

BEFORE THE GOVERNING BOARD OF THE
SANTA ANA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Layoff/Accusation
Against:

OAH NO. L-2004030330

31 CERTIFICATED EMPLOYEES,

Respondents.

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge ("ALJ"), Los Angeles Office of Administrative Hearings, at Santa Ana, California on May 3, 2004.

Keith V. Breon, Esq. of the Law Offices of Breon, Scaeffler & Bryant represented the Santa Ana Unified School District ("the district").

Marianne Reinhold, Esq. of Reich, Adell, Crost & Cvitan represented those of the 31 certificated employees ("respondents") who appeared at the hearing.

Oral and documentary evidence was received and the record was left open until closing arguments/briefs ("post-hearing briefs") could be submitted by the parties. The district and respondents stipulated that the time for rendering a Proposed Decision in this matter shall be extended until May 28, 2004. The parties had until 5:00 p.m. on May 10, 2004 to file their post-hearing briefs. The post-hearing briefs were received, read and considered and this matter was deemed submitted on May 14, 2004.

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FACTUAL FINDINGS

The ALJ makes the following Factual Findings:

1. On March 3, 2004, the Board of Education of the District ("the Board") adopted a resolution recommending a reduction in particular kinds of services provided by the district for the 2004-2005 school year due to a decline in the average daily attendance in the district. (Exhibit 9.) The resolution called for a reduction in services equaling 415 Full-Time Equivalent ("FTE") positions. Later, on March 3, 2004, the number of FTE's was reduced from 415 to 294. The revised resolution called for the following reductions in Particular Kinds of Services ("PKS"):

	<u>Net FTE Reduction</u>
<u>Decline in Average Daily Attendance (K-5)</u>	24.0
<u>Programs/Services Reduction</u>	
Assistant Principals	7.0
Elementary Classes (4-5)	18.0
Elementary Teachers (K)	90.0
Resource Teachers (K-5)	30.0
Resource Teachers (9-12)	4.0
<u>Intermediate (6-8)</u>	
Art	9.0
English Language Development (ELD)	7.0
Exploratory (Business)	7.0
General Science	8.0
Language Arts	13.0
Math	6.0
Music	6.0
Physical Education	9.0
Social Science	14.0
<u>High School</u>	
Art	4.0
Business	4.0
English	6.0
ELD	3.0
Home Economics	2.0

Industrial Arts	2.0
Math	2.0
Music	2.0
Physical Education	4.0
Science (Biology)	3.0
Science (Physical)	2.0
Social Science	6.0
Spanish	2.0
<u>Total</u>	<u>294.0</u>

The parties do not dispute the fact that the services listed above are particular kinds of services, which may be reduced or discontinued within the meaning of Education Code section 44955.

2. The district's and the Board's decisions to reduce or discontinue the services listed in Finding 1, above, is neither arbitrary nor capricious; rather, it is due to the decline in average daily attendance; and, is; therefore, a proper exercise of the district's and the Board's discretion(s).

3. The reduction and discontinuation of services is related to the welfare of the district and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Board.

4. All respondents affected by the layoffs received written notice, on or before March 15, 2004, notifying them that the Superintendent of the district had recommended they not be re-employed in the upcoming, 2004-2005, school year.

5. Each respondent submitted a timely request for a hearing to determine if cause exists for not re-employing them for the ensuing year.

6. On March 12, 2004 the district's Superintendent, on behalf of the district, timely notified the respondents, pursuant to California Education Code sections 44949 and 44955, of the district's intent not to reemploy them for the upcoming school year. That same date, March 12, 2004, respondents were also served with a copy of the Board's resolution, resolution number 03/04-2555, a blank "Request for Hearing" and other related materials.

7. Subsequently, on April 2, 2004, the Accusation and related materials were served on each respondent.

8. Each respondent timely submitted a Notice of Defense.
9. Each respondent was properly noticed of the date, time and place of the instant hearing. Any respondent who failed to appear at the instant hearing was properly noticed of the hearing.
10. All prehearing jurisdictional requirements have been met.
11. As of the date of hearing the number of certificated employees affected by the layoffs was reduced to 31, due to attrition (retirements, etc.). The following respondents remain:

1. Ayoub, Nahran
2. Barrera, Monica
3. Collins, Suzanne
4. Cushing, Patricia
5. Garcia, Jesus
6. Garcia, Teresa
7. Garner-Marcelo, Sonta
8. Gladchuk, Lisa Ann
9. Gordon Leon, Roger
10. Greenwood, Joy Anne
11. Harding, Angela
12. Head William, Leslie
13. Hernandez, Kristan
14. Higgins, Devon
15. Lopez, Delia
16. Madrigal-Chavez, Alexandra
17. Morales-Mandler, Elvia
18. Moran, Martha
19. Myers, Kyle
20. Newland, Taia
21. Olamendi, Gloria
22. Pabon, Namir
23. Pedraza Mendoza, Jose
24. Pedroza, Melina
25. Sanchez, Adriana
26. Silva, Blanca
27. Sinclair, Gary
28. Smith, Jason
29. Solis, Bertha
30. Weinman, Lori
31. Zor, Greg

12. The respondents identified in Finding 11 have been selected for notice of layoff pursuant to a seniority list based on the first day of paid service of each respondent. The respondents were ranked for layoff in the inverse order of their date of employment. As to respondents who have the same date of hire/employment, the district used appropriate, written, tie-breaking criteria to rank those employees.

13. Certain respondents identified in Finding 11 question the dates used by the Board and the district as their "Seniority Date". Some respondents believe they should have received credit for the time they worked under emergency credentials, some believe they should receive credit for the time they worked as Interns, and some believe they should be credited for the time they worked as Pre-Interns.

Respondents who worked with Emergency Credentials:

1. Head, William
2. Garner-Marcelo, Sonta
3. Sinclair, Gary
4. Zor, Greg
5. Garcia, Jesus
6. Myers, Kyle
7. Ayoub, Nahran
8. Solis, Bertha
9. Harding, Angela
10. Silva, Blanca
11. Lopez, Delia
12. Barrera, Monica
13. Olamendi, Gloria
14. Smith, Jason
15. Hernandez, Kristan
16. Pabon, Namir

Respondents who worked as Pre-Interns:

1. Garcia, Teresa
2. Gladchuk, Lisa Ann
3. Lopez, Delia
4. Pabon, Namir
5. Pedraza Mendoza, Jose
6. Weinman, Lori

Respondents who worked as Interns:

1. Barrera, Monica (Intern date: October, 2003; prelim. Credential: 1/20/04; seniority date: 1/20/04)
2. Hernandez, Kristan (Intern date: 9/1/03; prelim. Credential: 1/15/04; seniority date: 9/1/03)
3. Olamendi, Gloria (Intern date: 9/23/03; prelim. Credential: 12/17/03; seniority date: 12/17/03)
4. Silva, Blanca (Intern date: 9/03; prelim. Credential: 11/25/03; seniority date: 11/25/03)
5. Smith, Jason (Intern date: 9/2003; prelim. Credential: 1/3/04; seniority date: 1/3/04)

14. The respondents listed in Finding 13 did not receive any credit for the time they worked under their emergency credentials, or as Pre-Interns. Of the Interns, only Hernandez received credit for service as an intern. The decision whether to grant credit for the categories listed in Finding 13 was pursuant to district policy. As testified to by the Senior Director of Certificated Personnel, individuals working under a Pre-Intern credential or emergency credential were not credited for that work in calculating seniority. Instead, they were given a seniority date based on the first date of paid service after having obtained their preliminary or clear credentials. Interns working under a district intern credential or a university intern credential, however, were supposed to be given credit for up to one year service under the Intern credentials provided the service was rendered during the academic year immediately preceding the date upon which they received their preliminary or clear credential. This did not happen in the case of Barrera, Monica; Olamendi, Gloria; Silva, Blanca; or, Smith, Jason.

15. Of great concern in the present case is "what happened to the Assistant Principals who were originally listed on the seniority list for layoff?" As of the latest revision in the PKS being "cut" there were 7 FTE in the Assistant Principal category. According to the evidence, 20 FTE Assistant Principal positions were originally slated to be cut. This was reduced to 7 FTE due to attrition/retirements. None of the 7 Assistant Principals listed on the amended seniority list, however, are listed on the final list of 31 employees, Exhibit 23, the respondents in this action, even though 4 of the 7 Assistant Principals are probationary contract employees and have less seniority than some of the 31 respondents. Specifically, Martinez, Danny R. (Assistant Principal) has a seniority date of 6/2/03; Johnson, Adelea (Assistant Principal) has a seniority date of 8/1/03; Carlisle Sights, Bruce (Assistant Principal) has a seniority date of 9/2/03; and, Oishi, Todd D. (Assistant Principal) has a seniority date of 9/5/03. A review of the "list of 31" (Exhibit 23) reveals that the most senior respondent on the list, Head William, has a seniority date of 2/3/03 and has more seniority than any of the four Assistant Principals who disappeared from the seniority list. There are 18 other respondents on the "list of 31" who are as senior, or more senior, than the least

senior Assistant Principal (seniority dates on or before 9/5/03). The Senior Director of Certificated Personnel testified that although 7 Assistant Principals received layoff notices, they all "bumped back into the classroom" and that is why no Assistant Principals appear on the "list of 31". Based on the evidence presented, it is impossible to determine whether the rules of seniority and the "bumping" procedures were properly followed. The district erred in not providing sufficient evidence to reveal how the Assistant Principals came to be retained over more senior, similarly credentialed respondents on the "list of 31". Accordingly, it can not be said that no employee with less creditable employment service with the district, than the respondents listed in Finding 11, has been retained to render a service, which any respondent is certificated and competent to render.

16. According to the Senior Director of Certificated Personnel respondent Lopez, Delia should not have received a layoff (RIF) notice and that RIF notice should be rescinded.

LEGAL CONCLUSIONS

1. Jurisdiction for the instant proceedings exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections have been provided, as required.

2. The services listed in Factual Finding 1 are each determined to be a particular kind of service within the meaning of Education Code section 44955.

