

**BEFORE THE
BOARD OF EDUCATION OF THE
AZUSA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Reduction in Force of:

**SEVEN CLASSIFIED EMPLOYEES OF THE AZUSA UNIFIED
SCHOOL DISTRICT,
Respondents.**

OAH No. 2023040039

PROPOSED DECISION

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in Azusa, California on April 25, 2023.

Vanessa Lee, Esq., Fagen Friedman & Fulfrost, appeared on behalf of the Azusa Unified School District (District).

Andrew Sundstrom, Labor Relations Representative, Santa Fe Field Office, California School Employees Association (CSEA) appeared, as authorized by Education Code section 45117, subdivision (c)(4), on behalf of respondents Karina Hernandez, Adriana Kirchfeld, and Diane Velasquez. Respondents Hernandez, Kirchfeld, and Velasquez verbally assented at the hearing to Mr. Sundstrom's representation.

Respondents Naomi Diaz, Noemi Luttmers, and Irene Rodriguez did not file Notices of Participation in Reduction in Force Hearing (Notices of Participation) and

did not appear at the hearing. Respondent Bertha Mendieta filed a Notice of Participation, but she did not appear at the hearing.

The matter was submitted for decision on April 25, 2023.

SUMMARY

The District's Board of Education (Board) resolved to reduce or discontinue certain classified services and a corresponding number of full-time equivalent positions for the 2023–2024 school year. Respondents currently hold certain of these reduced or discontinued positions. By the direction of the Board, the District Superintendent's designee timely delivered layoff notices and other required materials to all respondents. Each respondent requested a hearing on whether there was cause for the layoffs. The District proved by a preponderance of evidence cause exists to layoff each respondent.

FACTUAL FINDINGS

Background

1. Respondents are permanent, classified employees of the District.
2. The Collective Bargaining Agreement between the District and the CSEA, Azusa Chapter 299, for the period between July 1, 2020, and June 30, 2023 (CBA), governs layoffs of classified employees in the District. According to the CBA, the order of layoff is based on seniority within a class and higher classes throughout the District. An employee with the least seniority within the class plus higher classes is to be laid off first. (Exhibit 4, p. A21.) The CBA further provides any employee laid off from their

present class may bump into another classification in which the employee has greatest seniority provided the classification into which they are bumping is equal to or lower than the position from which they have been laid off. (*Id.*, p. A21.) The order of classes is dependent on the salary range number; each classification has a designated salary range number. (Exhibit 5.)

3. The District maintains a Classified Seniority List, which identifies each classified employee's current position, assignment date, date of hire, salary range, and prior classifications and dates served in those classifications. (Exhibit 2.) The Classified Seniority List is prepared by a District personnel technician who is responsible for constantly updated its contents. On November 16, 2022, the District requested respondents confirm their work history; the District did not receive any information stating respondents' work history was inaccurate. (Exhibit 3.) The Classified Seniority List reflects respondents' confirmed work history. Additionally, the District shared the Classified Seniority List with CSEA in February 2023. CSEA does not dispute the accuracy of the List.

Proposed Layoffs

4. Jorge A. Ronquillo, Assistant Superintendent, Human Resources, testified at the hearing regarding the proposed layoffs of respondents. Mr. Ronquillo has served as Assistant Supervisor – Human Resources for the District since November 2018. His duties include identifying classified positions to reduce or eliminate, arranging the delivery of required notices, and interacting with CSEA and other District bargaining units regarding the positions at issue. Assistant Superintendent Ronquillo's testimony was knowledgeable and credible, and is summarized below.

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5. In September 2022, the District determined it was necessary to eliminate classified employment positions because of the closure of District schools. To decide which positions to eliminate, the District ran student population projection numbers, reviewed multiple staffing iterations, and gathered input from employees. The District also considered all positively assured attrition, including retirements. The District then made recommendations regarding the positions and services to be reduced or eliminated to the Board.

6. Based on the District's recommendation, the Board passed and adopted Resolution No. 22-23:24, entitled "Resolution to Decrease the Number of Classified Employees Due to a Lack of Work and/or Lack of Funds" (Resolution) at a regular meeting held on February 7, 2023. Citing Education Code sections 45114, 45117, 45298, and 45308, the Board determined it was necessary to reduce or discontinue certain classified services of the District no later than the beginning of the 2023–2024 school year due to a lack of work and/or lack of funds. Consequently, the Board further determined it was necessary to terminate the employment of certain classified employees of the District. The Board thereby resolved that 28.71 full-time employment (FTE) positions be either reduced or eliminated. Those positions included, but were not limited to, 2.0 FTE community liaison aide positions, 0.76 FTE health aide positions, 6.44 FTE school clerk positions, and 7.0 FTE school secretary positions. The Board directed the District Superintendent or designee to send appropriate notices to all employees whose services were to be terminated under the Resolution. (Exhibit 1.)

