

**BEFORE THE
GOVERNING BOARD OF THE NEVADA JOINT UNION
HIGH SCHOOL DISTRICT
COUNTY OF NEVADA
STATE OF CALIFORNIA**

**In the Matter of the Reduction in Force of Certificated
Employees:**

**Julie Campbell¹, Cassandra Frieden, Kristina Knox, Margarite
Meja-Jordana, Laurel Phillips, Anthony Pisenti, Elizabeth
Renteria, and James Wise, Respondents²**

OAH No. 2020030807

PROPOSED DECISION

Erin R. Koch-Goodman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by telephone on April 21, 2020.

¹ Exhibits refer to respondent Julie Campbell as both Julie Campbell and Julie Campbell-Coffin. In this Proposed Decision, she will be referred to as Julie Campbell.

² The District also served layoff notices to Paul Haas and Margaret McFadden-Shopp. Mr. Haas did not request a hearing. Ms. McFadden-Shopp requested a hearing and then withdrew her request prior to hearing.

Nevada Joint Union High School District (District) was represented by John Dietrich, Attorney at Law, Atkinson, Andelson, Loya, Ruud & Romo, Sacramento, California.

Julie Campbell, Cassandra Frieden, Kristina Knox, Margarita Mejia-Jordana, Laurel Phillips, Anthony Pisneti, Elizabeth Renteria, and James Wise (collectively, respondents) were represented³ by Andrea Price, Attorney at Law, Langenkamp, Curtis and Price, LLP.

Oral and documentary evidence was received. The record was held open for simultaneous closing briefs. On April 30, 2020, the District submitted a Closing Brief, marked Exhibit 19, and the respondents submitted a Closing Brief, marked Exhibit G.

FACTUAL FINDINGS

Jurisdictional Matters

1. Brett W. McFadden is the Superintendent of the Nevada Joint Union High School District (District). The actions of Superintendent McFadden, and those of the District's staff and Board of Trustees (Board), were taken solely in their official capacities.

2. On March 11, 2020, Superintendent McFadden recommended to the Board a reduction and/or elimination of particular kinds of services (PKS) and the

³ Respondents were represented by Ms. Price to the extent no conflicts existed between them. Where conflicts did exist, the respondent testified on his/her own behalf, in the narrative.

termination of services of a corresponding number of certificated employees. The same day, the Board adopted Resolution No. 2019/20-12, entitled “Reduction of Particular Kinds of Services of Certificated Services” (Resolution), mandating the same, “in the best interests of the District and the welfare of the schools and the pupils.” The Resolution mandated a reduction or discontinuation of PKS in the amount of 9.2 full-time equivalent (FTE) positions for the 2020-21 school year; the method to determine teacher layoffs; and the authority for Superintendent McFadden to do so. More specifically, the Resolution identified the 9.2 FTE to be eliminated, as follows:

Nevada Union High School

English	0.80 FTE
Social Science	1.0 FTE
Science – Biology	0.20 FTE
Science – Ecology	0.20 FTE
Science – Chemistry	0.40 FTE
Science – Physics	0.20 FTE
Science – Earth and Space	0.20 FTE
Sports Medicine	0.40 FTE
Mathematics	0.80 FTE
TV Production/Communication Arts	0.20 FTE
Foreign Language – Spanish	0.80 FTE

Bear River High School

English	0.60 FTE
Science – Chemistry	0.20 FTE
Integrated Science	0.20 FTE
Mathematics	0.80 FTE
Foreign Language – Spanish	0.40 FTE

Silver Springs High School

Business Math	0.20 FTE
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North Point Academy

Independent Study	1.60 FTE
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Total FTE	9.2 FTE
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3. The Resolution specified the method to determine teacher layoffs, including:

C. That the reduction of certificated staff be achieved by the termination of regular employees and not by the termination of temporary and substitute employees.

