

BEFORE THE
GOVERNING BOARD OF THE
WHITTIER CITY SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

Certain Certificated Employees of the
Whittier City School District,

Respondents.

OAH No. 2010030754

PROPOSED DECISION

David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 1, 2010, at the Mill School in Whittier, California.

Aaron V. O'Donnell, Esq., Atkinson, Andelson, Loya, Rudd & Romo, represented Whittier City School District, whose representative was also present.

Carlos R. Perez, Esq., Reich, Adell & Cvitan, represented Andrea Adame, Maria Alvarado, Kathryn Araiza, Patricia Cardiel, Rachel Chavez, Mary Dishigrikyan, Leah Elmange, Virginia Franco, Jana Fuentes-Long, Janay Hamrick, Brian Hansen, Claudia Herrera, Nilda Huerta, Vanessa Jayme, Gloria Jimenez, Domani Kem, Bernadette Leeper, Elizabeth Martel, Arlene Martinez, Catherine Miyagishima, Marisa Mnoian, Jenon Mocilac, Jennifer Munoz, Kevin Nielsen, Myra Orozco, Sharon Quirarte, Inez Robles, Merced Rodriguez, Kristy Rosander, Ginger Sparks, Yvonne Spitzer, Alisha Zepeda and Alexandria Zirschky (Respondents). Each Respondent was present, except for Bernadette Leeper.

Evidence was received by way of stipulation, testimony and documents. The record was closed and the matter was submitted for decision on April 1, 2010.

SUMMARY OF PROPOSED DECISION

The Governing Board of the District (Board) determined to reduce or discontinue particular kinds of services provided by certificated teachers for budgetary reasons. The decision was not related to the capabilities and 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. The selection process was in accordance with the requirements of the Education Code. The Board may proceed as indicated herein.

FACTUAL FINDINGS

Jurisdiction and Parties

1. The District provides educational services for approximately 6,700 students at nine elementary schools, two middle schools and one preschool. The District employs certificated staff in permanent or probationary positions, as well as temporary and substitute teachers.

2. Ron Carruth is the Superintendent of the District. Dr. Laurie Bruton is the Assistant Superintendent of Human Resources of the District. Their actions were taken in their official capacity. Mr. Carruth, Dr. Bruton and their staffs were responsible for implementation of the technical aspects of the layoff.

3. Before March 15, 2009, the District served 48 teachers, including Respondents, by personal service and/or certified mail, with a written notice (layoff notice) that it had been recommended that notice be given to them pursuant to Education Code sections 44949 and 44955 that their services would not be required for the next school year. Each layoff notice set forth the reasons for the recommendation and noted that the Board had passed a resolution reducing the certificated staff by 46.5 full-time equivalent (FTE) positions.

4. Thirty two certificated employees, referred to as Respondents, submitted timely written requests for a hearing to determine if there is cause for not reemploying them for the ensuing school year.

5. The Superintendent made and filed Accusations against each of the Respondents and the District served Respondents either in person or by certified mail with an Accusation along with required accompanying documents and blank Notices of Defense.

6. The District received a Notice of Defense on behalf of 17 Respondents. The District agreed that: any Respondent who submitted a written request for hearing and/or a Notice of Defense could participate in the hearing as a Respondent; and any teacher receiving a layoff notice who was present at the hearing could participate in the hearing as a Respondent, even if he or she did not submit a written request for hearing and/or a Notice of Defense.

7. Respondents in this proceeding are probationary or permanent certificated employees of the District.

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The Board and the Layoff Resolution

8. On February 22, 2010, the Board was given notice of the Superintendent's recommendation that certificated employees in 46.5 FTE positions be given notice that their services would not be required for the next school year and stating the reasons therefore.

9. Board Resolution number R14, adopted on February 9, 2010 (Resolution), proposed a layoff of certificated employees in 46.5 FTE positions. Specifically, the Resolution provided for the reduction or elimination of the following particular kinds of services:

POSITIONS (FTE); SERVICES OR PROGRAMS TO BE REDUCED

1. 28.0; Elementary Teaching Services
2. 6.0; Middle School 6th Grade Multiple Subject Classroom Teaching Services
3. 0.5; Successmaker Multiple Subject Teaching Services
4. 1.0; Middle School Single Subject Physical Education Teaching Services
5. 2.0; Middle School Single Subject English Teaching Services
6. 2.0; Middle School Single Subject Social Studies Teaching Services
7. 1.0; Assistant Superintendent of Instructional Services
8. 3.0; Middle School Counseling Services
9. 1.0; Alternative Education Counseling Services
10. 2.0; Program Improvement Coach¹

46.5 FTE Total Full Time Equivalent reduction

10. The Resolution was required by the District's fiscal situation due the uncertainty in the amount of state funding to be expected, and the need to reduce services to maintain a budget for the welfare of students.

11. The decision to reduce services was not related to the capabilities and dedication of the individuals whose services are proposed to be reduced or eliminated.

12. In a separate resolution, the Board established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. More specifically, the tie-breaker criteria provide for a priority system including, among other things, status of credentials, possession of certifications such as a BCLAD, CLAD or SDAIE, additional credentials, advanced degrees and college unit credits, to establish seniority within the shared date of first paid service. In the event of a tie after reference to all listed criteria, a random drawing would be held.

¹ The Resolution inadvertently listed item #10 as a second item #9. There was no prejudice to any Respondent as a result of this error.

The Seniority List and the Layoffs

13. The District maintains a seniority list which contains employees' seniority dates (first date of paid service), current assignments, credentials and certifications.

14. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority.

15. The District used information from the seniority list, personnel files, a county database and information from the California Commission on Teacher Credentialing to apply the tie-breaker criteria.

16. The District identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued. The District used its available information to determine if and when those employees were capable, due to their credentials, of displacing more junior employees (known as "bumping"). No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

17. The services identified in the Resolution are particular kinds of services that could be reduced or discontinued under Education Code section 44955. The Board's decisions to reduce or discontinue the identified services were neither arbitrary nor capricious, and were a proper exercise of its discretion. The decisions were based on the welfare of the District and its pupils.

LEGAL CONCLUSIONS AND DISCUSSION

1. Education Code² section 44949, subdivision (a), states in pertinent part:

"No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefor."

2. Section 44955 provides, in pertinent part:

"(a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as

² All statutory citations are to the Education Code.

specified in Sections 44948 to 44949, inclusive.

“(b) Whenever . . . a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, . . . and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

“As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish . . . a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. . . .

“(c) [S]ervices of such employees shall be terminated in the reverse order in which they were employed, as determined by the board in accordance with Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

“The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. . . .

“(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 . . . 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.”

3. Sections 44949 and 44955 establish jurisdiction for this proceeding, and the notice and jurisdictional requirements set forth therein were met. (Factual Findings 3 through 7.)

4. 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 v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

5. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the District’s schools and pupils within the meaning of section 44949. (Factual Findings 8 through 17.)

6. The services at issue have been recognized as particular kinds of services subject to layoff proceedings. (See, e.g., *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Campbell v. Abbott* (1978) Cal.App.3d 796; *Zalac v. Governing Board of the Ferndale Unified School District* (2002) 98 Cal.App.4th 838.)

7. 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.)

ORDER

1. Notice may be given to employees occupying 46.5 full-time equivalent certificated positions that their services will not be required for the 2010-2011 school year because of the reduction and discontinuance of particular kinds of services.

2. Notice shall be given in inverse order of seniority.

DATED: April 5, 2010.

/s/

DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings