

BEFORE THE
GOVERNING BOARD OF THE
SANTA RITA UNION SCHOOL DISTRICT

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

CESAR BEDON, KAREN CHUBBUCK,
DEVON DELANO, NICOLE FINK, JAIME
SHADE AND CARYN ST. GERMAIN,

Respondents.

OAH No. 2011030990

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, State of California, Office of Administrative Hearings, heard this matter in Salinas, California, on April 11, 2011.

Tami Essis Culkar, Attorney at Law, Dannis Woliver Kelley, represented the Santa Rita Union School District.

Michelle A. Welsh, Attorney at Law, Stoner, Welsh & Schmidt, represented Respondents.

The record closed on April 11, 2011.

SUMMARY

The Governing Board of the Santa Rita Union School District decided to discontinue particular kinds of services provided by teachers in the 2011-2012 school year for budgetary reasons. The decision was not related to the competency and dedication of those whose services were proposed to be eliminated. Except as to skipping criterion no. 2, the process complied with Education Code requirements.

FACTUAL FINDINGS

1. Michael Brusa filed the Accusation in his official capacity as Superintendent of the Santa Rita Union School District (District).

2. Cesar Bedon, Karen Chubbuck, Devon Delano, Nicole Fink, Jaime Schade, and Caryn St. Germain (Respondents) are certificated employees of the District.

3. On March 8, 2011, the District's Governing Board adopted Resolution Number 11-03-62, in which the Board resolved to reduce or eliminate particular kinds of services no later than the beginning of the 2011-2012 school year, as follows:

Particular Kinds of Services Number of Full Time Equivalent
(FTE) Positions

| | |
|--|-----------------|
| Music Program | 1.8 FTE |
| Foreign Language, Spanish and Japanese | 2.57 FTE |
| Elementary Classroom Teachers | 10.0 FTE |
| Special Day Class position | 1.0 FTE |
| Core Middle School Class Size Reduction Teachers | <u>1.44 FTE</u> |
| Total | 16.81 FTE |

4. The Resolution also contained criteria that the District decided were sufficiently important to warrant deviating from seniority order when instituting the reductions (commonly called "skipping criteria"). It provided that teachers would be skipped for layoff if they met the following requirements:

1. As of March 8, 2011, possession of a valid single subject Math and Physical Education credential or authorization; and [or]
2. California English Language Development Test (CELDT) administration training and/or experience.

5. Superintendent Brusa testified that the skipping criteria were applied to five teachers for math, and one teacher each for physical education (PE) and CELDT. Bursa described the CELDT as requiring extensive training both initially, and annually. He did not identify a course or course of study provided by the District that required completion of the CELDT. Donna Gillen, whose seniority date is August 16, 2007, holds a CELDT and the District plans to skip her.

As regards the need for math teachers, Brusa explained that "core" positions in the two middle schools contain only language arts. Students may or may not be sent out of the core classroom for math depending upon the qualifications of the core teacher. He noted that it would be rare in small districts such as this one to employ a teacher who only taught math. Bursa asserted that all of the five teachers who were skipped due to their math credentials would be assigned to teach math next year, albeit not exclusively. He also stated that all of the middle school teachers "will be teaching some core next year."

Similarly, the District needs to skip teachers holding PE credentials in order to fulfill state mandated requirements. The PE teacher who is being skipped teaches core pursuant to a waiver, but the majority of her assignment is PE, and this will continue next year.

6. Also on March 8, 2011, the Board passed Resolution No. 11.03.63. It contains the “Criteria for Determining Order of Seniority for Those Employees with the Same Date of First Paid Service” (commonly called “tie-breaking criteria”):

| | <u>CERTIFICATION TYPE</u> | <u>POINT(S)</u> |
|----|---|-----------------|
| 1. | Certificates: BCLAD | 2 |
| 2. | Special Education Credential: | |
| | Clear, Life, General | 2 |
| | Preliminary | 1 |
| 3. | Credentials: | |
| | Clear, Life, General | 2 |
| | Preliminary | 1 |
| | Additional Credentials | 1 |
| 4. | Credentials with Supplemental Authorizations: | |
| | Per Authorization | 1 |
| 5. | Masters Degree | 1 |
| 6. | Any ties that may occur after the application of these criteria shall be resolved by lottery. | |

7. The tie-breaking criteria were developed based upon the needs of the District and its students. Bursa explained that they all involve additional levels of education or training that reflect a higher level of preparation for teaching.

8. The District’s Seniority List is always subject to revision. In a memo dated December 15, 2010, the District asked each teacher to look over the List and indicate whether the information was correct. The District made corrections to the List as necessary, and that process is ongoing.

9. The tie-breaking criteria were applied to all of the Respondents, as each of them shared a seniority date with other teachers. Five teachers had two points each and application of the points failed to break and of the ties. Of the 13 total teachers with the same seniority date, 10 positions on the List were determined by lot. The District did not know ahead of time that the ties would not be broken by the application of the listed criteria. The current Seniority List reflects the results of the application of the criteria and the lottery results.

10. On March 9, 2011, written notice of the recommendation that their services will not be required for the 2011-2012 school year (the preliminary notice) was served upon

18 teachers. Some of the notices were sent to teachers working via temporary contracts, as a precautionary matter. Each notice contained the reasons for it.

11. Vincent Artalego and each of the six Respondents filed a timely request for hearing. Accordingly, an Accusation was filed and served upon those teachers. Artalego did not file a notice of defense. Each Respondent filed a timely notice of defense and this hearing followed.

12. Brusa credibly testified about the reasons for the Board's resolution to reduce services. The District contains two middle schools and four elementary schools, serving students in grades Kindergarten through eight. Due to an anticipated shortage of funds totaling approximately \$880,000, the District was required to look at areas to reduce. The planned reductions will still allow the District to meet staffing requirements and provide all mandated services.

13. Attrition was considered by the District in its calculations and decisions concerning the implementation of the reductions in services. Adjustments will be made to the Seniority List if further information is received concerning retirements and leaves of absence affecting the 2011-2012 school year.

14. The Board's decision to reduce or discontinue the identified services was made solely on the basis of the needs of the District and its pupils.

Testimony of three Respondents

15. Caryn St. Germain teaches kindergarten currently and has taught 5th grade in the past. She holds a clear multiple subject credential with a CLAD, and a preliminary mild/moderate special education credential. St. Germain is pursuing an authorization in math and expects to receive it this fall. Her position on the Seniority List was arrived at by application of the lottery. She is willing to teach math under whatever authorization is appropriate, as well as special education.

16. Jaime Schade teaches 4th grade. She holds a clear multiple subject credential with a CLAD. By the end of this fall, Schade expects to have earned a special education credential. All she needs is to complete the practicum course. Her position on the Seniority List was arrived at by application of the lottery. Schade is willing to accept a special education or core assignment for next year.

17. Nichole Fink teaches 2nd grade. She holds a clear multiple subject credential with a CLAD. In addition, she has a master's degree in education and curriculum. Fink testified that three teachers at her school, La Joya Elementary, are planning to retire before next year: Steven Wooden, Peggy Saunders and one other whose name she does not recall. She is aware that Wooden has notified the District, but does not know if the other two have.

18. None of the three teachers who testified established cause to require the District to take any particular action as regards their individual status.

19. Except Donna Gillen, no junior employee is being retained to render a service that any of the Respondents are certificated and competent to provide.

LEGAL CONCLUSIONS

1. All notices and other requirements of Education Code sections 44949 and 44955 have been provided as required. The District established jurisdiction for this proceeding as to each Respondent.

2. Cause was established as required by Education Code section 44955 to reduce the number of certificated employees in 16.81 full-time equivalent positions due to the reduction or discontinuation of particular kinds of services.

Skipping issues

3. Education Code section 44955, subdivision (b), requires a district to proceed in inverse order of seniority when effectuating an economic layoff. An exception to this provision is contained in Education Code section 44955, subdivision (d)(1), which allows deviation from seniority when:

. . . the district demonstrates a specific need for personnel to teach a specific course or course of study . . . and that the certificated employee has special training or experience necessary to teach that course or course of study or to provide those services . . . which others with more seniority do not possess.

4. The District did not demonstrate that criterion no. 2, “California English Language Development Test (CELDT) administration training and/or experience,” meets the requirements of section 44955, subdivision (d)(1). It was not established that having taken the CELDT qualifies a teacher to teach a specific course or course of study. Accordingly, criterion no. 2 is not valid and the District may not skip Donna Gillen or any other teacher based upon the CELDT.

5. Education Code section 44955, subdivision (b), provides seniority protection for permanent employees. A district may not retain an employee with less seniority over another employee who is certificated and competent to render the same service.

The District failed to notice Gillen for layoff despite her lack of seniority because of the mistaken impression that she could be validly skipped. Prior to the issuance of the final notices a determination must be made if an employee certificated and competent to render

the same service as Gillen but senior to her is subject to layoff because of the incorrect skipping of Gillen.

6. Criterion no. 1, in contrast, does describe courses of study: math and physical education. The evidence established that teachers holding special authorizations in those specialties are needed. Cause was established to allow the District to deviate from seniority order pursuant to Education Code section 44955 in effectuating the layoff as regards math and PE.

Tie-breaking issues

7. Respondents contend that the tie-breaking criteria established by the District were a subterfuge for the implementation of a lottery system, which was disallowed by the legislature many years ago. This argument was not persuasive.

Districts have broad latitude to establish and apply tie-breaking criteria. In this case, application of the criteria was not very useful in breaking ties, but the criteria themselves were clear and rationally related to the needs of the District. This is all that is required. In addition, it is noted that no authority was presented in support of Respondents' argument. In sum, it was not demonstrated that the selection and application of the tie-breaking criteria was arbitrary or capricious, or otherwise illegal.

Board waiver issue

8. Respondents contend that the District has granted credential waivers to certain teachers, such as the PE teacher being skipped, in an unfair manner. Education Code section 44256, subdivision (b), states that a governing board "may" authorize an employee, under certain conditions, to teach a subject outside his or her credential. Such waivers are thus discretionary. The evidence did not establish that the District acted illegally in granting or not granting waivers.

9. Any contentions raised by Respondents and not discussed above are found to be without merit and are rejected.

ORDER

1. Notice may be given to Respondents in 16.81 FTE positions that their services will not be required for the 2011-2012 school year because of the reduction or discontinuation of particular kinds of services.

2. Prior to issuing the final layoff notices, the District shall determine whether any employee senior to Donna Gillen has been prejudiced by skipping her. The District may not give a final notice to the most senior employee who was prejudiced.

DATED: _____

MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings