

BEFORE THE  
GOVERNING BOARD OF THE  
KERN HIGH SCHOOL DISTRICT  
COUNTY OF KERN  
STATE OF CALIFORNIA

In The Matter Of The Accusation Against:

OAH No. L2008030852

William L. Crowles, Sr.  
John Hansen  
Ricardo Ishida  
Leslie Lipton  
Sophia M. Lopez  
Donald Wayne Mills, Jr.  
Elizabeth Munoz-Herrera  
Terri Murray  
Evelia Rodriguez  
Deborah A. Schmidt  
Scott A. Smith

Respondents,

**PROPOSED DECISION**

Mark E. Harman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 25, 2008, in Bakersfield, California.

Peter C. Carton, Attorney at Law, represented Kern High School District (District).

Ernest H. Tuttle, Attorney at Law, represented William L. Crowles, Sr. (Crowles), John Hansen (Hansen), Ricardo Ishida (Ishida), Leslie Lipton (Lipton), Sophia M. Lopez (Lopez), Donald Wayne Mills, Jr. (Mills), Elizabeth Munoz-Herrera (Munoz-Herrera), Terri Murray (Murray), Evelia Rodriguez (Rodriguez), Deborah A. Schmidt (Schmidt), and Scott A. Smith (Smith), collectively referred to herein as Respondents.

Oral and documentary evidence was taken. The record was closed, and the matter was submitted for decision on April 25, 2008.

**FACTUAL FINDINGS**

1. Donald E. Carter is the Superintendent of the District and filed the Accusation in his official capacity.

2. Respondents are certificated employees of the District.

3. The Governing Board of the District (Governing Board) adopted a resolution on March 10, 2008, reducing or eliminating particular kinds of services equal to 95.0 Full-Time Equivalent (FTE) positions for the 2008-2009 school year. The particular kinds of services that will be reduced or eliminated include the following:

PARTICULAR KINDS OF SERVICES	NUMBER OF FTE POSITIONS
<u>High School Programs</u>	
English	21.6
Math	16.5
Social Studies	11.0
Science	12.4
Fine Arts (Drama, Music, & Art)	6.6
CTE (Bus., Voc. Arts, Industrial Arts, & Agr.)	8.4
Modern Language	6.4
Physical Education/Health	7.1
<u>Adult Programs</u>	
Lerdo Program (Jail Education)	5.0
Total	95.0

4. The Governing Board's resolution directed the Superintendent to determine which employees' services may not be required for the 2008-2009 school year as a result of this reduction in services and to give those employees notice of the Superintendent's recommendation that they will not be reemployed. The Superintendent has calculated that 57.0 FTE positions will become vacant due to resignations, retirements, and non-retention of District employees, and that the District will only need to terminate 38.0 FTE employees pursuant to this proceeding.

5. On or before March 13, 2008, the District personally served on each Respondent a written "reduction in force" notice (RIF notice) pursuant to Education Code sections 44949 and 44955 that their services would not be required for the next school year. Each written notice set forth the reasons for the recommendation and noted that the Board had passed a Resolution reducing the certificated staff by 95.0 FTE positions.

6. Respondents Hansen, Lipton, Lopez, Munoz-Herrera, Murray, and Rodriguez timely requested in writing a hearing to determine if there was cause for not reemploying them for the ensuing school year.

7. Assuming that all certificated employees would file a request for hearing, the District issued the Accusation dated April 7, 2008, and personally served the Accusation on each Respondent on or before April 9, 2008. All notices of defense were timely filed or were treated as if timely filed.

8. All prehearing jurisdictional requirements have been met.

9. At the hearing, the District indicated that the District had withdrawn and rescinded the RIF notices as to Respondents Crowles, Ishida, Mills, Schmidt, and Smith.

10. 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.

11. The Governing Board took action to reduce or discontinue the services set forth in factual finding number 3 because of the uncertainty surrounding State funding and the accompanying need to reduce staff. Further, the District is restructuring as a result of prospective openings of two additional high schools. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

12. The reduction of services set forth in factual finding number 3 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.

13. On March 3, 2008, the Governing Board adopted a resolution setting forth the criteria to determine seniority among employees who first rendered paid service in a probationary position on the same date (tie-breaking criteria). The tie-breaking criteria are reasonable as they relate to the skills and qualifications of certificated employees and to the welfare of the District and its pupils. Neither the criteria nor their application were challenged by Respondents.

14. Respondents Hansen, Lopez, Munoz-Herrera, and Rodriguez each hold a single subject credential (Social Sciences), services that suffered a reduction of 11.0 FTE positions. Hansen has a seniority date of August 15, 2007, and the other three are more junior certificated employees than Hansen. Respondent Lipton holds a multi-subject credential and is teaching education. Lipton has a seniority date of August 15, 2007. Respondent Murray holds a single subject credential (Art). Murray has a seniority date of August 15, 2007.

15. No certificated employee junior to any Respondents was retained to render a service which any Respondents were certificated and competent to render.

## LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 8.
2. The services listed in factual finding number 3 are particular kinds of services that can be reduced or discontinued under section 44955.
3. Cause exists for the District to reduce or discontinue the particular kinds of services listed in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils within the meaning of section 44949, as set forth in factual finding numbers 1 through 15.
4. Cause exists to terminate the services of Respondents John Hansen, Leslie Lipton, Sophia M. Lopez, Elizabeth Munoz-Herrera, Terri Murray, and Evelia Rodriguez for the 2008-2009 school year due to the reduction or discontinuation of particular kinds of services, by reason of factual finding numbers 1 through 15, and legal conclusion numbers 1 through 3.

## ORDER

The Accusation is sustained and the District may notify Respondents John Hansen, Leslie Lipton, Sophia M. Lopez, Elizabeth Munoz-Herrera, Terri Murray, and Evelia Rodriguez that their services will not be needed during the 2008-2009 school year due to the reduction or discontinuation of particular kinds of services.

Dated: \_\_\_\_\_

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MARK E. HARMAN  
Administrative Law Judge  
Office of Administrative Hearings