

BEFORE THE
GOVERNING BOARD OF THE
PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

Certain Certificated Employees of the
Palos Verdes Peninsula Unified School
District,

Respondents.

OAH No. 2010030325

PROPOSED DECISION

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 20, 2010, at the office of the Palos Verdes Peninsula Unified School District in Palos Verdes Estates.

Atkinson, Andelson, Loya, Ruud & Romo, by Sharon J. Ormond, Attorney at Law, represented the School District.

Reich, Adell & Cvitan, by Carlos R. Perez, Attorney at Law, represented the certificated employees shown on the attached List of Respondents, except for Adam M. Genovese, Suzanne G. Manavian, and William J. Peterman. All respondents were present at the hearing except for respondents Genovese, Manavian, Peterman, Carey, Christensen, Ferrera, and Seymour.

Evidence was received by stipulation, documents, and testimony. The matter was submitted on April 20, 2010.

FACTUAL FINDINGS

1. Walker Williams is the Superintendent of the Palos Verdes Peninsula Unified School District (District). William Franchini, Director of Human Resources, and his staff were responsible for implementation of the technical aspects of the layoff.

2. Respondents in this proceeding are probationary or permanent certificated employees of the District.

3. Board Resolution No. 13 – 2009/10 (Resolution), adopted on February 25, 2010, proposed a layoff of 59.685 FTE certificated employees. Specifically, the Resolution provided for the reduction or elimination of the following particular kinds of services:

Reduce K-5 Elementary Teaching Services	25.485	F.T.E.
Reduce Intermediate School Art Teaching Services	1.00	F.T.E.
Reduce Intermediate School English Teaching Services	3.20	F.T.E.
Reduce Intermediate School Math Teaching Services	2.40	F.T.E.
Reduce Intermediate School Physical Education Teaching Services	1.20	F.T.E.
Reduce Intermediate School Life Science Teaching Services	1.00	F.T.E.
Reduce Intermediate School Physical Science Teaching Services	1.00	F.T.E.
Reduce Intermediate School Social Studies Teaching Services	1.00	F.T.E.
Reduce High School Art Teaching Services	.60	F.T.E.
Reduce High School Chinese Teaching Services	.40	F.T.E.
Reduce High School English Teaching Services	4.00	F.T.E.
Reduce High School Japanese Teaching Services	.40	F.T.E.
Reduce High School Math Teaching Services	2.00	F.T.E.
Reduce High School Social Studies Teaching Services	.60	F.T.E.
Reduce High School Spanish Teaching Services	2.00	F.T.E.
Reduce High School SDC-Mild/Moderate Teaching Services	3.00	F.T.E.
Reduce Sunrise Program SDC-Mild/Moderate Teaching Services	1.00	F.T.E.
Reduce ROP-Digital Animation Teaching Services	.20	F.T.E.
Reduce Continuation School Art Teaching Services	1.00	F.T.E.
Reduce Continuation School English Teaching Services	1.00	F.T.E.
Reduce Continuation School Life Science Teaching Services	1.00	F.T.E.
Reduce Intermediate School Counseling Services	.20	F.T.E.
Reduce High School Counseling Services	3.00	F.T.E.
Reduce Speech Therapist Services	2.00	F.T.E.
Reduce Nursing Services	1.00	F.T.E.
TOTAL CERTIFICATED POSITIONS:	59.685	F.T.E.

4. The Resolution established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. The criteria, which are set forth in Attachment 1 to the Resolution, provide that the order of termination shall be based on the needs of the District and its students in accordance with the type and subject matter of credentials and authorizations, salary step, and college degrees, majors and credits.

5. The Resolution established competency criteria for determining whether a senior employee could be reassigned to a position held by a more junior employee. The criteria are reasonable. As stated in the Resolution:

"For purposes of implementing the Resolution, a more senior employee is defined as competent for reassignment into a position currently held by a more junior employee if he or she (1) currently possesses a clear or preliminary credential in the subject(s) or grade level to which the employee will be assigned at the beginning of the 2010-2011 school year; (2) has an appropriate EL authorization; and (3) has at least one complete year of experience in the District within the last five years in the subject matter area to be assumed.

6. On February 25, 2010, the Governing Board was given written notice of the Superintendent's recommendation that 64 employees be given notice that their services will not be required for the next school year and stating the reasons for that recommendation. The Superintendent's recommendation also identified an additional three employees to receive said notice as a precaution (to resolve tie-breaker or skipping disputes).

7. Between March 2, 2010 and March 12, 2010, the District served 74 employees¹ a written notice that it had been recommended that notice be given to them 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 59.685 full-time equivalent positions.

8. The District served the Accusation and other related documents on the 74 employees at the same time as service of the preliminary layoff notice described in Factual Finding 7. The layoff notice documents and Accusation documents were served personally on most of the employees and, on others, by certified mail, return receipt requested. The District received a timely request for hearing and/or notice of defense from 42 employees. Those 42 employees are the Respondents in this proceeding.

¹ The 74 employees consist of the 67 employees described in Factual Finding 8 and seven certificated employees in categorical temporary positions. The Board has notified all temporary employees that their services are not needed for the next school year.

9. The District maintains a seniority list which contains employees' seniority dates (first date of paid service), current assignments and locations, advanced degrees, credentials, and authorizations. Certificated employees were given access to the seniority list and some submitted information to update or correct the pertinent information.

10. The District used the seniority list to develop a proposed layoff and "bumping" list of the least senior employees currently assigned in the various services being reduced. The District then determined whether the least senior employees held credentials in another area and were entitled to "bump" other employees. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and whether they could "bump" other employees, and used that information to determine that certain Respondents should be included in these layoff proceedings.

11. The District used information from the District's seniority list to apply the tie-breaker criteria and competency criteria of the Resolution.

12. The District properly considered all known attrition, resignations, and retirements in determining the actual number of necessary layoff notices to be delivered.

13. The District proposes to exempt two high school drama teachers from the layoff proceedings, also known as skipping, based upon special training and experience. The teachers to whom this would apply are Seth Cohen (#606) and Jaclyn N. Thompson (#551).

14. The District stipulated to withdrawing the Accusations against I-Shu (Catherine) Hsieh (#504), Catherine Amy Steuernol (#505), Jennifer Wade (#506), Kristina Carey (#507), Willie McBride (#525), Gailene Lancey (#550), Carolyn Christensen (#590), Heidi Johannsen (#616), and Carla Ferrera (#617), assuming the seniority list is correct and the bumping analysis reflected in Exhibit 9 is upheld. The District determined that these employees could bump into vacancies resulting from attrition. The District further stipulated to dismissing the Accusation against Dana Tyson (#599) if the implementation of tie-breaker criteria between Tyson and Brian Helmrich (#600) is found correct.

15. Various contentions raised by Respondents, and a summary of the evidence relating thereto, are set forth below. Individual respondents are identified by their name and their number on the seniority list (Exhibit 9).

16. (A) Susan Pavelka (#527) raises two contentions in this proceeding. First, she disputes her assigned seniority date of August 30, 2006. She contends she is entitled to a seniority date of August 29, 2006, based on her attendance at in-service training held on August 29, 30, and 31, 2006. The District paid her for August 30 and 31, but did not pay her for August 29. The seniority date of a certificated employee is defined as the date the employee "first rendered paid service in a probationary capacity." (Ed. Code, § 44845.) As it

was not established that Pavelka was paid for August 29, 2006, she is not entitled to an earlier seniority date.

(B) Pavelka's second contention is that she should be entitled to bump into one of the high school drama positions that were exempted, or skipped, from layoff. Pavelka is currently assigned to Palos Verdes High School and teaches English and yearbook. Pavelka holds a clear single subject credential in English, which authorizes her to teach drama. She holds a master's degree in theater arts, and has over 16 years of extensive experience in drama and theater. In the last five years, Pavelka has taught drama for community theater and private acting lessons. She has not, in the last five years, taught high school drama in the District. Consequently, Pavelka does not meet the criteria adopted in the Resolution for reassignment to teach high school drama. The District correctly identified Pavelka as an employee subject to layoff.

17. Samantha Weiss (#544) was assigned a seniority date of August 28, 2007, which she does not dispute. She holds a clear single subject credential in social science, and supplemental authorizations for introductory French and English. She has a master's degree in English. Weiss contends she is competent to teach drama in the two positions that were skipped. Weiss is currently assigned to Ridgecrest Intermediate School, where she teaches English and French. For the last three years, Weiss has been involved in productions at the intermediate school level. She has not taught drama at the high school level in the last five years. As such, she does not meet the criteria for reassignment to a high school drama position. The District correctly identified Weiss as an employee subject to layoff.

18. Michael Lehault (#574) and Allison Lehault (#575) dispute their assigned seniority date of August 26, 2008. They were both hired by the District on August 28, 2002. They resigned on June 30, 2007. The Lehaults were classified as permanent employees at the time of their resignation. The Lehaults left their employment with the District in 2007 because they moved to New Jersey due to family issues. Michael Lehault worked as a teacher in New Jersey from 2005 to 2007. The Lehaults were rehired by the District on August 26, 2008. The Lehaults contend that, since they had worked five years for the District prior to their resignation, they are entitled to have their original seniority date of August 28, 2002, restored, based on Education Code section 44931. The Lehaults further contend that they should have been allowed to take a leave of absence, rather than resign, when they left the District in 2007. This latter contention was not established by the evidence.

19. Wendy Keller (#598) is employed by the District as a nurse. Marie-Louise Mulligan (#584) is employed by the District as an early childhood special education teacher. Both raised issues that their layoff would result in the District being unable to provide mandated services in nursing and special education. The District has indicated it will rehire employees as necessary to provide mandated services.

LEGAL CONCLUSIONS

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

2. The services identified in the Resolution are particular kinds of services that could be reduced or discontinued under Education Code section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

3. A school 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. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. The District identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued.

5. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render, except as set forth below.

6. A school district has discretion in determining whether an employee is certified and competent, as provided by Education Code section 44955, subdivision (b), to be reassigned and, as a result, displace a junior employee, as provided by subdivision (c). (See *Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3d 555, 565.) The criteria used to determine a teacher's competence must be reasonable. (*Id.* at p. 566.) Competency criteria that consider the skills and qualifications required of the teacher are reasonable. (*Id.* at pp. 565-566.) It was established that the competency criteria adopted in the Resolution are reasonable.

7. 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 is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) Under Education Code section 44955, subdivision (d)(1), junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Santa Clara Federation of Teachers, Local 2393 v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.)

8. The Board's decision to exempt drama teachers Seth Cohen (# 644) and Jaclyn N. Thompson (# 576) from the layoff proceedings was not an abuse of its discretion and was for the good of the District and its students. There was no evidence that the District implemented the bumping process improperly.

9. Susan Pavelka and Samantha Weiss are properly included in these proceedings and not entitled to be exempt or to be assigned any other seniority date.

10. (A) Michael Lehault and Allison Lehault are properly included in these proceedings and not entitled to be assigned any other seniority date.

(B) The District properly assigned a seniority date of August 26, 2008, to Michael Lehault and Allison Lehault, which was their first day of paid service after their reemployment. Under Education Code section 44848, if a certificated employee resigns and is thereafter reemployed, the first day of paid service after reemployment becomes the employee's new seniority date. However, the employee's original seniority date shall stand "[w]hen an employee's services are terminated for lack of enrollment or discontinuance of service or are otherwise interrupted in a manner declared by law not to constitute a break in service." (*Id.*)

(C) The Lehaults' reliance on Education Code section 44931, as entitling them to an earlier seniority date, is misplaced. Education Code section 44931 provides that if a certificated employee, who was classified as permanent at the time of resignation, is reemployed within 39 months after his or her last day of paid service, "the governing board of the district shall, disregarding the break in service, classify him or her as, and restore to him or her all of the rights, benefits and burdens of, a permanent employee, except as otherwise provided in this code." In *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 641, the court held that, under section 44931, the break in service shall be disregarded "as to individual rights, burdens and benefits, but not as to seniority rights which affect other employees. The 'except as otherwise provided in this code' provision in section 44931 must be read as deferring to section 44848." In other words, the employee's seniority date after reemployment is determined by section 44848, not section 44931.

11. The Accusations shall be dismissed as to I-Shu (Catherine) Hsieh (#504), Catherine Amy Steuernol (#505), Jennifer Wade (#506), Kristina Carey (#507), Willie McBride (#525), Gailene Lancey (#550), Carolyn Christensen (#590), Heidi Johannsen (#616), Carla Ferrera (#617), and Dana Tyson (#599).

ORDER

1. Notice shall be given to employees occupying 59.685 full-time equivalent certificated positions that their services will not be required for the 2010-2011 school year because of the reduction and discontinuance of particular kinds of services, except as set forth below.

2. Notice shall be given in inverse order of seniority.

3. The Accusations are dismissed as to I-Shu (Catherine) Hsieh (#504), Catherine Amy Steuernol (#505), Jennifer Wade (#506), Kristina Carey (#507), Willie McBride (#525), Gailene Lancey (#550), Carolyn Christensen (#590), Heidi Johannsen (#616), Carla Ferrera (#617), and Dana Tyson (#599).

Dated: April __, 2010

ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings

PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT

OAH No. 2010030325 / Hearing: April 20, 2010

LIST OF RESPONDENTS

- | | |
|-----------------------------|----------------------------|
| 1. Alvarez, Ann Marie | 22. Lancey, Gailene M. |
| 2. Bogart, Shannon E. | 23. Lehault, Allison |
| 3. Briskin, Karen D. | 24. Lehault, Michael B. |
| 4. Carey, Kristina Susan | 25. Lopez, Christine M. |
| 5. Chin, Curtis B. | 26. Maemoto, Julie L. |
| 6. Christensen, Carolyn A. | 27. Manavian, Suzanne G. |
| 7. Church, Timothy M. | 28. McHugh, Amerika M. |
| 8. Exner, Sara L. | 29. McMullen, Livia A. |
| 9. Ferrera, Carla P. | 30. Moeller, Jennifer C. |
| 10. Fleder, Curie | 31. Mulligan, Marie-Louise |
| 11. Fujita, Stefanie Tamiko | 32. Nyman, Jamie A. |
| 12. Genovese, Adam M. | 33. Pavelka, Susan M. |
| 13. Gingras, Julie Anne | 34. Peterman, William J. |
| 14. Godbold, Bryan D. | 35. Seymour, Alison B. |
| 15. Hewitt, Jamie L. | 36. Steuernol, Catherine |
| 16. Iwami, Sachiko | 37. Stoddart, Jennifer L. |
| 17. Johannsen, Heidi J. | 38. Thompson, Jaclyn N. |
| 18. Keller, Wendy Ann | 39. Tyson, Dana N. |
| 19. Kelly, Natalie Meiling | 40. Vestal, Karla Jeanne |
| 20. King, Phillip D. | 41. Weiss, Samantha |
| 21. Kipp, Suzanne M. | 42. Wolven, Adam D. |