7. On February 23, 2023, Assistant Superintendent Ronquillo, in response to the Resolution, identified 40 classified employees, including respondents, whose services the District decided to discontinue or restrict. (Exhibit 6.) On or before March 15, 2023, he then provided written notice to those 40 employees informing them of

the District's layoff recommendation and advising them of their right to a hearing to determine if cause existed for not reemploying them for the 2023-2024 school year (layoff notices). The layoff notices also notified certain of the 40 employees that their accrued seniority and previous employment with the District provided displacement or "bumping" rights under the CBA. The layoff notices attached a copy of the Resolution, a Request for Hearing form, and copies of Education Code sections 45114, 45117, 45298, and 45308, which address the layoff and rehiring of classified employees. Respondents received their layoff notices by personal delivery. (Exhibit 7.)

8. Respondents each provided written acknowledgment of receipt of their layoff notices. (Exhibit 7, pp. A165, A183, A238, A257, A275, A311, A365.) The layoff notices also informed respondents Kirchfeld and Mendieta they had accrued sufficient seniority to have displacement or "bumping" rights and therefore could elect to be reassigned or "bumped" from their current classifications to an equal or lower classification which they previously held instead of being laid off. (*Id.*, pp. A237, A274).

9. In response to the layoff notices, respondents each filed a Request for Hearing, requesting a hearing to determine if there was cause for not reemploying them for the 2023–2024 school year. (Exhibit 11.) Of the remaining 33 classified employees who were sent layoff notices, 28 did not request a hearing to challenge the layoff notices, and five received letters from the District rescinding the layoff notices. (Exhibits 8, 9.)

10. On March 30, 2023, Assistant Superintendent Ronquillo sent a District Reduction in Force (RIF) packet to each respondent by certified mail. The RIF packet included a RIF Notice, informing respondents their services were not required for the 2023–2024 school year because the Board determined it was necessary to reduce the number of classified employees due to a lack of work or lack of funds. The RIF packet

also included a statement to respondents notifying them of the need to timely file a Notice of Participation if they wished to have a hearing on the matter as well as their rights to be represented by counsel, and inspect and copy certain discovery. The RIF packets additionally included copies of the Resolution, Education Code section 45117 and Government Code sections 11505, 11506, 11507.5, 11507.6, 11507.7, and 11520, and a form Notice of Participation for filing. (Exhibit 12.)

11. The District received Notices of Participation from respondents Kirchfeld, Mendieta, and Rodriguez. (Exhibit 13.) At hearing, the District agreed to waive the failure of any respondent to file a Notice of Participation if that respondent was present at the hearing.

12. Assistant Superintendent Ronquillo sent notice of the date, time, and location of the RIF Hearing to each respondent by certified mail on April 10, 2023. (Exhibit 14.)

13. At hearing, Assistant Superintendent Ronquillo explained the analysis used by the District in deciding to eliminate respondents' positions. His testimony established the District followed the Classified Seniority List and the District's 2022–2023 Salary and Classification Schedule in determining respondents' seniority and assessing their eligibility to bump or displace less senior classified personnel. He noted respondents could not use seniority rights earned in positions that no longer existed. Assistant Superintendent Ronquillo also confirmed the District had not retained any permanent or probationary classified employee having less seniority than respondents to provide services in respondents' respective class. Additionally, no short-term employee has been retained to render a service that any of the respondents are qualified to render.

14. In response to questioning by respondents' representative, Assistant Superintendent Ronquillo acknowledged the District "may have gone too far" in projecting the number of school clerk positions to be eliminated for the 2023–2024 school year. He further acknowledged the District may rescind some of the layoff notices sent to some of the respondents because of those new projections in the near future. However, Assistant Superintendent Ronquillo stated the District had not yet identified the individuals who are to receive rescission letters or finalized staffing arrangements.

15. Respondents presented no testimony. They did not contest the timeliness or the propriety of the layoff notices or the RIF packages. Nor did respondents contend the Classified Seniority List or Salary and Classification Schedule was incorrect. Respondents also did not assert any error concerning the District's determination of their seniority or possible bumping of other classified employees.

16. Instead, respondents contended certain layoff notices should be rescinded because of the District's recent reassessment of its need for school clerks. Respondents pointed to the Resolution, which called for the elimination of 6.44 full-time school clerk positions, and documents recently prepared by the District and exchanged in discussions with CSEA indicating only 4.12 full-time clerk positions need to be eliminated. (Exhibits A, B.) Thus, according to respondents' reasoning, layoff notices for the three respondents present at the hearing should be rescinded because they expect to be hired as school clerks for the 2023–2024 school year. Respondents acknowledged, however, the three respondents would not suffer any loss if they were rehired after the hearing.