D. That "competency" as described in Education Code section 44955(b), for purposes of bumping, shall necessarily include all credentials, authorizations, training and experience possessed by the employee to be bumped that

are relevant to the subject matter area of the position to be filled, including [Bilingual, Crosscultural, Language, and Academic Development] BCLAD authorization.

E. That, as between certificated employees with the same seniority date, the order of termination shall be determined solely by the Board-adopted criteria.

4. Finally, the Resolution directed Superintendent McFadden to initiate layoff procedures and give appropriate notices to all employees whose services would be terminated as a result of the Board's action to reduce or discontinue PKS. On March 12, 2020, Superintendent McFadden served each respondent with a written notice, entitled "Notice of Recommendation That Services Will Not be Required" (Notice), of his recommendation to the Board that the respondents' services be terminated at the close of the 2019-20 school year. A copy of the Resolution was served with the Notice.

5. Respondents timely filed Requests for Hearing. On April 6, 2020, Lesa St. Germain, District Human Resources Coordinator, served respondents with a March 30, 2020 OAH Order Regarding Telephonic Hearing and a Notice of Hearing for Tuesday, April 21, 2020, at 9:00 a.m. Jurisdiction for the subject proceedings exists pursuant to Education Code sections 44949 and 44955.

Cause for Reduction or Discontinuance of Services

6. The District serves a poor, rural population of 2,600 students in Nevada County, a 600-square mile area on the south western slope of the Sierra Nevada mountains. The District maintains seven high schools: Bear River and Nevada Union (comprehensive), Ghidotti (early college), North Point Academy and Nevada Union Adult School (independent study), and NU Tech and Silver Springs (continuation).

Approximately 40 percent of District students take part in the free or reduced-price lunch program.

7. Currently, the District is operating in a budget deficit of 2.5 million dollars. Future budget projections are not good. Based on Governor Gavin Newsom's latest budget, the District has a projected budget deficit of 1.2 million for 2020-21, and 1.3 million for 2021-22. Further, Governor Newsom has cautioned the District that, following the COVID-19 pandemic, substantial cuts should be expected for the next several years. As a result, the District has already eliminated the projected cost of living adjustment (COLA) for next year. In addition, the District is uncertain of the future of instruction: whether in-person or distance learning will be offered for the 2020-21 school year; the certificated staff needed to serve the student population in either circumstance; and the costs of both.

Seniority

8. Seniority is established by the date upon which an employee first rendered paid services in a probationary position. (Ed. Code, § 44845.) Ms. St. Germain created and maintains the seniority list for the District, collecting relevant information from teacher personnel files and the California Teaching Commission. The District's seniority list contains 173 teachers. Respondents are all certificated employees ranked on the seniority list.

TIE-BREAKING

9. On February 12, 2020, the Board adopted Resolution No. 9-19/20, entitled "Determination of Seniority Among Certificated Employees with the Same Seniority Date" ("Tie-Breaker" Resolution), naming 10 criteria to determine the order of termination between employees who first rendered paid service to the District on the

same date, and the application and ranking of each employee relative to the other employees in the group. Further, the criteria “shall be applied based on information on file as of the employee’s first probationary paid day with the [District].” Ultimately, “[t]he employee with the highest number of points will have the highest seniority date.” The criteria are: (1) years of verified experience previous to current employment as a credentialed teacher in a probationary/permanent, K-12 certificated position in a public school – 1 point per year; (2) number of secondary (9-12) teaching credentials (including special education) – 1 point per credential; (3) number of secondary-level (9-12) supplementary authorizations – 1 point per supplementary authorization area; (4) number of secondary waivers, emergency permits, one-year non-renewable, pre-internship or internship credentials – 0.5 point per credential; (5) number of elementary and middle school supplementary authorizations (i.e., introduction courses) – 1 point per supplementary authorization area; (6) number of special service credentials or specialist credentials (i.e., Pupil Personnel Services, Library Media, Nursing, Reading or Agriculture Specialist) - 1 point per credential; (7) Crosscultural Language, and Academic Development (CLAD), BCLAD, Specifically Designed Academic Instruction in English (SDAIE) or English Learner (EL) authorizations – 0.5 point per authorization; (8) earned degrees beyond Bachelor’s Level – 1 point for a Master’s degree and 2 points for a Doctorate degree; (9) number of elementary or multiple subject credentials (anything less than full 9-12 authorization) - 0.25 points per credential or authorization; and, (10) in the event that employees have a common date of hire and have equal qualifications based on application of the above criteria, the following further criteria will be used based on the first year of hire with the District: Head Coach – 0.5 points per year; Assistant Coach – 0.25 points per year; and, Club Advisor - 0.25 points per year. Finally, “assuming that the preceding criteria do

