

BEFORE THE
GOVERNING BOARD OF THE
CABRILLO UNIFIED SCHOOL DISTRICT
SAN MATEO COUNTY, STATE OF CALIFORNIA

In the Matter of the Non-Reemployment of Certificated
Employees:

OAH No. 2010021081

ANNETTE ANGELES-HAGARTY, CLAUDIA AVILA,
SHARI BALDOCK, ILENE BRAGMAN,
CHRISTINE BROSSI, MARIA A. BRUNO,
SUZANNE CHARON, CARRYE DEMERS,
ERIC DENAULT, KELLY FARNSWORTH,
PAUL FARNSWORTH, CLAUDIA FRANK,
KIRA GANGSEI, DIANA GARCIA,
NICOLE HIGAKI, CATHERINE HOLLAND-FALL,
ROBIN IGLIS-ARKELL, AMY LOPEZ,
JENNIFER LUERSSSEN, TIMOTHY LUGO,
SHAWNA MCCARTNEY, JAN MCFARLAND-BROWN,
SHANNON MURRAY, GEMA NAVARRO,
MELINDA NOKES, ERIN O'CONNOR-BROWN,
DAVID PAPP, COURTNEY PARRIERA,
AMY RHODES, MAYUMI KATHERINE RIPPBERGER,
AMANDA ROBERTSON, LEAH SANDER,
JENNIFER SCARPACI, DEBBIE SILVERIA,
MAILE SPRINGER, HEIDI STADLER-MILLS,
PAMELA TEIGE, LISA THEA WALLACH,
STACEY WALSH, KATHERINE WEBER,
and JENNIFER ZAMORA,

Respondents.

PROPOSED DECISION

On April 29, 2010, in Half Moon Bay, San Mateo County, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California (OAH), heard this matter.

Tami F. Essis, Esq., of Dannis Woliver Kelley, Attorneys at Law, 71 Stevenson Street, San Francisco, California, 94105, represented the Cabrillo Unified School District.

Sheila K. Sexton, Esq., Beeson, Tayer & Bodine, Attorneys at Law, 1404 Franklin Street, Fifth Floor, Oakland, California 94612, represented Respondents Annette Angeles-Hagarty, Claudia Avila, Shari Baldock, Ilene Bragman, Christine Brossi, Maria A. Bruno, Suzanne Charon, Carrye Demers, Eric Denault, Kelly Farnsworth, Paul Farnsworth, Claudia

Frank, Kira Gangsei, Diana Garcia, Nicole Higaki, Catherine Holland-Fall, Robin Iglis-Arkell, Amy Lopez, Jennifer Luerssen, Shawna McCartney, Jan McFarland Brown, Shannon Murray, Melinda Nokes, David Papp, Courtney Parriera, Amy Rhodes, Mayumi Katherine Rippberger, Amanda Robertson, Leah Sander, Jennifer Scarpaci, Debbie Silveria, Heidi Stadler-Mills, Pamela Teige, Lisa Thea Wallach, Stacey Walsh, Katherine Weber, and Jennifer Zamora.

Respondents Maile Springer, Gema Navarro, Erin O'Connor-Brown did not attend the hearing of this matter. Nor did those respondents designate legal counsel or other individual to represent their individual or collective interests at the hearing of this matter.

On April 29, 2010, the parties submitted the matter and the record closed.

FACTUAL FINDINGS

Jurisdictional Matter

1. On March 25, 2010, John Corry, Director of Personnel, Cabrillo Unified School District (the District), made and filed the Accusation in his official capacity with regard to the respondents to this matter.

2. On March 10, 2010, the District's Governing Board adopted Resolution No. 3-10. The resolution recites that pursuant to Education Code sections 44949 and 44955 it has become necessary for the District to reduce and/or to eliminate, as of the end of the 2009-2010 school year, particular kinds of services in the form of 37.77 full time equivalent (FTE) certificated employee positions as follows:

<i>Particular Kinds of Services</i>	<i>Number of Full Time Equivalent (FTE) Positions Eliminated</i>
BTSA Coordinator	1.0
Elementary	23.0
Physical Education (K-5)	2.0
Special Education: SDC (Elementary)	1.0
Mathematics	0.17
Counselors	5.0
Biology (9-12)	0.20
English (9-12)	1.0
Librarian (9-12)	1.0
Physical Education (9-12)	0.40
Social Studies (9-12)	1.0
Special Education: RSP (High School)	1.0
Special Education: SDC (High School)	1.0
Total	37.77

3. Board Resolution No. 3-10 stated also that it will be necessary to consider retention of services of certificated employees in the 2010-2011 school year regardless of seniority, who possess qualifications needed for: (i) Agricultural Science, and (ii) English Language Learners (BCLAD¹).

4. Respondents to the proceeding are identified by name on the list attached hereto as Attachment "A"

5. Respondents are employees of the District, who contest the proposed certificated employee lay-off action. Respondents are either probationary certificated employees or permanent (tenured) certificated employees with the District.

6. The District's Director of Personnel's written preliminary notice, dated March 11, 2010, to each respondent stated legally sufficient reasons for the District's Board's intent to eliminate the course or service taught or performed by each respondent.

7. Each respondent timely requested in writing a hearing to determine whether or not cause exists for not reemploying each respondent for the ensuing school year.

8. The District's Director of Personnel's timely served upon each respondent the Accusation, dated March 25, 2010, and related documents. Each respondent filed a timely notice of defense.

9. All pre-hearing jurisdictional requirements were met.

Stipulations

10. At the hearing of this matter, the parties stipulated to several issues. The stipulations are set out in the following Factual Findings 11 through 15.