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LEGAL CONCLUSIONS

Applicable Law

1. The burden is on the District to demonstrate that: (1) cause exists for the reduction or elimination of classified services based upon a lack of work and/or lack of funds; and (2) the cause is related to the welfare of the schools and the pupils. (Ed. Code, § 45117, subds. (a)(1), (c)(3)(A).)

2. Education Code section 45117, subdivision (a), provides that no later than March 15 and before a classified employee is given notice by the governing board of a school district that the employee's services will not be required for the following school year due to lack of work or funds, the employee shall be given written notice by the school district superintendent or the superintendent's designee that "it has been recommended that the notice be given to the employee, stating the reasons that the employee's services will not be required for the ensuing year, and informing the employee of the employee's displacement rights, if any, and reemployment rights."

3. Government Code section 11505, subdivision (c), provides a District Statement of Reduction in Force (District RIF Statement) shall be served personally or by registered mail. The District must include with the District RIF Statement a Notice of Participation form, which when returned to the District acknowledges service of the District RIF Statement and indicates the employee intends to participate in a hearing. (Gov. Code, § 11505, subd. (a).) In addition to the District RIF Statement and Notice of Participation form, the District is required to provide a statement to the subject employees informing them of their rights to inspect documents, be represented by counsel, and learn of witnesses. (Gov. Code, § 11505, subd. (b).)

4. Classified employees are subject to layoff for lack of work or lack of funds. (Ed. Code, § 45308, subd. (a).) The order of layoff shall be determined by seniority. The employee who has the least seniority in the class, plus higher classes, is to be laid off first. (*Ibid.*) The CBA is consistent with the order of layoff stated in Education Code section 45308, subdivision (a). Cause for layoff is established if the District demonstrates it has complied with the seniority requirements of the Education Code. (Ed. Code, § 45117, subd. (c)(3)(B).)

Cause for Layoff

5. The District demonstrated certain classified services need to be reduced or eliminated due to lack of work or lack of funds. (Factual Finding 6; Legal Conclusion 1.) The Board's decision to reduce or discontinue the identified services because of the closure of schools in the District is consistent with student welfare and the welfare of the schools within the meaning of Education Code section 45117. (Factual Findings 5 & 6.) The Board's decision was neither arbitrary nor capricious and was a proper exercise of its discretion.

6. The District met all notice and jurisdictional requirements set forth in Education Code section 45117 and Government Code section 11505. The District sent out layoff notices to respondents before March 15, 2023, stating it has been recommended that notice of layoff be given to them, explaining the reasons their services would not be required for the ensuing school year, and informing them of their displacement and reemployment rights. (Factual Finding 7; Legal Conclusion 2.) The District RIF Statement was properly served by registered mail and contained the appropriate language. (Factual Finding 10; Legal Conclusion 3.)

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7. The District proved its layoff decisions comported with the seniority requirements in the Education Code and the CBA. (Factual Findings 2, 3, 13; Legal Conclusion 4.) Except as otherwise provided by law, the District has not retained any permanent or probationary classified employee having less seniority than respondents to render a service in respondents' respective class in which respondents have gained permanency. The District also has not retained any short-term employee to render a service that any of the respondents is qualified to render. (Factual Finding 13.)

8. Respondents' contention that certain layoffs are unnecessary because the District recently acknowledged in discussions with CSEA of its need for more school clerks for the 2023–2024 school year than originally projected is unpersuasive. As of the date of the hearing, the District had yet to finalize its staffing for the ensuing school year, and it is not known when it will do so. (Factual Finding 14.) The purpose of the hearing as set forth in Education Code section 45117, subdivision (c)(3)(A), is to determine whether the District had cause for not reemploying respondents for the ensuing year as of March 15, 2023, the date by which Assistant Superintendent Ronquillo provided layoff notices to respondents. It is outside the scope of this proceeding as to the impact of any change in the District's projections after that date, particularly considering the District has yet to finalize its staffing arrangements in light of its more recent projections.


9. Based on the foregoing, cause exists under Education Code sections 45308, subdivision (a), and 45117 for not reemploying respondents for the 2023–2024 school year. The District correctly laid off respondents based on a lack of work and/or a lack of funds, and correctly determined respondents' seniority and displacement rights. The District's action to reduce or discontinue respondents' services relates

solely to the welfare of the District's schools and pupils within the meaning of Education Code section 45117, subdivision (c)(3)(A).

RECOMMENDATION

Cause for layoff was established for respondents Naomi Diaz, Karina Hernandez, Adriana Kirchfeld, Bertha Mendieta, Noemi Luttmers, Irene Rodriguez, and Diane Velasquez. Notice may be given to respondents that their services will not be required for the 2023–2024 school year because of a lack of work and/or a lack of funds subject to respondents' displacement rights.

DATE: 05/04/2023

A handwritten signature in black ink, appearing to read 'Cindy F. Forman', with a stylized, flowing script.

CINDY F. FORMAN

Administrative Law Judge

Office of Administrative Hearings