

BEFORE THE
GOVERNING BOARD
ORCUTT UNION SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

KELLI BORNHOFT and
GREG SANDERS,
Certificated Employees of the
Orcutt Union School District,

Respondents.

OAH No. 2010020635

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge, on April 22, 2010, in Orcutt. Complainant Sharon McHolland, Superintendent, Orcutt Union School District, was represented by David C. Larsen, Attorney at Law.

Respondents Kelli Bornoft and Greg Sanders were present and represented by Robert M. Ostrove, Attorney at Law.

Documentary, stipulated, and oral evidence having been received and oral argument made, the Administrative Law Judge submitted this matter for decision on April 22, 2010, and finds as follows:

FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on March 24, 2010, the Accusation was made and filed by Sharon McHolland in her official capacity as Superintendent of the Orcutt Union School District, State of California (District).

2. Respondents Kelli Bornoft and Greg Sanders are permanent or probationary certificated employees of the District.

3. The District is an elementary and intermediate school district in Santa Barbara County. The District has an undetermined number of elementary schools with approximately 3,600 pupils and two intermediate schools with approximately 900 pupils. Due to the ongoing state budget crisis and the concomitant loss of revenue from the state, the District

has been having budgetary problems. Last fiscal year, the District used federal stimulus monies and funds from its reserve to offset its deficit spending. For the current fiscal year, the District will be operating at a deficit of \$3.5 million with revenues at \$29.5 million and expenditures at \$33 million. In or about January 2010, the Assistant Superintendent of Business Services prepared a projection of the District's expected revenues and expenditures for the next two fiscal years based on the Governor's proposed budget for the State of California. For 2010-2011, the Assistant Superintendent projects that the District not only will receive \$1.6 million less in revenue and have an even larger deficit but also will become insolvent if it continues to offer the same number of existing programs and services. The Assistant Superintendent has recommended that the District make budget cuts for the next fiscal year by reducing or discontinuing programs and services, laying off certificated and classified personnel, lowering wages, and reorganizing management in order to help ensure a balanced budget and to maintain the required three percent reserve.

4. (A) On March 10, 2010, the Superintendent gave written notice to the Governing Board of her recommendation that programs and services and related certificated positions be reduced for the 2010-2011 school year in order for the District to maintain a balanced budget and provide essential services.

(B) On March 10, 2010, in Resolution No. 10, pursuant to Education Code sections 44949 and 44955 and based upon recommendation of the Superintendent, the Governing Board determined that the District may no longer have the financial ability or resources to provide all of the services that it is currently providing; that the District will have to reduce certain services for the 2010-2011 fiscal year to maintain a balanced budget and provide for services in the most acceptable manner; and that the District must reduce or discontinue particular kinds of services and decrease a corresponding number of certificated employees at the close of the current school year in accordance with Education Code section 44955. The Governing Board thereupon resolved and directed the Superintendent and/or her designee to determine which certificated employees' services may not be required for the 2010-2011 school year and to give written notices to those certificated employees of the Superintendent's recommendation that they not be re-employed in accordance with and in the manner prescribed by Education Code sections 44955 and 44949.

(C) On March 10, 2010, in Resolution No. 10, the Governing Board also adopted criteria to be applied in the priority order indicated to determine which certificated employees meet the particular needs of the District in the event that all certificated employees with the same date of hire are not terminated. The Governing Board determined that, as between certificated employees who first rendered paid service in a probationary position to the District on the same date, the order of termination shall be determined by reference to six tiebreaking criteria. The Governing Board further found that, if certificated employees remain equal or tied after applying these tiebreaking criteria, priority will be determined by lot. The Governing Board found that the tiebreaking criteria met the particular needs of the District.

5. On or before March 15, 2010, pursuant to Resolution No. 10 and the provisions of Education Code sections 44949 and 44955, the designee of the Superintendent gave written notices to respondents and four other certificated employees that the Superintendent had recommended that notice be given to them that their services will not be required for the upcoming 2010-2011 school year and that the Governing Board had resolved that it was necessary to reduce or discontinue particular kinds of services and to decrease the number of certificated employees by the end of current 2010-2011 school year due to financial conditions (preliminary notice). Respondents, and each of them, timely requested a hearing to determine if there is cause for not re-employing them for the 2010-2011 school year.

6. The District's preliminary notice of layoff was sufficient in providing notice to respondents under Education Code sections 44949 and 44955. Respondents were not prejudiced by errors, if any, in the preliminary notice. Respondents did not raise any claims in the hearing that the preliminary notice, its contents, or the timing thereof, was deficient in any respect.

