

BEFORE THE GOVERNING BOARD  
OF THE  
CALEXICO UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Reduction in Force  
Involving 25 Credentialed Employees of  
the Calexico Unified School District,

Respondents.

OAH No. 2010031057

**PROPOSED DECISION**

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Calexico, California, on May 20, 2010.

Clifford D. Weiler, Attorney at Law, represented the Calexico Unified School District. He was assisted by Teresa Estrada, Director of Personnel Commission and Human Resources, Calexico Unified School District.

John W. Breeze, Attorney at Law, represented the 22 certificated employees who were identified as respondents in this reduction in force proceeding. He was assisted by Ernie Bristow, Regional Uniserv Staff, California Teachers Association.

The matter was submitted on May 20, 2010.

**FACTUAL FINDINGS**

*The Calexico Unified School District*

1. The Calexico Unified School District serves the educational needs of thousands of kindergarten through 12 grade students in Calexico, California. The district is governed by an elected five-member Board of Education (the governing board). Christina Luna, Ed. is the Superintendent of Schools. Teresa Estrada, Director of Personnel Commission and Human Resources, is Superintendent Luna's designee in this reduction in force proceeding.

*The Continuing Fiscal Crisis – Economic Layoffs*

2. Proposition 13 limited the imposition of local property taxes and reduced a major source of assured revenue for the funding of public education in California. After

Proposition 13 was enacted, public school districts have looked primarily to the State of California and to other governmental entities for 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 July, but sometimes taking much longer. A school board's obligation to balance its budget often requires that some teachers, administrators or other certificated employees be given preliminary layoff notices, warning them that their services will not be required for the next school year. Under Education Code section 44949, these preliminary layoff notices must be given 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 others 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, a process known as skipping.

#### *The District's Response*

3. By early 2010, the district's governing board and administration (as well as the governing boards and staff of other public school districts) were aware of California's budget deficit and its probable crippling impact on the district's operations. The district was required to look into methods by which it could balance its budget including the reduction of certificated and classified staffing.

4. On March 10, 2010, the governing board passed the following resolution:

Resolution Number **22-03-10**

On motion of member **Cordero**, seconded by member **De La Rosa**, the following Resolution is adopted:

WHEREAS, because of financial realities such as budget and revenue considerations state-wide and the resulting reductions of revenue to this school district and financial constraints resulting from revenue being insufficient to maintain current levels of programs and services including particular kinds of certificated services, and because of the desire and need to reassess educational priorities, and it being necessary to commence implementing program changes in a timely fashion within the current structure of the law, this District's Governing Board determines that it is in the best interest of the District and the welfare of the schools and the pupils thereof, to commence certificated layoff proceedings to reduce particular kinds of services ("PKS") as hereinafter enumerated and to reduce the corresponding number of certificated staff no later than the beginning of the 2010-2011 school year;

WHEREAS, the cause of this reduction in certificated services is not the separate statutory basis involving declining average daily attendance during either of the past two years;

WHEREAS, this discontinuance and reduction of certificated services shall result in layoffs of certificated personnel in accordance with Education Code sections 44955 and 44949

which provide a process whereby particular decisions, actions and notifications must be undertaken beginning no later than March 15 of each school year regarding layoffs of certificated personnel in order to reduce the number of certificated staff, and this Board desires to reduce certificated staff as permitted by law;

WHEREAS, this Governing Board desires to discontinue and reduce the particular kinds of certificated services as listed in Exhibit A, attached, and to that extent of full time equivalents (“FTEs”) not later than the beginning of the 2010-2011 school year (in addition to the release of temporary certificated employees and/or the expiration of their contracts without renewals or re-issuances);

WHEREAS, in the opinion of the Governing Board, it will be necessary as a result of the discontinuances and reductions of these particular kinds of services reflected in Exhibit A to decrease the number of certificated permanent and/or probationary employees by a corresponding number of full-time equivalent positions;

WHEREAS, in determining the extent of staff FTE reductions and services to be discontinued and reduced, as noted in Exhibit A, the Governing Board has considered all assured and/or known attrition as of this time to the extent required by law (including but not limited to resignations and retirements received and to be effective not later than the close of this current school year, non-reelections of certificated employees, if any, for reasons unrelated to these discontinuances and reductions of services, and the release of temporary certificated employees and the expirations of their contracts), so that the total referenced above and in Exhibit A has already accounted for such attrition; but for that attrition, this Board would have found it necessary to discontinue or reduce additional particular kinds of certificated services and/or full time equivalents;

NOW, THEREFORE BE IT RESOLVED, DETERMINED AND ORDERED by this Governing Board, as follows:

1. All of the above recitals are true and correct;
2. The particular kinds of services as listed in Exhibit A are hereby to be and will be discontinued and reduced and otherwise eliminated to the described extent not later than the beginning of the 2010-2011 school year, within the meaning of Education Code section 44955, subdivision (b);
3. It is the opinion of this Governing Board, in view of the reductions of these particular kinds of services, that it is necessary to decrease the number of permanent and/or probationary employees serving in positions requiring certification qualifications within this school district at the close of this school year by a corresponding number of full-time equivalent positions as set forth within Exhibit A, and that such decrease in number of certificated staff be implemented by the termination of employment of certificated employees above and beyond attrition and the termination or expiration of employment of temporary and substitute employees;
4. Due to the discontinuances and reductions of particular kinds of services set forth herein, the legal number of employees of the District, pursuant to Education Code Section 44955, shall not be reemployed for the 2010-2011 school year;

Subject to requirements (if any) within the Educational Employment Relations Act, that for purposes of “competency” as to “bumping” (displacement) rights within the meaning of Education Code section 44955(b) and as to reemployment rights within the meaning of Education Code sections 44956 and 44957, to the extent such might apply, “competency” shall be based upon the following: possession and current filing of a preliminary or clear credential for the subject matter into which the employee would bump for the 2010-2011 school year or be reemployed;

5. For purposes of seniority tie-breaking criteria within the context of layoff and reemployment within the meaning of Education Code section 44955, subdivision (b) (third paragraph), section 44846 (second paragraph), section 44956 and section 44957, the Governing Board determines that seniority ties shall be broken in accordance with the criteria within Exhibit B, said criteria being based solely upon the current needs of the District and the students thereof;
6. The Superintendent or the Superintendent’s designee(s) is(are) instructed to take the steps necessary pursuant to the Education Code including, in part, sections 44955 and 44949, to implement the above and to reduce the certificated staff as set forth herein above;
7. The actions of this Governing Board will not, in any way, be considered to prejudice the rights of any certificated employee to whom notice will be given of the superintendent’s recommendations of layoff, should any employee request a hearing to contest this matter and a recommended decision of an administrative law judge be presented to this Board for consideration.

Above is as adopted by the Governing Board of the Calexico Unified School District at a special meeting held on March 10, 2010, in Calexico, Imperial County, by the following vote:

Ayes:	<b>Cordero, De La Rosa, Castillo, Romo</b>
Nayes:	<b>None</b>
<b>ABSTAINED:</b>	<b>Pacheco</b>

I, Christina Luna, Superintendent and Secretary to the Governing Board of the Calexico Unified School District of Imperial County, California, do hereby certify that the foregoing is a true, and correct copy of a resolution and reflection of its vote as duly adopted by said Board at a meeting thereof, which Resolution is on file and of record in the office of the Superintendent.

Date: **March 10,** \_\_\_\_ **2010**

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Christina Luna, Ed.D.  
Superintendent/Secretary to Governing Board  
Calexico Unified School District

Upon a motion to amend, moved by: **Member Romo** seconded by: **Member De La Rosa** the following amendment was adopted to the above resolution within its Exhibit A: add to the listing Particular Kinds of Service Assistant Superintendent Educational

Services, discontinuance of 1.0 FTE. Passed and amended at the same special meeting by the following vote:

Ayes: **Romo, De La Rosa, Pacheco**

Nayes: **Cordero, Castillo**

I, Christina Luna, Superintendent and Secretary to the Governing Board of the Calexico Unified School District of Imperial County, California, do hereby certify that the foregoing is a full, true, and correct reflection of an amendment duly adopted by said Board at a meeting thereof, the vote above stated, which Resolution is on file and of record in the office of the Superintendent.

Date: **March 10, 2010**

Christina Luna, Ed.D.

Superintendent/Secretary to Governing Board

#### **EXHIBIT A**

#### **IDENTIFICATION OF PARTICULAR KINDS OF SERVICES (PKSs) AND**

#### **FULL TIME EQUIVALENCIES (FTEs) TO BE DISCONTINUED OR REDUCED NOT LATER THAN THE BEGINNING OF THE 2010-2011 SCHOOL YEAR**

<b><u>Particular Kind of Service</u></b>	<b><u>Discontinuance or Reduction</u></b>	<b><u>Full time Equivalents</u></b>
Kindergarten through sixth grade teaching services	reduction	6.0
Biology, high school, teaching services	reduction	1.0
Core class teaching services, junior high schools	reduction	5.0
Counselor services	reduction	1.0
English teaching services, high school	reduction	2.0
English/English Language Arts teaching services, junior high schools	reduction	3.0
Social science teaching services, junior high schools	reduction	3.0
Special education teaching services moderate/severe classroom RSP setting (1.0 FTE) special day class (1.0 FTE)	reduction	2.0
Spanish teaching services, high school	reduction	1.0
Elementary itinerant music teaching services	reduction	1.0
Physics secondary teaching services	reduction	1.0
Spanish teaching services, junior high school	reduction	1.0
Adult education teaching services	discontinuance	1.0

Categorically funded services:* Agriculture teacher services (one employee) Social science teaching services (one employee) Home instructor services (one employee) English teacher services (one employee) RTI (Response to Intervention Teacher) services (three employees) RTI (Response to Intervention) tutor services (fifteen employees)	Discontinuance	All [22]
	<b>TOTAL FTEs</b>	28.0** (plus categorically funded services)

\* These services as specified in the listing will be discontinued; all employees providing those services will be released. Inclusion of these and any categorically funded services within this Resolution is not intended to grant those individuals who are impacted any rights greater than provided by law, nor to nullify any provisions within each impacted individual's employment contract, nor to supersede any other action by this Board to release or otherwise terminate the services of any impacted individual.

As per amendment of March 10, 2010;

Particular Kind of Service: Assistant Superintendent Education Services, discontinuance, 1.0 FTE.

\*\*Total as Amended: 29.0 (Plus categorically funded services)

## EXHIBIT B

### CRITERIA FOR BREAKING SENIORITY TIES

Subject to requirements (if any) within the Educational Employment Relations Act, this Governing Board determines, based solely on the needs of this District and the students of this District, that seniority ties within the meaning of Education Code sections 44955, subdivision (b) (third paragraph) and section 44846, shall be resolved by applying the following criteria:

The following rating system shall be applied in determining the order of termination of certificated employees, such that a tie will be broken in favor of the employee with a greater number of total points:

A. Clear Professional, Standard, or General Teaching Credentials. **Rating: +3 points per credential**

B. Preliminary Teaching Credentials. **Rating: +2 points per credential**

- C. Supplementary Authorization, issued by the California Commission on Teacher Credentialing: **Rating: + 1 point per area of supplementary authorization**
- D. Earned degrees beyond the BA/BS level. **Rating: +1 point per degree**
- E. Credentials and experience to teach in a special categorical program (e.g., bilingual, special education). **Rating: +1 point per credential, +1 point per year of experience**
- F. Complete years of teaching experience in any California school district under a full credential. **Rating: +1 point per year**
- G. Number of complete years of service in the District in a position requiring an administrative services credential. **Rating: +1 point per year**

The above-referenced determinations shall be based upon information and data which exists in the District's possession and within the employee's personnel file as of the date of this Resolution.

#### **TIE-BREAKING PROCEDURE FOR EQUAL POINT TOTALS**

In the event that a tie still exists following application of the above criteria, the District will then break ties by utilizing a lottery.

#### *Jurisdictional Matters*

5. On and before March 15, 2010, at least 25 permanent certificated employees of the Calexico Unified School District were served with a written preliminary notice that the Superintendent of Schools had recommended that their services be terminated at the conclusion of the current school year and that their services would not be needed for the upcoming 2010-11 school year. Each employee was notified of the right to a hearing. Each employee who filed a request for a hearing became a respondent in this proceeding and was thereafter served with an accusation and other required jurisdictional documents.

6. On May 20, 2010, the record in the administrative hearing was opened. Jurisdictional documents were presented. It was stipulated by the parties that all jurisdictional requirements related to the respondents in this proceeding were met. It was stipulated that the district's exhibits 1 through 28 could be received in evidence to support the proposed decision in this matter.

7. It was stipulated that the district could withdraw the preliminary layoff notices served upon Peter Carlos Borobia for 0.4 FTE, Christina Barron for 1.0 FTE, Karla Valdez for 1.0 FTE, Noemi Esquer for 1.0 FTE, and Ashly Reitsma for 1.0 FTE and dismiss the accusations filed against those respondents to the extent supported by the stipulation.

8. It was stipulated that the district's seniority list should be amended to document that Maria Elena Paola Sanchez-Romero is a permanent employee.

9. It was stipulated that after March 15, 2010, Maria V. Martinez, a permanent certificated employee whose seniority date was September 5, 1972, taught 1.0 FTE of elementary school in a self-contained classroom that Martinez submitted her notice of retirement to the district and that on May 13, 2010, the governing board approved her retirement. It was further stipulated that respondent Lourdes Cuesta, whose seniority date is September 22, 2005, was the most senior certificated district employee who is credentialed and qualified to fill the position vacated as a result of Martinez's retirement.

It was stipulated that the only issue to be decided in this matter was whether the accusation filed against Cuesta should be sustained as a matter of law in light of Martinez's retirement. Respondent Cuesta argued that Martinez's retirement and the board's acceptance of it constituted positively assured attrition and that the accusation could not be sustained as a matter of law because of that fact. The district argued that in a reduction in force proceeding involving particular kinds of services, any attrition occurring after the March 15 deadline for issuing preliminary layoff notices did not need to be considered. Each party relied on *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627 to support its contention.

### *The Layoff Procedure*

10. The governing board resolved to reduce and discontinue particular kinds of services provided by teachers and other certificated employees for budgetary reasons. This decision was not related to the competency or dedication of the valued employees whose services were proposed to be discontinued. The governing board's determination was in the best interest of the district and its students.

The district's administrative staff initiated and followed a systematic procedure for identifying employees directly affected by the governing board's resolution. Evaluation of each employee's seniority date, credential, and qualifications preceded the determination of what bumping rights, if any, an employee had. Adjustments were made to the seniority list where indicated.

## LEGAL CONCLUSIONS

### *Statutory Authority*

1. Education Code section 44944 provides in part:

“No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year . . . the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefor . . .

(b) The employee may request a hearing to determine if there is cause for not



reemploying him or her for the ensuing year . . . If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute his or her waiver of his or her right to a hearing . . .

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with . . . the Government Code and the governing board shall have all the power granted to an agency therein, except that all of the following shall apply:

(1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing in the accusation.

. . .

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board. Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. . . .”

2. Education Code section 44955 provides in part:

“(a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

(b) Whenever . . . 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 have become necessary . . . to decrease the number of permanent employees in 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. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary

employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

. . .

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 . . .

. . .

(c) Notice of such termination of services shall be given before the 15th of May . . . and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. However, prior to assigning or reassigning any certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess. . . .”

### *Jurisdiction*

3. 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 all respondent employees who were identified in the accusation.

### *The Reduction of Particular Kinds of Services*

4. A school board's decision to reduce or discontinue a particular kind of service is not tied in with any statistical computation. Where a governing board determines to discontinue or reduce a particular kind of service, it is within the discretion of the board to determine the amount by which it will reduce a particular kind of service as long as a district does not reduce a service below the level required by law. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636.)

### *Attrition after March 15 in a PKS Reduction in Force Proceeding*

5. "Positively assured attrition" is attrition which has actually occurred and it is distinguished from "potential attrition" which may be anticipated but is still unknown. As noted in *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, at pages 634-635, courts had previously held that in terminating certificated employees because of a decline in a school district's average daily attendance (ADA), a district was required to consider all positively assured attrition. However, in *San Jose* the terminations were the result of the reduction of particular kinds of services (PKS), not ADA, which the appellate court described as "an issue of first impression." The appellate court considered the previous ADA decisions and the language of the statute in reaching the conclusion that a district need not consider attrition occurring after March 15. In this regard, the court reasoned that it is within a district's discretion, subject to the minimum level required by law, to determine the extent to which a reduction of services was deemed necessary and proper under the circumstances. The decision is made at the time of the final notice. In PKS cases the determination of the amount by which a service is to be reduced is the determination of the number of positions to be eliminated by statute. In making a final decision on PKS reductions, the extent to which the services are reduced inherently determines the number of positions to remain. If a service is to be eliminated, for example, it is obvious that it is unnecessary to consider attrition in any way. (*Ibid.*, at 636.)

This aspect of the *San Jose* decision remains unchallenged. It supports the district's position in this matter. Based on this decision, cause exists to sustain the accusation filed against Cuesta.

### *Cause Exists to Give Notice to Certain Employees*

6. As a result of the governing board's lawful reduction and elimination of particular kinds of service, cause exists under the Education Code for the district to give notice to those respondents identified hereafter that their employment will be terminated at the close of the current school year and that their services will not be needed by the district for the 2010-11 school year.

### *Determination*

7. The charges set forth in the accusation were sustained by the preponderance of the evidence and were related to the welfare of the district and the pupils thereof. Necessary

assignments and reassignments were made in such a manner that the most senior employees were retained to render services which their seniority and qualifications entitled them to render. No employee with less seniority than any respondent will be retained to render a service which any respondent identified hereafter is certificated, competent and qualified to render. This determination is based on all factual findings and on all legal conclusions.

## RECOMMENDATIONS

It is recommended that the governing board dismiss the accusations filed against the following respondents in the amount of the full time equivalent indicated: Peter Carlos Borobia (0.4 FTE); Christina Barron (1.0 FTE); Karla Valdez (1.0 FTE); Noemi Esquer (1.0 FTE); and Ashly Reitsma (1.0 FTE).

It is recommended that the governing board make certain that the district's seniority list reflects the fact that Maria Elena Paola Sanchez-Romero is a permanent employee.

It is recommended that the governing board give final notice to the following respondents that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2010-2011 school year: Anel E. Bustamante, Nelly Coronel, Lourdes Cuesta, Gisela De La O, Rodrigo Figueroa, Delia Susana Hurtado (0.60 FTE), Martin Leyva, Victoria Susan Medina, Carmen Moncada, Juan Moncada, Juan Carlos Padilla (0.40 FTE),; Eliza Pereda, Juan P. Ramirez, Alejandrina Rangel, Yordan Rivera, Cynthia Salgado, Maria Elena Paola Sanchez-Romero, and Martha Torres.

DATED: \_\_\_\_\_

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JAMES AHLER  
Administrative Law Judge  
Office of Administrative Hearings