not resolve all ties between employees having the same seniority date, then the relative seniority of the remaining employees shall be determined by lot.”

10. Ms. St. Germain created and maintains the tie-breaker data. The data was last updated approximately one-week prior to hearing. The tie-breaker data lists the most recently hired certificated teachers who first rendered paid service to the District on the same date: August 13, 2018 (13), August 1, 2019 (2), and August 12, 2019 (11). The District implemented tie-breaking criteria to internally rank the respondents hired on the above dates. Respondents Cassandra Frieden (rank 8) and Laurel Phillips (rank 2) both began paid work for the District on August 13, 2018. Respondents Kristina Knox (rank 6), Margarite Meja-Jordana (rank 4), and Anthony Pisenti (rank 9) all began paid work for the District on August 12, 2019.

11. At hearing, respondents Phillips and Frieden disputed the tie-breaker data. Respondent Phillips seeks to correct her years of verified teaching experience, noting she had 10 years, and not five years, of verified teaching experience prior to joining the District; as a result, respondent Phillips should be moved from rank 2 to rank 1 for the hire date of August 13, 2018. However, in rank 1, respondent Phillips would still have received a layoff notice. She was the only Spanish teacher hired by the District on August 13, 2018, and working at Nevada Union. (See discussion, *infra*).

12. Respondent Frieden⁴ questioned the rationale for two of the tie-breaker criteria: limiting years of teaching experience to years completed and verified prior to

⁴ Respondent Phillips also questioned the rationale for the tie-breaker criteria limiting the years of teaching experience to years completed and prior to teaching at the District.

teaching at the District; and limiting credentials to those held prior to teaching at the District. First, all teachers hired on August 13, 2018, and still employed by the District, earned the same additional year of teaching experience in the 2018-19 school year as respondent Frieden. As such, the change would require adding one point to all teachers on the list, rendering the adjustment meaningless. Second, respondent Frieden seeks an additional point for a second teaching credential she obtained while employed by the District, making her a more diverse asset. Respondent Frieden believes not counting her second credential is inapposite to the profession of teaching; teachers should be encouraged to continue learning, thereby helping the District and its students. Respondent Frieden's argument is persuasive. Assuming respondent Frieden was given credit for her additional credential, she would have moved from rank 8 to rank 5 or 6, with a lot drawn to determine her ranking between the two. However, in rank 5 or 6, respondent Frieden would still have received a layoff notice. She was the only Science teacher hired on August 13, 2018, and working at Bear River. (See discussion, *infra*).

LAYOFFS

13. Education Code section 44955, subdivision (b), provides that no senior employee may be terminated while any less senior employee is retained to render a service which the more senior permanent employee is "certificated and competent" to render. "It [is] the district's obligation under section 44955, subdivision (b), to determine whether any permanent employee whose employment is to be terminated in an economic layoff possess[es] the seniority and qualifications which would entitle him/her to be assigned to another position." (*Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 137.) The Resolution identified the competency criteria as: "all credentials, authorizations, training and experience possessed by the employee to

be bumped that are relevant to the subject matter area of the position to be filled, including BCLAD authorization.”