3. Based on the Factual Findings, considered in their entirety, cause exists to reduce the number of certified employees of the district by 31.0 full-time equivalent positions, due to the decline in average daily attendance. (Finding 2)

4. Cause to reduce or discontinue services relates solely to the welfare of the district's schools and pupils within the meaning of Education Code section 44949. (Finding 3)

5. The district was correct in not granting teachers credit for the time worked on an emergency or Pre-Intern basis. For example, under Education Code section 44911 time spent teaching under an emergency credential cannot be counted in computing an employee's progress toward permanent status unless the employee was credentialed in another state and demonstrated adequate basic skills proficiency pending successful completion of the California Basic Educational Skills Test (CBEST). By analogy it seems that the same principles should apply to accruing seniority while working under emergency and Pre-Intern credentials. (See also Lori Summerfield v. Windsor Unified School District (2002) 95 Cal.App.4th 1026.) Pursuant to the district's own policy, however, Interns should be credited for up to one year service under their Intern credentials provided the service was rendered during the academic year

immediately preceding the date upon which they received their preliminary or clear credential. Consequently, of those certificated employees listed in Finding 13, four of the teachers who worked as Interns should have their seniority dates corrected, as follows:

1. Barrera's seniority date should be corrected from 1/20/04 to the specific day in October, 2003 that she began as an Intern;

2. Olamendi's seniority date should be corrected from 12/17/03 to 9/23/03 (or the date established by employment records as the date she began as an Intern);

3. Silva's seniority date should be corrected from 11/25/03 to the specific day in September, 2003 that she began as an Intern; and,

4. Smith's seniority date should be corrected from 11/25/03 to the specific day in September, 2003 that he began as an Intern.

6. Based on Finding 15, the ALJ concludes that it is impossible to determine if "bumping rights" and seniority principles were properly applied in allowing certain of the less senior Assistant Principals to "bump back into the classroom" while other, more senior teachers remained on the "list of 31". Consequently, what is commonly referred to as the "Domino effect" shall apply and all employees on the "list of 31" as senior, or more senior, than the least senior Assistant Principal who "bumped" into the classroom (seniority dates on or before 9/5/03) shall be deemed reemployed and their layoff notices shall be rescinded. This applies to the following employees on the "list of 31":

1. Collins, Suzanne
2. Garcia, Jesus
3. Garcia, Teresa
4. Garner-Marcelo, Sonta
5. Gladchuk, Lisa Ann
6. Gordon Leon, Roger
7. Greenwood, Joy Anne
8. Head William, Leslie
9. Hernandez, Kristan
10. Higgins, Devon
11. Lopez, Delia
12. Madrigal-Chavez, Alexandra
13. Moran, Martha
14. Myers, Kyle
15. Newland, Taia
16. Pedroza, Melina

17. Sanchez, Adriana
18. Sinclair, Gary
19. Weinman, Lori

Note: Due to the corrections to the seniority list which must occur based on the factual findings and legal conclusion 5, it is unclear whether two of the employees, Silva and Smith should be included in the "Domino effect" list. According to the ALJ's notes, they testified that they were hired as Interns in September of 2003. The exact day they were hired was not established at the hearing. Accordingly, if a review of district records reveals they began working as Interns on or before 9/5/03, then they shall be included with the others on the above, "Domino effect" list.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. The Accusation is sustained, in part. The district may notify the following respondents that their services will not be needed during the 2004-2005 school year due to reduction or discontinuance of particular kinds of services:

1. Ayoub, Nahran N.
2. Barrera, Monica M.
3. Cushing, Patricia A.
4. Harding, Angela L.
5. Morales-Chavez, Alexandra
6. Olamendi, Gloria O.
7. Pabon, Namir
8. Pedraza Mendoza, Jose L.
9. Solis, Bertha
10. Zor, Greg C.

2. The Accusation is dismissed as to the following respondents, and the district may not notify those respondents that their services will not be needed during the 2004-2005 school year:

1. Collins, Suzanne
2. Garcia, Jesus
3. Garcia, Teresa
4. Garner-Marcelo, Sonta
5. Gladchuk, Lisa Ann
6. Gordon Leon, Roger
7. Greenwood, Joy Anne
8. Head William, Leslie

9. Hernandez, Kristan
10. Higgins, Devon
11. Lopez, Delia
12. Madrigal-Chavez, Alexandra
13. Moran, Martha
14. Myers, Kyle
15. Newland, Taia
16. Pedroza, Melina
17. Sanchez, Adriana
18. Sinclair, Gary
19. Weinman, Lori

3. As to respondents Silva, Blanca I. and Smith, Jason L., the following shall occur. The district shall review their employment records. Respondent(s) with an employment date, as an Intern, on or before 9/5/03 shall have the accusation dismissed as to them. If, however, respondent(s) has/have an employment date, as an intern, after 9/5/03, then the accusation is sustained as to respondent(s) and the district may notify respondent(s) that his/her/their services will not be needed during the 2004-2005 school year due to reduction or discontinuance of particular kinds of services.

Dated: May____, 2004.

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings