

BEFORE THE
GOVERNING BOARD OF THE
WILSONA SCHOOL DISTRICT

In the Matter of the Accusation Against

CERTIFICATED EMPLOYEES OF THE
WILSONA SCHOOL DISTRICT,

Respondents.

OAH No. 2013030938

PROPOSED DECISION

This matter came on regularly for hearing on April 25, 2013, in Lake Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

James B. Furnow, Attorney at Law, represented the Wilsona School District (District).

Paul Scott, Regional Inserv Staff, Political Organizer Region III/IV of the California Teachers Association represented Respondents, Maria Aguilar, Tracie Banner, Lorrie Bauder, Pat McGuire, Darcell Nilsson, Marcia Saldana, Anne Stanley, and Raymond Strasser-King (Respondents).

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2013-2014 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2013-2014 school year.

Oral and documentary evidence was presented at the hearing, and the matter was submitted for decision on the hearing date.

FACTUAL FINDINGS

1. Superintendent Teresa A. Grey (Grey) filed the Accusation in her official capacity.
2. Respondents are certificated employees of the District.

3. On February 21, 2013, the Governing Board of the District (Governing Board) adopted Resolution Number 2012-13-10, reducing or discontinuing the following services for the 2013-2014 school year:

<u>Service</u>	<u>FTE¹ Reduction</u>
Classroom Instructors, Grades K-8	5.33
Resource Specialist Program, Special Education Teachers	0.83
Instructional Coaches	2.00
Intervention Teachers	<u>2.00</u>
Total	10.16

4. Superintendent Grey thereafter provided written notice to the Governing Board and to Respondents that she recommended the termination of Respondents' services for the 2013-2014 school year due to the reduction of particular kinds of services.

5. On March 6 and 7, 2013, the District provided notice to Respondents that their services will not be required for the 2013-2014 school year due to the reduction of particular kinds of services. Respondents thereafter filed timely requests for hearing.

6. On or about March 26, 2013, the District filed and served the Accusation and other required documents on Respondents. Respondents thereafter filed timely notices of defense, seeking a determination of whether cause exists for not reemploying them for the 2013-2014 school year.

7. All prehearing jurisdictional requirements have been met.

8. The services set forth in Factual Finding Number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.²

9. The District seeks to reduce projected spending due to the uncertainty associated with State funding and potential reductions in such funds. The Governing Board's decision to reduce or discontinue the services set forth in Factual Finding Number 3 is not arbitrary or capricious but is rather a proper exercise of the District's discretion in light of such potential loss of revenue.

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¹ Full-time equivalent position.

² All further statutory references are to the Education Code.

10. The reduction of services set forth in Factual Finding Number 3, in the context of potential revenue losses and the need to provide services if such losses materialize, 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 Governing Board.

11. On February 21, 2013, the Governing Board adopted Resolution 2012-13-09, setting forth its tie-breaking criteria for employees with the same seniority date. In pertinent part, the Resolution provides:

WHEREAS, as among employees who first rendered paid service to the District on the same date, the law requires the Governing Board to determine the order of termination solely on the basis of the needs of the District and its students; and

NOW THEREFORE, BE IT RESOLVED, that the specific criteria used in determining this need shall be as follows, but not necessarily listed in the order of importance:

1. CLAD – 1 point
2. BCLAD – 1 point
3. Clear Special Education Credential – 1 point
4. Clear Multiple Subject Credential/Life Credential – 1 point
5. Clear Single Subject Credential – 1 point per credential
6. Supplemental Authorizations – 1 point per authorization
7. National Board Certification – 1 point
8. Masters Degree – 1 point each
9. Doctorate Degree – 1 point each

12. Respondents Lorrie Bauder (Bauder) and Darcell Nilsson (Nilsson) share the same first date of paid service with the District. Respondent Nilsson holds a Crosscultural, Language and Academic Development (CLAD) certificate. Respondent Bauder holds a Specially Designed Academic Instruction in English (SDAIE) certificate.

13. The District applied its tie-breaking criteria to Respondents Bauder and Nilsson. Because the CLAD and the SDAIE certificates authorize Bauder and Nilsson to perform the same functions with/for English learners, each teacher was awarded one tie-breaking point for her respective certificate, even though SDAIE was not specifically listed as a tie-breaking criterion in Resolution Number 2012-13-09. The application of the tie-breaking criteria, with one point awarded to Bauder for her SDAIE, resulted in a tie. Had Bauder not been awarded the point for SDAIE, Nilsson would have been deemed the more senior employee by one point.

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14. Thereafter, the District conducted a lottery to break the tie. Playing cards were drawn by or on behalf of Bauder and Nilsson.³ The teacher drawing the highest card was deemed to have the greater seniority. Bauder drew the higher card and was awarded the greater seniority. She was therefore retained for the 2013-2014 school year.

15. The tie-breaking criteria were improperly considered. Code section 44955, subdivision (b) states in relevant part:

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the *specific criteria* used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.
(Emphasis added.)

16. Section 44955, subdivision (b) mandates a district to furnish the “specific criteria” it intends to use in the event of a tie in seniority. The District had the opportunity to include SDAIE in its tie-breaking criteria but chose against it. Although the CLAD and SDAIE authorizations are functionally equivalent, each must be set forth in the resolution in order to be considered as a tie-breaking criterion. To hold otherwise would permit other, more disparate criteria to be added to tie-breaking resolutions after the fact, an act that would violate the statute and lead to uncertainty in breaking ties between certificated employees with the same first date of paid service. In this case, had the tie-breaking criteria been correctly applied, Nilsson would have been retained as the more senior employee, and the need for the lottery would have been obviated.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of Factual Finding Numbers 1 through 7.

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³ Respondent Nilsson was unable to attend the lottery due to an injury. A card was drawn on Nilsson’s behalf by a District employee.

2. The services listed in Factual Finding Number 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of Factual Finding Numbers 3 and 8.

3. Cause exists under sections 44949 and 44955 for the reduction of the particular kinds of services set forth in Factual Finding Number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of Factual Finding Number 1 through 10.

4. The number of certificated employees to be given final layoff notice depends on the service reductions. As Section 44955, subdivision (b), states, "[w]hen a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year . . . and when in the opinion of the governing board of the district it shall become necessary to decrease the number of permanent employees of the district, the governing board may terminate the services of not more than a *corresponding percentage of the certificated employees* of the district, permanent as well as probationary, at the close of the school year. . . ." (Emphasis added.)

5. With the exception of Respondent, Darcell Nilsson, cause exists to terminate the services provided by Respondents, by reason of Factual Finding Numbers 1 through 16 and Legal Conclusion Numbers 1 through 4.

6. Cause does not exist to terminate the services provided by Respondent, Darcell Nilsson, by reason of Factual Finding Numbers 1 through 16.

ORDER

1. The Accusation is sustained as to all Respondents except Darcell Nilsson, and the District may notify all Respondents except Darcell Nilsson, that their services will not be needed during the 2013-2014 school year due to the reduction of particular kinds of services.

2. The Accusation is dismissed as to Respondent Darcell Nilsson. The District shall retain Darcell Nilsson for the 2013-2014 school year.

Dated: _____

H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings