

BEFORE THE  
GOVERNING BOARD  
OF THE  
MORENO VALLEY UNIFIED SCHOOL DISTRICT

In the Matter of the Reduction in Force of  
Certain Employees of the Moreno Valley  
Unified School District:

Tina L. Arias, Nicole L. Castro,  
Christopher G. Fuerte, John Pepe, Shannon  
Robinson, Kathy Shirley, and  
Daniel W. Singer,

Respondents.

OAH No. 2008030656

**PROPOSED DECISION**

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Moreno Valley, California, on April 18, 2008.

Melanie A. Peterson, Attorney at Law, and Kerrie Taylor, Attorney at Law, represented the Moreno Valley Unified School District.

Carlos R. Perez, Attorney at Law, represented respondents Tina L. Arias, Nicole L. Castro, John Pepe, Shannon Robinson, Kathy Shirley, and Daniel W. Singer.

No appearance was made by or behalf of respondent Christopher G. Fuerte.

The matter was submitted on April 18, 2008.

**FACTUAL FINDINGS**

*The Moreno Valley Unified School District*

1. The Moreno Valley Unified School District (the District) is located in Moreno Valley, California. The District is the third-largest school district in Riverside County.

The District maintains and operates 23 elementary schools, six middle schools, five comprehensive high schools, and five alternative schools. The District provides services to approximately 37,000 students from kindergarten through 12<sup>th</sup> grades. The District employs approximately 1,600 certificated employees.

2. The District is governed by an elected five member Board of Education (the Board). The Board's Chief Executive Officer is Rowena T. Lagrosa (Superintendent Lagrosa), the Superintendent of Schools. Olivia Hershey is the District's Assistant Superintendent of Schools and Human Resources Officer. Robert Kronk is the District's Assistant Superintendent of Business Services. Willie Hasson is the District's Director of Certificated Services.

#### *The Fiscal Crisis – Economic Layoffs*

3. Proposition 13 limited the imposition of local property taxes and reduced a major source of assured revenue for funding public education in California. Since the passage of Proposition 13, public school districts have looked primarily to the State of California and to other governmental entities for necessary funding.

A school district cannot determine the level of state funding it will receive until the state budget is chaptered, an event usually occurring in late June. Before then, the school district's governing board must take steps to make certain that ends meet if the worst-case financial scenario develops.

A school board's obligation to balance its budget often requires that some teachers, administrators and/or other certificated employees be given preliminary layoff notices, warning that their services will not be required for the next school year. Under Education Code section 44949, these preliminary layoff notices must be given to certificated employees no later than March 15.

The economic layoff statutes found in the Education Code generally require the retention of senior employees over more junior employees and the retention of permanent employees over probationary employees and other employees with less seniority. A public school district may deviate from the general rule requiring termination in reverse order of seniority only if it can demonstrate that identifiable junior employees possess a credential, special training or experience necessary to teach a course of study or to provide services which more senior employees do not possess.

#### *The District's Response*

4. In early 2008, the District's administration (as well as the administrators of most other school districts) became aware of the State of California's massive budget deficit and its fiscal impact. As a result of the financial crisis, the District projected a budget deficit of about \$11.1 million for the 2008-2009 school year. The District was required to look into ways to balance its budget.



The District's administrative staff prepared a recommendation that was given to the Board concerning the reduction and elimination of particular kinds of services as one of the methods available to meet the budgetary shortfall.

5. On March 11, 2008, the Board passed Resolution No. 2007-08-67 and Resolution No. 2007-08-69, based on its opinion that it was necessary for the District to reduce or discontinue particular kinds of certificated services for the 2008-2009 school year.

The resolutions directed the Superintendent to send appropriate notices to all employees whose services would be terminated by virtue of the Board's actions.

More specifically, Resolution 2007-08-067 provided:

RESOLUTION NO. 2007-08-67 - INTENTION TO DISMISS  
CERTIFICATED EMPLOYEES - PARTICULAR KINDS OF SERVICES

WHEREAS, the Governing Board of the Moreno Valley Unified School District has determined that it shall be necessary to reduce or discontinue the particular kinds of services of the District as itemized in Exhibit "A" at the close of the current school year; and

WHEREAS, it shall be necessary to terminate at the end of the 2007-2008 school year, the employment of certain certificated employees of the District as a result of this reduction or discontinuance in particular kinds of services;

THEREFORE, BE IT RESOLVED that the Superintendent is directed to send appropriate notices to all employees whose services shall be terminated by virtue of this action. Nothing herein shall be deemed to confer any status or rights upon temporary or categorically funded project certificated employees in addition to those specifically granted to them by statute.

Adopted by the Board of Education of the Moreno Valley Unified School District on the 11th day of March, 2008.

AYES:

NOES:

ABSENT:

MORENO VALLEY UNIFIED SCHOOL DISTRICT GOVERNING BOARD

/s/

Jesus M. Holguin, President  
Board of Education

Exhibit A provided:

**EXHIBIT A**

Recommended Reduction in 2008-2009 Programs/Services for the Moreno Valley Unified School District.

The Superintendent recommends that the Governing Board adopt a resolution to reduce the programs and services for 2008-2009 as follows:

<b>GENERAL FUND</b> (Reduction in Force)	
<u>Services</u>	<u>FTE</u>
1. 9-12:	
• Work Experience	2.0 FTE
2. Counselors:	
• K-5	7.0 FTE
<b>TOTAL</b>	<b>9.0 FTE</b>

Resolution 2007-08-069 provided:

RESOLUTION NO. 2007-08-69 - INTENTION TO DISMISS  
CERTIFICATED EMPLOYEES - PARTICULAR KINDS OF SERVICES

WHEREAS, the Governing Board of the Moreno Valley Unified School District has determined that it shall be necessary to reduce or discontinue the particular kinds of services of the District as itemized in Exhibit "C" (as amended) at the close of the current school year; and

WHEREAS, it shall be necessary to terminate at the end of the 2007-2008 school year, the employment of certain certificated employees of the District as a result of this reduction or discontinuance in particular kinds of services;

THEREFORE, BE IT RESOLVED that the Superintendent is directed to send appropriate notices to all employees whose services shall be terminated by virtue of this action. Nothing herein shall be deemed to confer any status or rights upon temporary or categorically funded project certificated employees in addition to those specifically granted to them by statute.

Adopted by the Board of Education of the Moreno Valley Unified School District on the 11th day of March, 2008.

AYES:

NOES:

ABSENT:

/s/

Jesus M. Holguin, President  
Board of Education

Exhibit C provided:

**EXHIBIT C**

Recommended Reduction in 2008-2009 Programs/services for the Moreno Valley Unified School District.



The Superintendent recommends that the Governing Board adopt a resolution to reduce the programs and services for 2008-2009 as follows:

<b>CATEGORICAL</b> (Possible Reduction Funding – Addresses Compliance Issues)	
<u>Services</u>	<u>FTE</u>
1. Counselors:	
• Categorical	3.0 <del>5.0</del> FTE
2. P.E. (K-6)	4.0 FTE
<del>3. EL Specialists</del>	<del>15.0 FTE</del>
4. Categorical Teachers	5.1 FTE
• Title I Teacher (1.1 FTE)	
• English (2.0 FTE)	
• Math (2.0 FTE)	
<b>TOTAL</b>	<b>12.1 <del>29.1</del> FTE</b>

6. On or before March 15, 2008, each certificated employee who is party to this proceeding was given notice that the Superintendent had recommended that his or her services would be terminated at the conclusion of the current school year and would not be needed for the upcoming 2008-2009 school year. Each employee was notified of their right to a hearing.

7. Seven employees timely requested an administrative hearing: Respondents Tina L. Arias, Nicole L. Castro, Christopher G. Fuerte, John Pepe, Shannon Robinson, Kathy Shirley, and Daniel W. Singer.

#### *The Administrative Hearing*

8. On April 14, 2008, the Office of Administrative Hearing received notice from Carlos R. Perez, Attorney at Law, that he represented respondents Tina Arias, Nicole Castro, John Pepe, Shannon Robinson, Kathy Shirley, and Dan Singer.

On April 18, 2008, the record in the administrative hearing was opened. Jurisdictional documents were presented, a stipulation of jurisdictional facts was filed, sworn testimony and documentary evidence was received, closing arguments were given, the record was closed and the matter was submitted.

### *The Particular Kinds of Services/Decline in Attendance Issues*

9. The services identified in Exhibit A were services that could properly be reduced or discontinued. The reduction of those services was neither arbitrary nor capricious, and it constituted a matter within the proper exercise of the Board's discretion. Before issuing preliminary layoff notices, the administrative staff considered all known positive attrition including resignations, retirements and probationary non-reelects to determine the number of layoff notices that needed to be served. The administrative staff met with teachers, board members, and others in the educational community before making specific recommendations regarding a reduction in force.

No particular kinds of services were lowered to levels less than those levels mandated by state or federal law.

### *The Seniority List*

10. The District maintains a seniority list, a living document that is updated as new employees are hired and as other employees retire or resign. The seniority list contains each employee's name, his or her seniority date (based on the first date of paid service with the District), the employee's hire date, the teacher's assignment, the nature and extent of the teacher's credentials, the name of the school site where the employee provides services, the employee's status (intern, probationary, tenured), and what percentage of full-time equivalent (FTE) service the employee provides.

11. As soon as the District determined that the budget crisis might require a reduction in force, the certificated seniority list was sent to all school sites and was made available for all employees for review. Employees were given a reasonable period of time in which they could request corrections or changes to the seniority list. When employee comments were returned, the District investigated the requests and made changes to the seniority list when appropriate.

### *The District's Layoff Notices*

12. Under the Board's reduction in force resolutions, the District was required to provide notice to the two most junior physical education teachers and the seven most junior counselors.

In reviewing the seniority list, staff concluded that Christopher Fuerte (hired 1/14/08, a probationary 1 elementary school PE teacher at Hidden Springs Elementary School) and Kathy Shirley (hired 1/14/08, a probationary 1 middle school PE teacher at Sunnymead Middle School) were the most junior physical education teachers and should be given notice.

In reviewing the seniority list, staff concluded that Tina Arias (hired 2/27/07, a probationary 1 elementary school counselor at Sierra Elementary School), Daniel W. Singer (hired 3/5/07, a probationary 1 continuation school counselor at March Mountain Continuation School), John Pepe (hired 4/9/07, a probationary 1 middle school counselor at Sunnymead Middle School), Nicole Castro (hired 4/10/07, a probationary 1 middle school



counselor at Badger Springs Middle School), and Shannon Robinson (hired 8/17/07, a probationary 1 high school counselor at Valley View High School) were the most junior counselors and should be given notice.

13. Each certificated employee identified in Factual Finding 12 was given notice as required by law and timely filed a request for a hearing. Thereafter, the District timely served an Accusation and other required jurisdictional documents on each certificated employee identified in Factual Finding 12, along with a Notice of Hearing.

### LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied as to those certificated employees identified herein.

2. A school board's decision to reduce or discontinue particular kinds of services (PKS) need not be tied to any statistical computation, such as a reduction in the number of students. The number of terminations through PKS reductions depends totally upon the district's decision as to how many services to reduce. It is within a board's discretion to determine the extent to which it will reduce a particular service. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627.)

A school board may "reduce services" by determining a certain type of services or by reducing the number of district employees who perform such services. A school board's decision to reduce or discontinue a particular kind of service is not unfair or improper because the school board made a decision it was empowered to make. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

3. Education Code section 44955, subdivisions (b) and (c), sets forth a general rule requiring school districts to retain senior employees over more junior employees and to retain permanent employees over temporary employees. Any exception to this general rule must be based on statute.

4. For employees hired on the same date, Education Code section 44955, subdivision (b) provides:

"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."

5. Seniority determines the order of dismissals; between employees with the same first date of paid service, the order of termination is determined on the "basis of the needs of the district and its students." Senior employees are given "bumping" rights and will not be terminated if junior employees are being retained who render services which the senior employee is certificated and competent to render. A district may move a junior

employee upward from the bottom of a seniority list, "skipping" over more senior employees, so long as the junior employee being retained is certificated and competent to render services which more senior employees are not. (*Alexander v. Board of Trustees* (1983) 139 Cal.App.3d 567.)

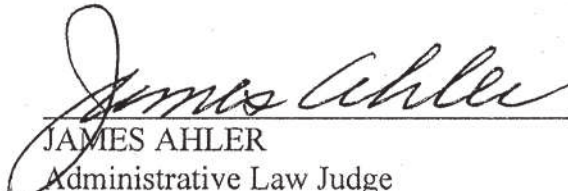
A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who holds that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.)

6. As a result of the lawful reduction of particular kinds of service, cause exists under Education Code section 44955 for the District to give notice to respondents Tina L. Arias, Nicole L. Castro, Christopher G. Fuerte, John Pepe, Shannon Robinson, Kathy Shirley, and Daniel W. Singer that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2008-2009 school year.

#### RECOMMENDATION

It is recommended that the Board give notice to respondents Tina L. Arias, Nicole L. Castro, Christopher G. Fuerte, John Pepe, Shannon Robinson, Kathy Shirley, and Daniel W. Singer that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2008-2009 school year.

DATED: April 21, 2008.

  
JAMES AHLER  
Administrative Law Judge  
Office of Administrative Hearings