7. On or about March 24, 2010, the District properly served respondents, and each of them, with an Accusation, Resolution No. 10, and a Notice of Hearing. On or about April 12, 2010, respondents and four other certificated employees, David Greenelsh, Kirsten Riede, Renee Schmid, and Michelle Topping, filed a joint Notice of Defense, objecting to the Accusation and requesting a hearing to determine if there is cause not to employ them for the ensuing school year. All prehearing jurisdictional requirements have been met.

8. On or about March 10, 2010, the Superintendent recommended to the Governing Board that it take action to reduce or discontinue certain services or programs offered by the District for the 2010-2011 school year in the following full-time equivalent (FTE) positions:

<u>Services</u>	<u>Full-Time Equivalent Positions</u>
K-6 Classroom Teachers	3.0
7-8 Classroom Teachers	
English	1.0
Social Science	1.0
Math	2.0
Psychologist	1.0

On or about March 10, 2010, pursuant to Resolution No. 10, the Governing Board determined to reduce or discontinue the services set forth hereinabove which constitute a total of 8.0 FTE positions. No claims were made that the resolution of the Governing Board to reduce or discontinue services was deficient or arbitrary and capricious in any respect.

9. The services or programs set forth in Finding 8 above are particular kinds of services performed by certificated employees of the District which may be reduced or discontinued within the meaning of Education Code section 44955. The determination of the Governing Board to reduce or discontinue these services is within its sound discretion and is not arbitrary or capricious. The District demonstrated that the reduction or discontinuance of these particular kinds of services is related to the welfare of the District and its pupils and is necessary in order for the District to maintain a balanced budget and a sufficient reserve.

10. Further, the District has obviated the need to reduce or discontinue all of the particular kinds of services or programs described in Finding 8 above and to terminate the employment of all certificated employees given preliminary notice and accusations by taking into account the personnel changes and attrition due to reassignments, retirements, and/or resignations of individual certificated employees within the District. Accordingly, due to retirements and reassignments or transfers of certificated employees, the District withdrew the Accusation against certificated employees Michelle Topping, Renee Schmid, Kirsten Riede, and David Greenelsh. The District determined that there are no retirements of certificated employees who teach English and Social Science in the seventh and eighth grades. As such, the District has reasonably determined and accounted for what will be positively assured attrition among its certificated staff for the ensuing 2010-2011 school year and reduced by a corresponding number of certificated employees whose employment must be terminated due to the present reduction or discontinuance of particular kinds of services.

11. The District has prepared and maintains a Seniority List (Exh. 4) which sets forth the names of certificated employees and their seniority dates or dates of first paid service, FTE position, credentials and/or authorizations, and current assignments and work site locations. No claims were raised concerning the District's Seniority List or determinations of how many certificated employees and which specific certificated employees must be reassigned or laid off in each service area affected by the present reduction of particular kinds of services.

12. In the service or program area of classroom instruction, the District plans to facilitate the reduction or discontinuance of 2.0 FTE in English and Social Science teachers by reducing the five sections or periods of both English and Social Science classes. Even with the reductions of these class sections, the District will be able to offer a full program of English and Social Studies to its pupils.

13. Respondent Kelli Bornhoft is a seventh grade English teacher who has a single subject credential in English. She is a probationary 2, certificated employee of the District with a seniority date of August 18, 2008. Bornhoft is the least senior of the District's intermediate school English teachers. The District is not retaining any certificated employee junior to Bornhoft to teach seventh and/or eighth grade English next year. Respondent Bornhoft may be terminated due to the reduction or discontinuance of 7-8 grade English teachers by 1.0 FTE.

14. Respondent Greg Sanders is an intermediate school History and Keyboarding teacher who has a single subject credential in Social Science. He is a tenured certificated employee and has a seniority date of August 17, 2007. Sanders is the least senior of the District's teachers authorized to teach Social Science. The District is not retaining any certificated employee junior to Sanders to teach seventh and eighth grade Social Science next year. Respondent Sanders may be laid off due to the reduction or discontinuance of 7-8 grade Social Science teachers by 1.0 FTE.

15. (A) Certificated employee Chae Meadows is a seventh and eighth grade English teacher who holds a multiple subject and administrative credentials as well as an authorization in English. He is a tenured certificated employee of the District.

(B) Meadows was formerly the sole teacher and sole site administrator of the nearby Casmalia School District, a school district that was comprised of one school. Effective on July 1, 2008, the territory of the Casmalia School District was transferred to the District. Pursuant to Education Code section 35555, upon transfer or reorganization of the Casmalia School District to the District, Meadows retained his certificated status that he had with the Casmalia School District, including his first date of paid service, which was August 16, 1999.

(C) In or about August 2008, after becoming an employee of the District on reorganization of the Casmalia School District, Meadows elected to transfer to and become a teacher at Orcutt Academy, a new K-12 charter school approved by the State Board of Education. After teaching at the Orcutt Academy for the 2008-2009 school year, Meadows exercised his right under the charter school petition to return to the District in a regular or traditional teaching assignment within two years. For the current 2009-2010 school year, Meadows has been an English teacher at Orcutt Junior High School and Lakeview Junior High School.

(D) Based on Findings 15(A) – (C) above, Meadows is a certificated employee of the District whose seniority date is August 16, 1999. He is not subject to layoff in this proceeding. Meadows has more seniority with the District than certificated employees Renee Schmid, Kirsten Riede, and David Greenelsh whom the District is retaining for next school year and is senior to respondents Bornhoft and Sanders who are subject to layoff. Accordingly, the District may retain Meadows to teach for the next school year.

16. (A) The District may take action against any certificated employee, if any, who was duly served with a preliminary notice of layoff but then did not request a hearing, pursuant to Education Code sections 44949 and 44955.

(B) The District may likewise take action against any certificated employee or respondent, if any, who was duly served with a preliminary notice of layoff and an accusation but then did not file a notice of defense or make an appearance at the hearing after filing a notice of defense, pursuant to Government Code section 11520, subdivision (a), and Education Code sections 44949 and 44955.

17. It was not established there are any certificated employees with less seniority than respondents who are being retained by the District to provide services that respondents are certificated and competent to render.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Jurisdiction exists for the subject proceedings pursuant to Education Code sections 44949 and 44955, based on Findings 1 – 17 above. All preliminary notices, accusations, and other related papers and reports required by these Education Code sections have been provided in timely manner and, as such, the parties have complied with the statutory requirements.

2. Cause exists pursuant to Education Code sections 44949 and 44955 to reduce the concomitant number of certificated employees of the District due to the reduction or discontinuance of particular kinds of services, as set forth in Finding 8 above. With respect to those respondents whose employment have been found to be terminable by the District and any other certificated employees who received notices but did not request a hearing, if any, the causes set forth in the Accusation relate solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

3. Cause does not exist pursuant to Education Code sections 44949 and 44955 to terminate the employment of respondents and/or certificated employees Michelle Topping, Renee Schmid, Kirsten Riede, and David Greenelsh due to the dismissal of the Accusation against them, as set forth in Finding 10 above. The District has determined to retain these certificated employees.

4. Cause does not exist pursuant to Education Code sections 44949 and 44955 to terminate the employment of certificated employee Chae Meadows, based on Finding 15 above.

5. Cause exists pursuant to Education Code sections 44949 and 44955 to terminate the employment of respondents Kelli Bornhoft and Greg Sanders due to the reduction or discontinuance of particular kinds of services, based on Findings 1 – 17 above.

6. Based on Findings 1 – 17 above, there is no certificated probationary or permanent employee with less seniority than any one of respondents who is being retained by the District for the 2010-2011 school year to render services which any one of respondents is certificated and competent to render.

* * * * *

WHEREFORE, the Administrative Law Judge makes the following Order:

ORDER

1. The Accusations issued against respondents and/or certificated employees Michelle Topping, Renee Schmid, Kirsten Riede, and David Greenelsh must be dismissed, based on Conclusion of Law 3 above, respectively. These certificated employees will not be given notice that their services are not required for the 2010-2011 school year.

2. The Accusations issued against the respondents Kelli Bornhoft and Greg Sanders are sustained, based on Conclusions of Law 1, 2, 5, and 6 above. The District may give notice to these respondents, and each of them, that their services will not be required for the ensuing 2010-2011 school year because of the reduction or discontinuance of particular kinds of services pursuant to Education Code section 44955.

3. The District may give notice to those certificated employees, if any, who were served with notices and/or accusations that their services will not be needed next year but did not file requests for hearing or did not appear at the hearing, that their services will not be required for the ensuing 2010-2011 school year because of the reduction or discontinuance of particular kinds of services pursuant to Education Code sections 44949 and 44955.

4. Before giving notice to respondents and any certificated employees who did not request a hearing, the District shall further determine and take into account any additional positively assured attrition among certificated employees in deciding how many and when certificated employees should be terminated before the ensuing 2010-2011 school year.

Dated: May 3, 2010

Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings