of Schools. Superintendent McKinney is ably supported by an administrative staff which includes Assistant Superintendant Karen Kelly, who is responsible for 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 was passed, 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 a governing board's budgeting problems far more complicated than they were before.

A school district'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. In early 2008, the District's administration (as well as the administrators of most other school districts) became 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 \$6 million for the 2008-2009 school year. The District was required to look into ways to meet the projected deficit.

Under the Superintendent's direction, budgetary cuts were considered across the board including the elimination and reduction of particular kinds of services being provided by the District's certificated employees. On March 10, 2008, Superintendent McKinney

presented to the Board a recommendation concerning the reduction and elimination of particular kinds of services in the approximate amount of 54.5 full time equivalent positions.

5. On March 10, 2008, the Board adopted Resolution 07/08-46 (set forth below in Factual Finding 6) recommending a reduction in 54.5 full time equivalents (FTEs) of particular kinds of services that were previously scheduled to be provided by District for the 2008-2009 school year. The Board also adopted Resolution 07/08-48 (set forth below in Factual Finding 7) setting the criteria of discontinuing the service of the most recently hired employees and adopting tie-breaking criteria to be applied in the event that two or more employees shared the same date of service. The adoption of these resolutions was based on the welfare of the schools and their pupils.

6. **HESPERIA UNIFIED SCHOOL DISTRICT**

RESOLUTION No. 07/08-46

REDUCTION OF SERVICES

WHEREAS, the Board of Education of the Hesperia Unified School District has determined that the particular kinds of services set forth herein must be reduced or discontinued; and

WHEREAS, it is the opinion of the Board that because of the aforementioned reason it is in the best interest of the District that the number of regular certificated employees of the District must be reduced; and

WHEREAS, this Board does not desire to reduce the services of regular certificated employees based upon reduction of average daily attendance during the past two years.

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of the Hesperia Unified School District as follows:

- A. That the particular kinds of services set forth below be reduced or eliminated commencing in the 2008-2009 school year.

Elementary Classroom Teachers	12.5	F.T.E.
Elementary Kindergarten Class Size Reduction	24	F.T.E.
Elementary Music Teachers	4	F.T.E.
Middle School Math/Sci Core	3	F.T.E.
Middle School Home Ec	2	F.T.E.
Middle School P.E.	1	F.T.E.
Middle School English/P.E.	1	F.T.E.

Middle School Social Science	1	F.T.E.
Middle School Language Arts/Soc. Sci. Core	1	F.T.E.
Middle School Success	1	F.T.E.
High School ROTC	1	F.T.E.
High School Work Experience	1	F.T.E.
HS Consumer Science	1	F.T.E.
HS Piano	1	F.T.E.

Secondary	14.0	F.T.E.
Elementary	40.5	F.T.E.
TOTAL	54.5	F.T.E.
Eliminate	54.5	F.T.E.
Reduce		

- B. That due to the reduction or elimination of particular kinds of services the legal number of certificated employees of the District be terminated pursuant to Education Code section 44955.
- C. That the reduction of certificated staff be affected by the termination of regular employees and not by terminating temporary and substitute employees.
- D. That the District Superintendent (or legal designee) is directed to initiate layoff procedures pursuant to Education Code sections 44955 and 44949.

PASSED AND ADOPTED at the regular meeting of the Board of Education held on March 10, 2008.

AYES: _____
 NOES: _____
 ABSENT: _____

 President
 Board of Education

I certify under penalty of perjury, that this is a true and correct copy of the Board Resolution, adopted by the Board of Education, March 10, 2008.

Mark McKinney
Interim Superintendent

7. Resolution 07/08-48 set forth the criteria for workforce reduction as follows:

HESPERIA UNIFIED SCHOOL DISTRICT

RESOLUTION NO. 2007/08-48

RESOLUTION TO SET CRITERIA FOR WORKFORCE REDUCTION

WHEREAS, the Board of Education of the Hesperia Unified School District has determined that particular kinds of services within the District must be reduced or discontinued; and

WHEREAS, it is the opinion of the Board that because of the aforementioned reason it is in the best interest of the district that the number of regular certificated employees of the District must be reduced; and

WHEREAS, in determining a seniority list an order of workforce reduction tie breaking system and criteria must be developed.

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of the Hesperia Unified School District as follows:

In the event of a District wide reduction in force, layoffs shall be conducted in the order of reverse seniority (least senior laid off first). The following specific criteria, between employees who first render paid service to the District on the same date, based solely on the needs of the District and the student's thereof, listed in order of importance, shall be applied in the order listed;

- A. Possession of a credential authorizing service in the assignment to be named;
- B. District teaching experience within the last three (3) years in the assignment to be made;
- C. Teaching experience at different grade levels;
- D. Teaching experience in different subject areas;
- E. Teaching experience at more than one school site;
- F. Multiplicity of credentials;
- G. Possession of: 1) a graduate degree, 2) a major, 3) a minor in the field to be assigned. Majors and minors are defined as those listed on the credential and recorded at the County Office of Education;

- H. Special training in the area to be assigned;
- I. Persons engaged in authorized student, professional, and/or leadership activities; both school and District (beyond the classroom), will be considered the more valuable to the District;
- J. Number of majors, minors or graduate degrees in subject areas within the District curriculum out of the area to be assigned. Majors and minors are defined as those listed on the credential and recorded at the County Office of Education;
- K. Receipt of a satisfactory rating on the latest evaluation subject to the 1990-1991 school year. If no evaluation has occurred since 1990-1991, then a satisfactory rating will be presumed;
- L. Number of days of absence (other than industrial accident and pregnancy disability) during three years prior to March 1.

PASSED AND ADOPTED at the regular meeting of the Board of Education held on March 10, 2008.

8. Before preliminary layoff notices were served, the District's 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 seniority list contained each employee's original date of hire; the employee's status (permanent, probationary 2, probationary 1, emergency); the employee's assignment, the employee's credential(s); and the employee's English learner authorization. Certificated employees had the opportunity to review the seniority list and to provide the administrative staff with any changes or corrections.

9. The Board's resolution called for the elimination or reduction of about 54 FTEs in particular kinds of services. Using the Board's resolution and the District's seniority list, Assistant Superintendent Kelly, Cindy Fortin, Michelle Rush, and others identified the most recently hired certificated employees providing the kinds of services that were scheduled to be reduced or eliminated. The administrative staff considered positive attrition including retirements and resignations. The District's financial situation required the service of the preliminary layoff notices.

10. On or before March 15, 2008, each certificated employee who is party to this proceeding was given notice that the Superintendent had recommended that his or her services with the District would be terminated at the conclusion of the current school year. The notice stated the reason for the reduction in the District's workforce. The 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.

Twenty-two of the certificated employees served with the preliminary layoff notice requested a hearing. An accusation packet was thereafter served on the 22 certificated employees who requested a hearing. Nineteen of those employees filed a Notice of Defense.

All jurisdictional requirements were met for respondents appearing in this proceeding.

The Administrative Hearing

11. On April 25, 2008, the record in the administrative hearing was opened.

A stipulation of jurisdictional facts was filed – it was stipulated that all respondents were certificated employees of the District; that the Board adopted the resolutions related to the reduction of particular kinds of services and the criteria for workforce reduction; that all identified respondents received written notice before March 15, 2008, of the superintendent's recommendation that their employment be terminated at the conclusion of the current school year; that each respondent received a true and correct copy of the accusation packet (with the required jurisdictional documents); that each respondent received a notice of hearing; and that the identified respondents filed a notice of hearing.

The Accusations filed against Katherine Accomazzo, Angela Barber, Lucinda Barrington, Heather Childress, Kinsi Downard, Joann Hageman, Kera McLaughlin, Christine Menge, Sherry Morean, BreAnna Ott, Christina Parker, Cami Self, Ann Shirk, Christie Smith, Kristi Stirling, Maria Zapata-Galvan, Donald French, Melissa Long, Christopher Seybert, Larry Williams, and Joan Ferris were withdrawn.

Jurisdictional documents were presented. The District gave an opening statement. Respondents who were represented by counsel waived an opening statement. Sworn testimony and documentary evidence was received, closing arguments were given, the record was closed, and the matter was submitted.

The Particular Kinds of Services

12. The services identified by the Board for reduction or elimination 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 law.

The Seniority List

13. The preponderance of the evidence did not establish that any certificated employee was improperly classified. Nevertheless, the District staff should be available to make corrections to the seniority list as may be appropriate following this hearing based upon new verifiable information.

The District's Layoff Procedure

14. After the Board's resolution was adopted, the District's staff reviewed the Board's resolution and determined the most junior employees providing the particular kinds of services that were identified in the Board's resolution by referring to the seniority list. For those employees who were displaced, the staff attempted to determine if the displaced employee could "bump" a more junior employee who was providing a particular kind of service that the displaced employee was credentialed and competent to provide.¹ The Board's tie-breaking criteria established the method by which employees having the same seniority date could be ranked for layoff purposes. The tie-breaking criteria were based on the welfare and needs of the students. However, the use of the tie-breaking procedure was not necessary to resolve any dispute related to the layoffs in this matter.

Through this 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.

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

¹ 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 holds that position.

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 which 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 which 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.

RECOMMENDATION

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, with the exception of Katherine Accomazzo, Angela Barber, Lucinda Barrington, Heather Childress, Kinsi Downard, Joan Ferris, Donald French, Joann Hageman, Melissa Long, Kera

McLaughlin, Christine Menge, Sherry Morean, BreAnna Ott, Christina Parker, Camie Self, Chris Seybert, Ann Shirk, Christie Smith, Kristi Stirling, Larry Williams and Maria Zapata-Galvan.

It is recommended that the Board serve final notices on the following respondents that their services will not be required in the next school year because of the reduction of particular kinds of services as indicated: Kristy Ashlock, Tiffany Broussard, Surojeet Chatterji, Jason Cole, Rafael Cordero, Michele Cutler, Nathaniel Davis, Inez Denson, Amber Derrick, Nancy Enriquez, Shannon Erath, Jonna Eyre, Kelley Farnham, Cheryl Ferrato, Kimberly Franklin, Cynthia Gonzalez, Robert Gore, Timothy Gray, Brenda Guillen, Sarah Hale, Gregory Hammond, Katherine Johnson, Heidi Martinez, Stefenie McKean, Melissa McPherson, Teri Muzquiz, Marissa Padilla, Nacina Russo Harris, Jeremy Sauer, John Schoch, Thomas Steed, Aiko Thomas, Judson Washburn.

DATED: 5-5-08



STEPHEN E. HJELT
Administrative Law Judge
Office of Administrative Hearings