11. The District retained certificated employees who possess a BCLAD to perform services in assignments that require a BCLAD.

12. Respondent Jennifer Scarpaci may not exercise bumping rights into a high school assignment because the District does not have a full ninth-grade English assignment that would permit Respondent Scarpaci to displace a junior English teacher at the high school.

13. The District shall withdraw the accusations regarding, and shall rescind the layoff notices as served on, the following 12 certificated employees: Claudia Avila, Mathew Ballard, Ilene Bragman, Christine Brossi, Kelly Farnsworth, Paul Farnsworth, Diana Garcia, Shawna McCartney, Erin O'Connor Brown, Patrick Olson, Donald Prestosz, and Pamela

¹ BCLAD denotes Bilingual, Crosscultural, Language and Academic Development.

Teige. By its withdrawal of the accusations, the District will retain for the ensuing school year the services of the twelve individuals named above.²

14. The District will issue final notice of layoff to the following certificated employees, including individuals who are not respondents in this matter: Annette Angeles-Hagarty, Shari Baldock, Maria Angelica Bruno, Ryan Candelario, Joseph Centoni, Suzanne Charon, Kenneth Church, Carrye Demers, Eric Denault, Claudia Frank, Kira Gangsei, Nicole Higaki, Catherine Holland-Fall, Robin Iglis-Arkell, Amy Lopez, Jennifer Luerssen, Timothy Lugo, Jan McFarland-Brown, Shannon Murray, Melinda Nokes, David Papp, Courtney Parriera, Amy Rhodes, Mayumi Katherine Rippberger, Amanda Robertson, Leah Sander, Jennifer Scarpaci, Debbie Silveria, Maile Springer, Heidi Stadler-Mills, Lisa Thea Wallach, Stacey Walsh, Katherine Weber, and Victor Zerpa.

15. Along with the final notice of layoff, the District will provide to each respondent who will receive a final layoff notice, tie-breaking sheets and “individual calculation” data.

Acts by the District’s Director of Personnel

16. Mr. John Corry, Director of Personnel for the District came to the hearing of this matter to provide credible and persuasive evidence.

The Director of Personnel in his official capacity was reasonable in the exercise of discretion in executing the procedures associated with the layoffs of certificated employees required by Board’s Resolution No. 3-10. The Director of Personnel, as the Superintendent’s designee, was neither arbitrary, capricious nor fraudulent in carrying out the directive of the Board’s Resolution No. 3-10.

Ultimate Findings

17. No competent and credible evidence establishes that as a result of the proposed elimination of the full time equivalent positions respectively held by respondents, the District will retain any teacher who is junior to respondents to perform services for which respondents have been certificated or found to be competent to teach for the next school year.

18. The decision of the District’s Board to eliminate or discontinue a total of 37.77 FTE positions as specified in Resolution No. 3-10, including the positions held by each respondent, was neither arbitrary nor capricious. Rather, the determination was within the proper exercise of the discretion bestowed by law upon the District.

² The names of Mr. Mathew Ballard, Ms. Erin O’Connor Brown, and Mr. Donald Prestosz were not among the list of respondents. And their names were not included on the “List of Respondents Represented by Beeson, Tayer & Bodine,” which is exhibit “A.”

19. The District's proposed elimination or discontinuation of the subject full time equivalent positions, including the positions respectively held by respondents, for the ensuing school year, is related to the welfare of the District and its overall student population.

20. The Board determined that it will be necessary, due to the elimination of particular kinds of services, to decrease the number of teachers before the beginning of the next academic year. The Director of Personnel, as the Superintendent's designee, lawfully directed the notification to respondents of the elimination of the certificated positions held by each affected respondent.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955.

2. The District provided all notices and other requirements of Education Code sections 44949 and 44955. This conclusion of law is made by reason of the matters set forth in Factual Findings 1 and 9.

3. Evidence Code section 664 establishes a presumption that the action or official duties of a public entity, such as the District and its governing board, have been regularly performed. Respondents offer no evidence to rebut the presumption that the District has properly performed actions related to the procedures that seek the non reemployment of respondents.

4. Judgments entered by a tribunal on the stipulation of the parties have the same effect as acts tried on the merits. (*John Siebel Associates v. Keele* (1986) 188 Cal.App.3d 560, 565.) The District stipulates to withdraw the Accusation against the certificated employees named in Factual Finding 13. The stipulation is binding on the parties.

5. Pursuant to Education Code sections 44949 and 44955 cause exists to give respondents notice of the discontinuation of full-time equivalent positions in the particular kinds of services rendered by respondents, by reason of the matters set out in Factual Findings 16 through 18 and 20.

6. The discontinuation of the subject particular kinds of service provided by each respondent relates solely to the welfare of the District and its students within the meaning of Education Code sections 44949 and 44955, by reason of the matters in Factual Finding 19.

RECOMMENDED ORDER

1. The accusations served on respondents are sustained, except that the accusations are dismissed as to Respondents Claudia Avila, Ilene Bragman, Christine Brossi, Kelly Farnsworth, Paul Farnsworth, Diana Garcia, Shawna McCartney, Patrick Olson, and

Pamela Teige. By its withdrawal of the accusations, the District will retain the services of these respondents for the ensuing school year.

2. Where preliminary layoff notices were not rescinded as determined above, final notice may be given to respondents that their respective services will not be required for the 2010-2011 school year because of the reduction or discontinuance of the particular kinds of services by the Cabrillo Unified School District.

DATED: May 6, 2010

PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings
State of California