

BEFORE THE
GOVERNING BOARD OF THE
CUCAMONGA SCHOOL DISTRICT
COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA

In the Matter of the Accusation Against:)	OAH No. L 2005020721
)	
DARREN ALCALA, BOBBY BALTIERRA,)	
SHANNON BARRERA, BHARPUR BUTTAR,)	
REGINA CONRAD, JOELLE CROWL,)	
KRISTEN FAJARDO, SCOTT GRAVIANO,)	
MICHAEL GROTHEM, STACY HICKS,)	
CHRISTINE McALLASTER, ARTURO)	
PRECIADO, PATRICIA RACINE, LEANA)	
RODRIGUEZ, KATHRINE STEFFLER,)	
SARAH STRANGE, JAMIE STRONG,)	
SHEAU SUN, KIMBERLY THAN,)	
KIMBERLY WEAVER, BONNIE WOOD,)	
)	
Respondents.)	
)	

PROPOSED DECISION

This matter was heard by Carolyn D. Magnuson, Administrative Law Judge of the Office of Administrative Hearings at the offices of the Cucamonga School District in Rancho Cucamonga, California on April 20, 2005.

Glenn Rothner, an attorney with the firm of Rothner, Segall & Greenstone, represented the Cucamonga School District.

Warren S. Kinsler, an attorney with the firm of Atkinson, Andelson, Loya, Ruud & Romo, represented all of the Respondents.

FACTUAL FINDINGS

1. The Cucamonga School District (District) operates three elementary schools and one middle school and has in excess of 140 certificated employees.

2. On February 24, 2005, the Governing Board of the Cucamonga School District (Board) was informed of the Superintendent's recommendation that 31 full time equivalent (FTE) employees be given notice that their services would not be required for the next school year and stating the reasons for that recommendation.

3. Board Resolution No. 0440.08, was adopted on February 24, 2005, and authorized a reduction or elimination by the District of the following particular kinds of services, as follows:

Reduce Kindergarten through Fifth Grade Classroom Teaching Services	- 24 FTE
Discontinue Assistant Principal Services	- 03 FTE
Discontinue Elementary Physical Education Services	- 03 FTE
Discontinue Beginning Teacher Support and Assistance Services	- 01 FTE

This action required the District to layoff of 31 FTE certificated employees employed in the services being reduced or eliminated.

4. Although the District had recently experienced a decline in average daily attendance (ADA), the Board's resolution specifically stated that the Board was not reducing services by permanent certificated teachers based on the decline of ADA.

5. The District prepared a seniority list of all certificated employees of the District based on each employee's first date of paid service in a certificated position and used that list to identify those employees who would receive notices of non-retention. For those certificated employees with the same date of hire, the Board adopted tie breaking criteria. None of the Respondents challenged the criteria or the application of the criteria to establish seniority rankings.

6. In creating the lay-off list, the District considered whether any of the certificated employees employed in a position designated for reduction or discontinuation was "credentialed and competent" to bump a junior certificated employee assigned to a position that had not been selected for reduction or discontinuation. The District determined that the nine most senior lay-off designees could bump a more junior employee. The District then created the layoff list, which the Board adopted.

7. On or before March 15, 2003, the District served on each Respondent a written notice of the Superintendent's recommendation to the Board that notice be given to Respondents pursuant to Education Code sections 44949 and 44955 that their services would not be required for the next school year.¹ Each written notice stated that the Board had passed a resolution to reduce or discontinue particular services at the close of the 2004-05 school year,

¹ The district integrated the documentary service and reply requirements found in Education Code section 44949 into a single procedure whereby both the notice of intent not to re-employ and the accusation were served on the teachers at the same time, and the teachers were allowed 12 days within which to return a signed request for hearing form to the District. The Respondents did not challenge the legality of this modified procedure.

which would result in the elimination of 31 full time equivalent (FTE) positions for certificated employees of the District. Notice was served on each of the Respondents as required by law.

8. The Superintendent made and filed Accusations against each of the employees designated to be laid off. The Accusations were timely served on those employees. Requests for Hearing/Notices of Defense were timely filed by the Respondents herein.²

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

LEGAL CONCLUSIONS

10. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements mandated by those sections have been satisfied.

11. Respondents argue that the Board's resolution reducing and/or eliminating particular kinds of service is fatally defective in that it fails to identify with sufficient particularity the services that are being reduced or eliminated. The Respondents assert that the general term "classroom teaching" is too broad a designation to provide the Respondents with sufficient information to assess their employment situation vis-à-vis the District. The Respondents argue that the Board knew the nature and effect of the layoffs in much more detail than was provided to the teachers. Had that information been shared, the Respondents' understanding of how each of them would be affected would have been more complete. The Respondents rely, inter alia, on the holdings in *Burgess v. Board of Education* (1974) 41 Cal.App.3d 571 [116 Cal.Rptr. 183] and *Karbach v. Board of Education of Lawndale School District* (1974) 39 Cal.App.3d 355 [114 Cal.Rptr. 84] to support these contentions.

12. The District maintains that elementary classroom teaching is a particular kind of service and that the resolution reducing elementary classroom teaching by 24 FTEs comports with the statutory notice requirements and is valid. In support of its position the District relies, inter alia, on the holding in *California Teachers Association v. Board of Trustees of the Goleta Union School District* (1981) 64 Cal.App.3d 167 [134 Cal.Rptr. 290].

13. Typically, at the elementary school level, students are assigned to a specific classroom; and single teacher instructs the same students in multiple subjects, unlike high school where the teacher is certificated to teach a particular academic subject and teaches that subject to students who are assigned to the teacher's room for a single period. Thus, in elementary school, the designation "classroom teaching" is a PKS (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627 [192 Cal.Rptr. 710].), and the Board's designation of "Kindergarten through Fifth Grade Classroom Teaching Services" for reduction was sufficient to provide the Respondents with notice of their potential of being laid off. Any elementary school teacher in the District with limited time in service knew from the resolution's language

² Ten of the employees noticed for layoff did not file a Request for Hearing/Notice of Defense.

that s/he was at some risk of being laid off. And within a short period of time thereafter, every teacher knew specifically how the resolution applied to him or her.

14. Therefore, the services identified in Board Resolution 0440.08 are particular kinds of services that could be reduced or discontinued under Education Code section 44955.

15. Respondent Crowel challenged her placement on the seniority list. It is her belief that she should be placed chronologically according to her first date of paid service in a certificated position without regard for her probationary status.³ The District had designated Ms. Crowel as a "prob. 2"⁴ teacher and had placed her second in seniority of the probationary teachers designated for layoff.

16. Under the holding of *California Teachers Assn. v. Governing Bd. of Golden Valley Unified School Dist.* (2002) 98 Cal.App.4th 369, a teacher holding an emergency credential is a probationary teacher under the provisions of Education Code section 44915.5.

17. Section 44845 provides that a probationary teacher begins accruing seniority on his or her first day of paid service in a credentialed position.

18. However, under an exception created by section 44911, unlike most other probationary teachers, a teacher working under an emergency credential or permit does not accrue tenure credit.

19. While section 44955 provides the procedures by which both permanent and probationary certificated employees may be laid off by a school district, it does not treat the two types of certificated employees equally. Section 44955, subdivision (b), provides:

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.

20. In other words, a permanent employee will take precedence over two other classes of employees: anyone who is a probationary employee and any permanent employee with a later seniority date. (*Campbell Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 817.)

21. Therefore, because Ms. Crowel is still a probationary employee, she may only be retained if all permanent employees (without regard for their seniority date) and all

³ Ms. Crowel taught in the District on an emergency credential beginning in 1999 and at that time began to accrue seniority. However, she did not begin teaching on a non-provisional certificate, and thereby acquiring service credit toward tenure, until the 2003-2004 school year and was, therefore a probationary teacher 2 at the time of the Board's decision to reduce services.

⁴ This designation meant that Ms. Crowel was in the second year of the tenure track.

probationary employees with an earlier seniority date, who are affected by the reduction or discontinuation of services, have first been retained.

22. Ms. Crowel's placement on the seniority list is correct.

23. The Respondents argued that, because a decline in ADA was one factor considered by the District in deciding to reduce or discontinue services, the District was thereby required to use the ADA reduction as the basis for the instant layoffs and to apply to these layoffs the formula associated with ADA reductions. In support of this position, the Respondents cite *Cousins v. Weaverville Elementary School Dist.* (1994) 24 Cal.App.4th 1846 [30 Cal.Rptr.2d 310] (*Cousins*).

24. The District responded that, because ADA was just one factor considered in assessing the need for a reduction in services, and not a major factor at that, this case is not an ADA case; and the Board acted properly in reducing certain PKS, which resulted in teacher layoffs. In support of its position, the District cites *Krausen v. Solano County Junior College Dist.* (1974) 42 Cal.App.3d 394 (*Krausen*).

25. In fact, neither *Cousins* nor *Krausen* fully support either party's contentions. *Cousins* was a case in which ADA was the only reason for the reduction in services, which is not the case here, and *Krausen* was a case in which the court found there had been no decline in ADA, which is not the case here.

26. The Respondents are attempting to make a distinction where there is no difference. If the reduction in force were entirely due to a drop in ADA, then the District would be required to base its layoffs solely on that decline. However, the evidence in this case established that the District's reduction in services was in most part a response to fiscal constraints unrelated to ADA.

27. The fact that a decline in ADA is an element of a district's economic picture does not constrain that district to limit its response to its overall budgetary concerns to that issue. A school district may consider all its financial circumstances in deciding whether to reduce or discontinue a particular kind of service. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627.) Therefore, a district with a declining ADA may also reduce or eliminate services and may layoff certificated employees whose services will not be required as a result of those reductions. Nor is there any policy reason to require a school district to bifurcate its layoff procedures when ADA is only one factor in the decision to reduce services since the procedural rights of the affected employees are the same regardless of the type of reduction in force undertaken and any layoffs made in excess of the "corresponding ratio" of a decline in ADA would be authorized by the district's reduction in services.

28. It was not established that any particular kind of service was lowered to levels less than those levels mandated by state or federal law.

29. It was not established that any certificated employee junior to any more

senior employee was retained to perform any service which a more senior employee was certificated and competent to perform.

30. Cause exists to affirm the Board's reduction of 31FTE certificated positions as a result of reducing or eliminating the particular kinds of services identified by Board in Resolution No. 0440.08, adopted on February 24, 2005. The Board's decision was not arbitrary or capricious, but constituted a valid exercise of its discretion. The Board's reduction and elimination of the particular kinds of services related to the welfare of the District and its students.

31. As a result of the reduction or discontinuation of particular kinds of service, cause exists to give final notice to:

Darren Alcala
Bobby Baltierra
Shannon Barrera
Bharpur Buttar
Regina Conrad
Joelle Crowl
Kristen Fajardo
Scott Graviano
Michael Grothem
Stacy Hicks
Christine McAllaster
Arturo Preciado
Patricia Racine
Leana Rodriguez
Katharine Steffler
Sarah Strange
Jamie Strong
Sheau Sun
Kimberly Than
Kimberly Weaver
Bonnie Wood

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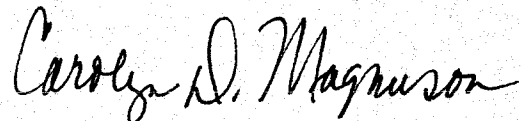
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ORDER

On or before May 15, 2005 notice will be given to Darren Alcala, Bobby Baltierra, Shannon Barrera, Bharpur Buttar, Regina Conrad, Joelle Crowl, Kristen Fajardo, Scott Graviano, Michael Grothem, Stacy Hicks, Christine McAllaster, Arturo Preciado, Patricia Racine, Leana Rodriguez, Katharine Steffler, Sarah Strange, Jamie Strong, Sheau Sun, Kimberly Than, Kimberly Weaver, and Bonnie Wood that their services will not be required for the 2004-2005 school year because of the reduction or discontinuation of the identified particular kinds of services.

Dated: *May 6, 2005*



CAROLYN D. MAGNUSON
Administrative Law Judge
Office of Administrative Hearings