Competency

14. Superintendent McFadden, Assistant Superintendent Dan Frisella, and Ms. St. Germain evaluated the competency of each teacher who was bumped, using the competency criteria. Ms. St. Germain created and maintains the bumping analysis.

15. Uniformly, respondents each argued their competency to bump less senior teachers with assignments in Credit Recovery (Nicholas Montoya⁵ (0.20 FTE) Permanent #160, Silver Springs) and Independent Studies (Julie Campbell (0.80 FTE) Probationary #137, North Point Academy; Margaret McFadden-Shopp (0.80 FTE), Probationary #139, North Point Academy; and Margarita Mejia-Jordana (1.0 FTE) Probationary #163, NU Tech⁶). In addition, respondent James Wise (Permanent #106) argued his competency to teach the Get Focused, Stay Focus (GFSF) curriculum.

16. In response, the District noted the following considerations. First, NU Tech and Silver Springs are continuation high schools and North Point Academy is an independent study school; these alternative schools offer an almost incomparable teaching environment, requiring District-specific experience teaching to, and an understanding of how to engage non-mainstream District students. For example, Mr.

⁵ Mr. Montoya was not served a layoff notice.

⁶ Ms. Campbell, Ms. McFadden-Shopp, and Ms. Mejia-Jordana were served layoff notices. By date of hire, the three are less senior to several other respondents.

Montoya's Credit Recovery class at Silver Springs involves direct subject-matter instruction and not simply monitoring mainstream self-study students.

17. Second, the GFSF curriculum is unique. The District began offering the GFSF curriculum in the 2018-19 school year at Ghidotti (early college) and Bear River (comprehensive), and in the 2019-20 school year at Nevada Union (comprehensive). GFSF teachers must have specialized training. For example, Jessica Lee (Permanent #103) teaches GFSF at Nevada Union. She attended a two-day GFSF training in Redding in June 2019, participated in the February 2019 one-day site-visit demonstration in Manteca, and has completed Academic Innovation webinar trainings throughout the year. Respondent Kristina Knox (Probationary #165) attended a three-day GFSF workshop in Santa Barbara, taught by the GFSF author; participated in the February 2019 one-day site-visit demonstration in Manteca, and has completed online training throughout the year. In addition, respondent Knox and Josie Andrews (Permanent #120) have, together, adapted and implemented the GFSF curriculum to the needs of Bear River students. In sum, the District determined that a competent teacher had District experience in a teaching environment or particular subject matter. The District's competency determinations properly considered all credentials, authorizations, training and experience of a bumped teacher.

Bumping

18. Respondent Frieden (#148) has a hire date of August 13, 2018. She is a probationary employee with 1.0 FTE in Science at Bear River. She holds a single subject credential in Biological Sciences - Health. She was identified for layoff on the basis of the PKS reduction in Science. Specifically, respondent Frieden will be laid off for 1.0 FTE (0.20 FTE Science – Chemistry; 0.20 FTE Science – Integrated, Bear River; 0.40 FTE Science – Chemistry; and 0.20 Science – Physics, Nevada Union). Ms. Frieden was

bumped by Bear River teacher Peter Gammelgard (Permanent #114) for 0.20 FTE Science - Chemistry. Mr. Gammelgard is senior to her, and is certificated and competent to teach the relevant subject matter. Respondent Frieden was also bumped by Nevada Union teacher Christopher Bishop (Permanent #9) for 0.40 FTE Science - Chemistry. Mr. Bishop is senior to her, and is certificated and competent to teach the relevant subject matter. Ms. Frieden was also bumped by Nevada Union teacher William Meyer (Permanent #107) for 0.20 FTE Science - Physics. Mr. Meyer is senior to her, and is certificated and competent to teach the relevant subject matter. Given the above, Ms. Frieden properly received a layoff notice.

19. Respondent Knox (#165) has a hire date of August 12, 2019. She is a probationary employee with 1.0 FTE in English at Nevada Union. She holds a single subject credential in English. Ms. Knox teaches English and GFSF at Nevada Union. She was identified for layoff on the basis of the PKS reduction in English. Specifically, Ms. Knox will be laid off for 0.40 FTE (minus 0.80 Nevada Union; plus 0.40 Bear River). Ms. Knox was bumped by Nevada Union teacher Devin Bradley (Probationary #161) for 0.80 FTE in English. Mr. Badley is senior to her, and is certificated and competent to teach the relevant subject matter. However, respondent Knox then bumped respondent Anthony Pisenti (#168 Probationary) for 0.40 FTE in English at Bear River. Respondent Knox is senior to respondent Pisenti, and is certificated and competent to teach the relevant subject matter. Given the above, respondent Knox properly received a layoff notice.

20. Respondent Laurel Phillips (#142) has a hire date of August 13, 2018. She is a probationary employee with a 0.60 FTE in Spanish at Nevada Union. She holds a single subject credential in Spanish and Geosciences. She was identified for layoff on the basis of the PKS reduction in Spanish. Specifically, respondent Phillips will be laid

off for 0.60 FTE. Respondent Phillips does not possess the seniority or qualifications to bump into another classroom assignment. Given the above, respondent Phillips properly received a layoff notice.

21. Respondent Pimenti (#168) has a hire date of August 12, 2019. He is a probationary employee with a 1.0 FTE in English at Bear River. He holds a single subject credential in English. He was identified for layoff based on the PKS reduction in English. Specifically, respondent Pimenti will be laid off for 1.0 FTE (0.60 Bear River and 0.40 Nevada Union). Mr. Pimenti was bumped by Nevada Union teacher respondent Knox (Probationary #165) for 0.40 FTE in English. Respondent Knox is senior to him, and is certificated and competent to teach the relevant subject matter. However, respondent Pimenti does not possess the seniority or qualifications to bump into another classroom assignment. Given the above, respondent Pimenti properly received a layoff notice.

22. Respondent Elizabeth Renteria (#136) has a hire date of August 14, 2017. She is a probationary employee with a 1.0 FTE in Spanish at Nevada Union. She holds a single subject credential in Spanish. She was identified for layoff on the basis of the PKS reduction in Spanish. Specifically, respondent Renteria will be laid off for 0.60 FTE in Spanish (0.40 FTE Bear River and 0.20 Nevada Union). Respondent Renteria was bumped by Bear River teacher Daniel Bussinger (Permanent #82) for 0.40 FTE. Mr. Bussinger is senior to her, and is certificated and competent to teach the relevant subject matter. Given the above, respondent Renteria properly received a layoff notice.

23. Respondent James Wise (#106) has a hire date of August 18, 2015. He is a permanent employee with a 1.0 FTE in Sports Medicine. He holds a Career Technical Education (CTE) single subject credential in Health Science and Medical Technology. He was identified for layoff based on the PKS reduction in Sports Medicine.

Specifically, respondent Wise will be laid off for 0.40 FTE in Sports Medicine.

Respondent Wise does not possess the seniority or qualifications to bump into another classroom assignment. Given the above, respondent Wise properly received a 0.40 layoff notice.

24. Independent Studies. North Point Academy/NU Tech must eliminate 1.60 FTE in Independent Studies. North Point Academy is a continuation school and NU Tech is an independent studies school. The three least senior Independent Studies teachers are: respondents Julie Campbell (Probationary #137) at North Point Academy with 0.80 FTE; Margaret McFadden-Shopp (Probationary #139) at North Point Academy with 0.80 FTE; and Margarita Mejia-Jordana (Probationary #163) at NU Tech with 1.0 FTE.

- a. Respondent Campbell (#137) has a hire date of October 25, 2017. She is a probationary employee with 0.80 FTE in Independent Studies at North Point Academy. She holds a multiple subject credential. She was identified for layoff based on the PKS reduction in Independent Studies. However, respondent Campbell possesses the seniority and qualifications to bump respondent McFadden-Shopp (#139 Probationary) at North Point Academy for 0.80 FTE, and subsequently bump respondent Mejia-Jordana (Probationary #163) at NU Tech for 0.80 FTE, should she desire. Given the above, respondent Campbell properly received a layoff notice.
- b. Respondent McFadden-Shopp (#139) has a hire date of January 30, 2018. She is a probationary employee with 0.80 FTE in Independent Studies at North Point Academy. She holds a single subject credential in Biological Sciences. She was identified for layoff based on the PKS reduction in Independent Studies. However, respondent McFadden-Shopp possesses the

seniority and qualifications to bump respondent Mejia-Jordana (Probationary #163) at NU Tech for 0.80 FTE, should she desire. Given the above, respondent McFadden-Shopp properly received a layoff notice.

- c. Respondent Mejia-Jordana (#163) has a hire date of August 12, 2019. She is a probationary employee with 1.0 FTE in Independent Studies at NU Tech. She holds a single subject credential in Social Science. She was identified for layoff based on the PKS reduction in Independent Studies. Respondent Mejia-Jordana does not possess the seniority or qualifications to bump into another classroom assignment. Given the above, respondent Mejia-Jordana properly received a layoff notice.

25. In sum, the District considered seniority, competency, and attrition, as well as properly applied criteria for tie-breaking and bumping, to implement the 9.2 FTE PKS reduction for school year 2020-21. In other words, tie-breaking procedures were implemented as necessary between those employees who first rendered paid service on the same date, and bumping was employed to ensure that the more senior teachers, certificated and competent to render a PKS, were retained over those with less seniority.

26. Any other assertions put forth by respondents at the hearing and not addressed above are found to be without merit and are rejected.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. The anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under section 44955. As stated in *San Jose Teachers Assn v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of PKS on the basis of financial considerations is authorized under that section, and, "in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction." The District must be solvent to provide educational services, and cost savings are necessary to resolve its financial crisis. The Superintendent's decision to reduce PKS was a proper exercise of his discretion.

3. A District may reduce services within the meaning of section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

4. The Layoff Notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Board Resolutions and in the Layoff Notices, adequately described PKS. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838.)

5. Education Code section 44955 provides that when certificated employees face layoffs due to reduction or elimination of PKS, the District has an affirmative obligation to reassign senior teachers who are losing their positions into positions held by junior teachers, if the senior teachers have both the credentials and

competence to occupy such positions. The clear intent of the statute is to prevent school districts from laying off senior teachers while retaining junior teachers.

Education Code section 44955, subdivision (c) provides in pertinent part:

Services of such employees shall be terminated in the inverse of the order in which they were employed 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

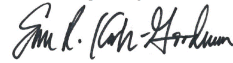
6. The District appropriately considered all positively assured attrition which occurred during the computation period prior to submitting the PKS Resolution to the Board for its approval. In addition, the District appropriately applied tie-breaking criteria and bumping rules, and allowed bumping based upon the more senior employee's competency (e.g., credential or authorization) to teach the assignment of the less senior teacher.

7. The services identified in the Resolution are PKS that can be reduced or discontinued under Education Code section 44955. Cause exists for the reduction of the PKS and for the reduction of 9.2 FTE certificated positions for the 2020-21 school year pursuant to Education Code sections 44949 and 44955. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949. Therefore, cause exists to give respondents notice that their services will be reduced or will not be required for the ensuing 2020-21 school year.

RECOMMENDATION

Cause exists for the reduction of 9.2 full-time equivalent certificated teaching positions for the 2020-21 school year. Notice shall be given to respondents that their services will be reduced or will not be required for the 2020-21 school year, because of the reduction and/or discontinuance of particular kinds of services. Notice shall be given in inverse order of seniority.

DATE: May 7, 2020

DocuSigned by:

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ERIN R. KOCH-GOODMAN

Administrative Law Judge

Office of Administrative Hearings