

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

In the Matter of the Employment Status of:

REYNA AVELINO, GEETA CHANDRA,  
IVAN GARIBAY, NELDA RODRIGUEZ,

Respondents.

OAH No. N2006040285

**PROPOSED DECISION**

Robert Walker, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Parlier, California, on April 27, 2006.

Linda Bacon, Legal Counsel, Fresno County Office of Education, represented the complainant, Fernando Elizondo, Ph.D., Interim Superintendent, Parlier Unified School District.

Daniel T. McCloskey, Attorney at Law,<sup>1</sup> represented the respondents, Reyna Avelino, Geeta Chandra, Ivan Garibay, and Nelda Rodriguez.

**FACTUAL FINDINGS**

1. Respondents – Reyna Avelino, Geeta Chandra, Ivan Garibay, and Nelda Rodriguez – are certificated district employees.

2. Not later than March 15, 2006, in accordance with Education Code sections 44949 and 44955,<sup>2</sup> the superintendent of the school district caused the governing board of the district and respondents to be notified in writing that it was recommended that respondents be notified that the district would not require their services for the ensuing school year. The notice stated the reasons for the recommendation. The recommendation was not related to respondents' competency.

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<sup>1</sup> Daniel T. McCloskey, Attorney at Law, 750 East Bullard, Suite 101, Fresno, California 93710-5445.

<sup>2</sup> All references to the Code are to the Education Code unless otherwise specified.

3. A notice was delivered to each respondent, either by personal delivery or by depositing the notice in the United States mail, registered, postage prepaid, and addressed to respondent's last known address.

4. The notice advised each respondent of the following: He or she had a right to a hearing. In order to obtain a hearing, he or she had to deliver a request for a hearing in writing to the person sending the notice. The request had to be delivered by March 27, 2006, which was not less than seven days after the notice of termination was served. And the failure to request a hearing would constitute a waiver of the right to a hearing.

5. Each respondent timely filed a written request for a hearing to determine whether there was cause for not reemploying him or her for the ensuing year. An accusation was timely served on each respondent. Each respondent filed a timely notice of defense. All prehearing jurisdictional requirements were met.

6. The governing board of the district resolved to reduce or discontinue particular kinds of services. Within the meaning of Code section 44955, the services are "particular kinds of services" that can be reduced or discontinued. The recommendation to reduce or discontinue these services was not arbitrary or capricious but constituted a proper exercise of discretion.

7. The governing board of the district determined that, because particular kinds of services are to be reduced or discontinued, it is necessary to decrease the number of permanent employees in the district.

8. Respondents contend that the reduction or discontinuation of particular kinds of services does not relate to the welfare of the district and its students.

9. The district has a \$3,700,000 short fall in its budget and is engaging in deficit spending. The County Office of Education has lent money to the district, and the district has devised a financial recovery program that will require a number of years of reduced spending in order to be successful. It is found that the reduction or discontinuation of particular kinds of services relates to the welfare of the district and its students. The reduction or discontinuation is necessary in order to decrease the number of certificated employees of the district.

10. The district is retaining William Cazares as a science teacher. Ms. Chandra also is a science teacher, and she contends that she has more seniority than Mr. Cazares has. If her contention is correct, Code section 44955, subdivision (b), prohibits the district from terminating her services.

11. The evidence, however, supports a finding that Mr. Cazares and Ms. Chandra both began rendering paid service to the district on August 11, 2004, and that the district appropriately applied tie-breaking criteria in deciding to retain Mr. Cazares and terminate Ms. Chandra.

12. Ms. Chandra testified that she did not recall seeing Mr. Cazares the first two or three weeks of school in August of 2004 and that she understood that he began teaching in

Parlier after the beginning of the school year because he was finishing a contract to teach elsewhere.

13. On August 10, 2004, the district conducted a voluntary orientation for new teachers. Teachers were not paid for attending. August 11, 2004, was the first day of paid service, and it was a day of in-service training. Mr. Cazares testified that, because of a prior commitment, he missed the one day of orientation but that he attended the second day, the day of in-service training. And Zulema Cano, who is in charge of human resources for the district, testified that, if Mr. Cazares had not begun the year on August 11, 2004, there should have been an absence report in the payroll records. She testified, further, that there was no absence report.

14. It is found that Mr. Cazares and Ms. Chandra both began rendering paid service to the district on August 11, 2004.

15. The district is not retaining any employee with less seniority than respondents have to render a service that respondents are certificated and competent to render.

#### LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Code sections 44949 and 44955. All notice and jurisdictional requirements contained in those sections were satisfied.

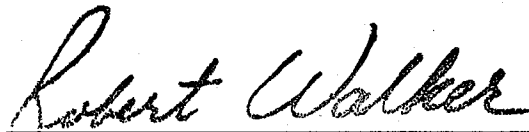
2. Within the terms of Code sections 44949 and 44955, the district has cause to reduce or discontinue particular kinds of services and to give notices to respondents that their services will not be required for the ensuing school year. The cause relates solely to the welfare of the schools and the pupils.

3. Mr. Cazares and Ms. Chandra both began rendering paid service to the district on August 11, 2004, and the district appropriately applied tie-breaking criteria in deciding to retain Mr. Cazares and terminate Ms. Chandra.

#### ORDER

The district may give notice to the respondents that the district will not require their services for the ensuing school year.

Dated: May 3, 2006



ROBERT WALKER

Administrative Law Judge

Office of Administrative Hearings