

**BEFORE THE BOARD OF EDUCATION  
OF THE BASSETT UNIFIED SCHOOL DISTRICT**

In the Matter of the Accusation Against:	)	OAH NO. L2008020595
	)	
Respondents Named in the Attached	)	
Accusation Mailing List	)	
	)	
<u>Respondents.</u>	)	

**PROPOSED DECISION**

Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 1, 2008, at the Board Room of the Bassett Unified School District, La Puente, California.

Margaret A. Chidester, Attorney at Law, represented Bassett Unified School District.

Emma Lehene, Attorney at Law, represented the respondents Amy Arreola, Jessica Barajas, Dora Carrillo, Jesus Fuentes, and Isabel Reyes. All other respondents appeared in Propria Persona.

Evidence was received and the record was left open to allow the District to submit a revised list of reductions. The revised list of reductions was received on May 2, 2008, and marked and admitted as exhibit 10. The matter was deemed submitted on May 2, 2008.

**SUMMARY**

The Board of Education of the Bassett Unified School District (District) decided to reduce or discontinue particular kinds of services provided by certificated personnel for the 2008-2009 school year for budgetary reasons. The decision was not related to the competency and dedication of the teachers whose services were 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, "bumping," and breaking ties between employees with the same first dates of paid service. The selection process complied with Education Code requirements.

**FACTUAL FINDINGS**

1. Cynthia Byrd filed the Accusation and the First Amended Accusation in her official capacity as Assistant Superintendent, Human Resources, Bassett Unified School District.

2. Respondents are certificated employees of the District.

3. On March 3, 2008, the Board adopted Resolution No. 20-08, to discontinue or reduce the particular kinds of services for the 2008/2009 school year as follows:

10 elementary (K-6) multiple subject classroom teachers	10 FTE
1 middle school (6-8) multiple subject classroom teachers	1 FTE
1 secondary French classroom teacher	1 FTE
1 secondary history/social studies classroom teacher	1 FTE
3 secondary English studies classroom teachers	3 FTE
2 secondary mathematics studies classroom teachers	2 FTE
3 counselors	3 FTE
5 Student Achievement Resource teachers	5 FTE
1 ELD resource teacher	1 FTE
1 secondary PE teacher on special assignment	1 FTE
3 child development classroom teachers	3 FTE
2 education specialists mild/moderate classroom teachers	2 FTE
1 mild/moderate credentialed special education specialist	1 FTE
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TOTAL	34 FTE

The Board further determined that based on the discontinuance or reduction of services, it would be necessary to decrease the number of certified employees at the close of the present school year by a corresponding number of full-time equivalent positions. The Board resolution also included exemptions from the order of lay off and tie-breaking criteria for certificated employees with the same date of first paid service.

5. The reduction or discontinuation of the particular kinds of services set forth in Factual Finding 3, related to the welfare of the District and its pupils.

6. On March 6, 2008, Ms. Byrd notified respondents in writing that she had recommended to the governing board that their services would not be required for the next school year. The mailing included the reasons for the notification and stated that "A request for hearing must be in writing and must actually be received by me at the District Office no later than 4:00 p.m. on March 17, 2008." All but two of the noticed certificate employees requested a hearing.

7. At some point during the layoff process, the District was notified by a representative of the Bassett Teachers' Association that the collective bargaining agreement currently in force, includes a provision that seniority among certificated employees with the same first day of paid service is to be determined by lottery.

8. On April 17, 2008, based on the collective bargaining agreement between the District and the Bassett Teachers' Association, the Board reaffirmed resolution 20-08 but set forth new tie-breaking criteria to comply with section 7 of the collective bargaining agreement. Section 7 states:

7. Seniority is established by the initial date of uninterrupted credentialed service to the district in probationary status. Those unit members whose first day of service tot (sic) the district is the same, shall have their seniority established by lot. The district shall conduct the lottery in a fair, equitable and reasonable manner in consultation with the association and with association representation present.

9. On April 24, 2008, Ms. Byrd made and filed an Amended Accusation against each respondent.

10. The Board considered attrition, including resignations, retirements and requests for leave, in determining the necessary layoff notices to be delivered to employees.

11. The District maintains a Seniority List which contains employees' seniority dates (the first date of paid service in a probationary position), current assignments and locations, advanced degrees, credentials, and authorizations.

12. During the hearing, the District made a motion to dismiss the accusations against respondents Lynda Doerner, Vanessa Chavez, Jessica Gallo-Ramirez, Meghan Lerma, Denise Strickland, Kerry Honey, John Mamea, Wendy Max, Nona Watson and Jennifer Avila. The motion to dismiss the Accusations against these respondents was granted.

13. Based on the District's decision to dismiss the Accusations against the respondents named in Factual Finding 12, the District submitted a revised list of reductions as follows:

10 elementary (K-6) multiple subject classroom teachers

10 FTE

1 middle school (6-8) multiple subject classroom teachers	1 FTE
1 secondary history/social studies classroom teacher	1 FTE
1 secondary English studies classroom teacher	1 FTE
1 secondary mathematics studies classroom teacher	1 FTE
3 counselors	3 FTE
1 ELD resource teacher	1 FTE
1 secondary PE teacher on special assignment	1 FTE
2 education specialists mild/moderate classroom teachers	2 FTE
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TOTAL	21 FTE

14. The reduction or discontinuation of the particular kinds of services set forth in the revised reduction list (Factual Finding 13), relates to the welfare of the District and its pupils.

15. Four of the named respondents (Maria Herrera, Jimmy Lima, Dora Carrillo and Estela Peregrina) are counselors. However, the Board resolution calls for a reduction of only three counselors. Although respondent Herrera is the most senior of the four counselors who received notice, respondent Lima is only tenured counselor on the list, while respondents Herrera, Carrillo and Peregrino are probationary employees. Therefore, the accusation against respondent Jimmy Lima should be dismissed.

16. No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render.

### LEGAL CONCLUSIONS

1. All notices and other requirements of Education Code sections 44949 and 44955 were met. Therefore, jurisdiction was established for this proceeding as to all respondents.

2. The utilization by the District of a lottery as a tie-breaking procedure was a proper exercise of its authority and discretion under the facts of this case. The Education Code does not specifically prohibit a lottery procedure to establish seniority when the parties agree to such a procedure pursuant to their collective bargaining agreement. In this case, the District and the Bassett Teachers' Association agreed that seniority would be established through a lottery for teachers with the same first date of paid service. In fact, it was at the behest of the



Bassett Teachers' Association that he District changed its tie-breaking criteria to a lottery. Finally, respondents did not object to the lottery procedure at the hearing.

3. Cause was established as required by Education Code section 44955 to reduce the number of certificated employees due to the reduction or discontinuation of particular kinds of services as set forth in Factual Finding 13. The Board's decision to reduce or eliminate the identified services was neither arbitrary nor capricious. The decision relates solely to the welfare of the District's schools and the pupils within the meaning of Education Code section 44949.

4. No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render.

5. Cause exists to layoff respondents Amy Arreola, Jessica Barajas, Dora Carillo, Carlos Castellanos, Veronica Cueva, Jesus Fuentes, Kim Fuentes, Martha C. Garcia, Maria Herrera, Melodie Arin McDonald, Estela Peregrina, Margarita Perez, Moncia Portugal, Isabel Reyes, Bernice Rios, Kimberly Thompson, and Rene Tiscareno.

6. Cause exists to dismiss the Accusations against respondents Lynda Doerner, Vanessa Chavez, Jessica Gallo-Ramirez, Meghan Lerma, Denise Strickland, Kerry Honey, John Mamea, Wendy Max, Nona Watson and Jennifer Avila, pursuant to Factual Finding 12.

7. Cause exists to dismiss the Accusation against respondent Jimmy Lima pursuant to Factual Finding 15.

### **ORDER**

1. Notice may be given to respondents Amy Arreola, Jessica Barajas, Dora Carillo, Carlos Castellanos, Veronica Cueva, Jesus Fuentes, Kim Fuentes, Martha C. Garcia, Maria Herrera, Melodie Arin McDonald, Estela Peregrina, Margarita Perez, Moncia Portugal, Isabel Reyes, Bernice Rios, Kimberly Thompson, and Rene Tiscareno, that their services will not be required for the 2008-2009 school-year.

2. The Accusations and Amended Accusations against respondents Lynda Doerner, Vanessa Chavez, Jessica Gallo-Ramirez, Meghan Lerma, Denise Strickland, Kerry Honey, John Mamea, Wendy Max, Nona Watson, Jennifer Avila and Jimmy Lima are dismissed.

Dated: \_\_\_\_\_

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HUMBERTO FLORES  
Administrative Law Judge  
Office of Administrative Hearings