

**BEFORE THE GOVERNING BOARD
ANTIOCH UNIFIED SCHOOL DISTRICT**

In the Matter of the Layoff of:

Certificated Employees,

Respondents.

OAH No. N2004020394

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on April 30, 2004, in Antioch, California.

Laurie S. Juengert of Lozano Smith represented the Antioch Unified School District.

Margo A. Feinberg of Schwartz, Steinsapir, Dohrmann & Sommers, LLP, represented the respondents, of whom Stephanie Andrews-Garcia, Brian Barnes, Nella Cockerham, Diana Degering, Dolores Erickson, Neil Gardiner, Megan Keesling, Sonia Manuel, David Price, Carolyn Roberts and James Wolley were present at the hearing.

The matter was submitted on April 30, 2004.

FACTUAL FINDINGS

1. Dennis Goettsch made and filed the accusation in his official capacity as Superintendent of the Antioch Unified School District (District).
2. Respondents are listed on Appendix A, attached hereto and by this reference incorporated herein. They are certificated employees of the District.
3. On March 3, 2004, the District's Governing Board (Board) adopted Resolution No. 2003-04-27 reducing or discontinuing particular kinds of services and directing the Superintendent to send appropriate notices to certificated employees that their services will not be required for the 2004-05 school year.
4. On March 4, 2004, Associate Superintendent for Personnel Services Donna Becnel gave written notice to respondents of the recommendation that their services will not be required for the 2004-05 school year. Each notice set forth the reasons for the recommendation.

5. Respondents filed timely requests for hearing to determine if there is cause for terminating their services for the 2004-05 school year. An accusation was served on respondents, all of whom are deemed to have filed timely notices of defense. All prehearing jurisdictional requirements have been met.

6. The Board took action to reduce or discontinue the following particular kinds of services for the 2004-05 school year:

<u>SERVICES</u>	<u>FTE</u> ¹
Administrative Positions:	
Elementary Vice Principals	13.0
Director of Certificated Personnel	1.0
Certificated Positions:	
K-5 Specialists	
Computers	13.0
Music	9.4
PE	13.0
Counselor – Prospects High School	.6
Hourly Positions – Prospects High	2.54
Food Service/Atrium – Prospects High	.4
Music	<u>1.0</u>
TOTAL	53.94

7. At the hearing, the District rescinded the layoff notice sent to Pat Lamson.

8. The parties stipulated to the following matters concerning the seniority and credentials of respondents:

- a. Dolores Erickson's seniority date shall be changed from August 1, 2000 to July 26, 1999.
- b. Mark Hurtado, a provisional employee in physical education, also holds an emergency permit for multiple subject teaching. The District will retain him for the 2004-05 school year in a position requiring a multiple subject credential. His layoff notice is rescinded.
- c. James Wolley is impacted by the .4 FTE reduction in Food Service/Atrium at Prospects High School. He will receive a final layoff notice for .4 FTE of his current 1.0 FTE position. If a full-time position exists for the 2004-05 school year at Deer Valley High School, the District will recall Wolley to that position. Wolley has a right to work at Deer Valley High School if the position there is full-time or to work at Prospects High School and Deer Valley High School if there is a full-time position between those two sites.

¹ Full-time equivalent positions.

9. The parties stipulated that non-respondents Jason Ebner and Margarita Martinez De Madrid² were temporary teachers whose status is being changed to probationary. They will be treated as having probationary status for the 2003-04 school year. They are not impacted by the layoff.

10. The parties stipulated that respondent Megan Keesling was hired as a provisional employee on an emergency permit on August 6, 2001. She later received her preliminary credential and is now a probationary employee. The validity date of Keesling's preliminary credential is June 15, 2003.

The parties do not agree on what respondent Megan Keesling's seniority date should be. In this district an employee teaching on an emergency permit is called a provisional employee. When a provisional employee receives a credential the District changes his or her status to Probationary 1 as of the validity date of the credential. This date also becomes the employee's seniority date. Accordingly the District considers Keesling's seniority date to be June 15, 2003. Keesling claims that once she received her preliminary credential she was entitled to a seniority date of August 6, 2001, the date she started teaching under an emergency permit. (She does not claim that her service under an emergency permit should count for purposes of accruing tenure.) Keesling's claim to an earlier seniority date is without merit and is rejected.

In *California Teachers' Association v. Governing Board of the Golden Valley Unified School District* (2002) 98 Cal.App.4th 369, the court construed section 44915³ to allow a teacher serving under an emergency permit to be classified as a probationary employee and held that such a teacher is entitled to the statutory protections governing the dismissal of a probationary employee. However, the *Golden Valley* court agreed with the ruling in *Summerfield v. Windsor Unified School District* (2002) 95 Cal.App.4th 1026, that time spent teaching under an emergency permit cannot be counted toward accruing tenure as a permanent employee. It is logical to conclude that such service also should not count for seniority purposes. This conclusion finds support in *Summerfield* – although the teacher there had been employed under an emergency permit for the 1997-1998 school year and had been classified by her district as a probationary employee, the court referred to "her first probationary year" as the 1998-1999 school year, when she was first employed as a probationary employee under a preliminary credential.

² Although the parties referred to "Margarita Martinez De Madrid," this may not be the correct name. The District's list of temporary teachers (Exhibit 7) includes no teacher by this name but does include a teacher by the name of Margarita Martinez De Miguel. There is another temporary teacher by the name of Jeffrey Madrid, so this might have caused some confusion.

³ Section 44915 provides that: "Governing boards of school districts shall classify as probationary employees, those persons employed in positions requiring certification qualifications for the school year, who have not been classified as permanent employees or as substitute employees."

11. No certificated employee junior in seniority to any respondent is being retained by the District to perform services that any respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

2. Cause exists to change the seniority date of respondent Dolores Erickson from August 1, 2000 to July 26, 1999.

3. Cause exists to dismiss the accusations against respondents Mark Hurtado and Pat Lamson.

4. Cause exists because of the reduction or discontinuation of particular kinds of services pursuant to section 44955 to give notice to all respondents except Mark Hurtado and Pat Lamson that their services will not be required for the 2004-05 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of section 44949.


ORDER

1. The District shall change the seniority date of respondent Dolores Erickson from August 1, 2000 to July 26, 1999.

2. Notice may be given to all respondents except Mark Hurtado and Pat Lamson that their services will not be required for the 2004-05 school year because of the reduction or discontinuation of particular kinds of services.

3. The accusations against respondents Mark Hurtado and Pat Lamson are dismissed.

DATED: May 4, 2004


NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings

RESPONDENTS

Stephanie Andrews-Garcia
Brian Barnes
James Carlile
Nella Cockerham
Farrah Davies
Diana Degering
Dolores Erickson
Benjamin Fong
Neil Gardiner
Cecile Henderson
Mark Hurtado
Megan Keesling
Chrishan King
Pat Lamson
Sonia Manuel
David Price
Carolyn Roberts
Cynthia Rodemich
Nicole Sanders
Damian Ting
Wendy Troxell
Staci Webb
James Wolley

Appendix A