

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

In the Matter of the Reduction in Force of:

CERTAIN CERTIFICATED
EMPLOYEES OF THE STOCKTON
UNIFIED SCHOOL DISTRICT,

Respondents.

Case No. 2013030372

PROPOSED DECISION

This matter was heard by Administrative Law Judge Coren D. Wong (ALJ), Office of Administrative Hearings (OAH), State of California, on April 22, 2013, in Stockton, California.

Attorneys Diana D. Halpenny and Meghan Covert Russell of the law firm of Kronick, Moskovitz, Tiedemann & Girard represented the Stockton Unified School District (District). Craig R. Wells, Assistant Superintendent of Human Resources, also appeared on behalf of the District.

Attorney Ernest H. Tuttle, IV, of the Law Offices of Ernest H., Tuttle, IV, represented respondents Lori S. Biser, Tammy Michelle Earnest, Jillian Renee Glende, Nicolette Marie Gonzaba, Heather A. Griffin, Joleen M. Higginbotham, Cuong Nguyen, Maria L. Pacheco-Renteria, Stephanie Anne Sanchez, and Victor S. Torres, members of the Stockton Pupil Personnel Association (collectively, SPPA respondents). Neither Mr. Tuttle nor any of his clients appeared at hearing.

Attorney Thomas J. Driscoll, Jr., of the law firm Driscoll & Associates represented respondents Gustavo Arzac, Julie Backster, Maria L. Beggs, Barry D. Benigno, Crystal Earnhart Brown, Alan Toribio Calpito, Vanrith Chhang, Jan Norton, Sandra Ozornio-Caballero, Kevin A. Romero, Robert S. Schonwald, and Larry Jerome Watson, members of the Stockton Teachers' Association (collectively, STA respondents). Mr. Driscoll appeared at hearing on behalf of each of his clients, none of whom attended the hearing.

Attorney Heidi Primack Talbot of the Talbot Law Group represented respondents Louie R. Campos, Marlesse R. Cavazos, and Yanik E. Ruley, members of the United

Stockton Administrators (collectively, USA respondents). Neither Ms. Talbot nor any of her clients appeared at hearing.¹

Evidence was received, the record was closed, and the matter was submitted for decision on April 22, 2013.

FACTUAL FINDINGS

1. On February 26, 2013, at a regular meeting, the governing board of the District determined that it was in the best interests of the District and the welfare of the schools and pupils thereof to reduce or eliminate particular kinds of services and therefore necessary to reduce or eliminate certificated services affecting the employment of 95.20 full-time equivalent (FTE) positions. The governing board adopted Resolution No. 12-38 providing for the reduction or elimination of the particular kinds of services that are more specifically described in Exhibit A to this decision.

2. In determining the extent by which to reduce or eliminate particular kinds of services, the governing board considered all positively assured attrition up to and including the date of the resolution. The total number of positions to be reduced or eliminated under the resolution is 95.20 FTE certificated positions. The governing board determined that the services of a corresponding number of certificated employees shall be terminated at the end of the 2012/2013 school year.

3. The governing board also adopted Resolution No. 12-35 for purposes of making assignments and reassignments of certificated employees into and/or within teaching positions in the District pursuant to Education Code section 44955. The governing board determined that a certificated employee is deemed “competent and qualified to perform the certificated teaching service if: (a) he or she holds a “BCLAD, CLAD, SB 2042, AB 1059, SB 395; and [sic] (b) his or her credential authorizing the service to be provided is a regular credential, and not a provisional credential as defined by Education Code section 44911; [sic] (c) he or she has a single subject credential authorizing the full spectrum of courses within that subject area or has a credential authorizing the teaching of foundational-level courses in grades 9-12.”

4. The governing board also adopted Resolution No. 12-34, which specified the following tie-breaking criteria for determining the relative seniority of two or more certificated employees who share the same first date of paid service as a probationary employee with the District:

¹ In light of the stipulations and motion to dismiss discussed below, Mr. Tuttle and Ms. Talbot received permission prior to hearing to not attend the hearing but be available by telephone if they were needed.

1. Individuals with National Board Certification will be given preference. If these factors are identical then;
2. Individuals with BCLAD certificate will be given preference. If these factors are identical then;
3. Individuals who are deemed “highly qualified” under the No Child Left Behind Act in the proposed assignment will be given preference. If these factors are identical then;
4. [For teaching assignments only] Individuals with CLAD, SB 2042, AB 1059, SB 395, SDAIE or an equivalent training and certificate will be given preference. If these factors are identical then;
5. Individuals who currently hold a regular credential, not a provisional credential as defined by Education Code section 44911, which authorizes the service to be provided will be given preference. If these factors are identical then;
6. Individuals who hold multiple (2 or more) single subject credentials will receive preference as follows:
 - a. Those who hold the most single subject credentials will be given preference from most to least.
 - b. For individuals who hold the same number of single subject credentials, preference will be given first to those who hold:
 1. mathematics credentials, then
 2. science credentials, then
 3. English credentials

If these factors are identical then;

7. Individuals who hold subject matter authorizations as determined by the Commission on Teacher Credentialing will receive preference as follows:

- a. Those who hold the most subject matter authorizations will be given preference from most to least.
- b. For individuals who hold the same number of subject matter authorizations, preference will be given first to those who hold;
 1. mathematics authorization, then
 2. science authorization, then
 3. English authorization

If these factors are identical then;

8. A lottery shall be conducted among those remaining, and layoff shall be from the lowest number to the highest number from the lottery.

5. Each respondent is a permanent or probationary certificated employee of the District. On March 14, 2013, the District served each respondent with written notice that the superintendent recommended that notice be given to each of them pursuant to Education Code sections 44949 and 44955 that each of their services would be reduced or would not be required for the 2013/2014 school year. Each written notice set forth the reasons for the recommendation and noted that the District's governing board had passed Resolution No. 12-38 reducing or eliminating the certificated staff by 95.20 FTE positions. Each respondent timely requested, in writing, a hearing to determine if there is cause for not reemploying him or her for the ensuing school year.

6. On March 15, 2013, Craig R. Wells, Assistant Superintendent of Human Resources for the District, provided the governing board respondents' names and identified them as the certificated employees who received notice that their services would be reduced or not required for the next school year.

7. On April 4, 2013, Assistant Superintendent Wells made and filed the Accusation in this matter solely in his official capacity. The Accusation and all required documents were timely served on the respondents. Each respondent timely filed a Notice of Defense to the Accusation. All prehearing jurisdictional requirements were satisfied.

8. Prior to hearing, the District entered into separate stipulations with the SPPA respondents, the STA respondents, and the USA respondents. Included within each stipulation was the parties' agreement that all procedural and jurisdictional requirements specified in Education Code sections 44949 and 44955 have been met. The SPPA respondents withdrew their joint Notice of Defense.

9. At hearing, the District moved to dismiss the following respondents and rescind each of their layoff notices in light of the parties' stipulations: Julie Backster, Maria L. Beggs, Crystal Earhart Brown, Louis R. Campos, Marlesse R. Cavazos, Kevin A. Romero, Stephanie Anne Sanchez, and Yankik E. Ruley. No opposition to the motion was filed. The motion is granted.

10. This matter proceeded to hearing as to the following respondents only: Gustavo Arzac, Barry D. Benigno, Lori S. Biser, Alan Toribio Calpito, Vanrith Chhang, Tammy Michelle Earnest, Jillian Renee Glende, Nicolette Marie Gonzaba, Heather A. Griffin, Joleen M. Higginbotham, Cuong Nguyen, Jan Norton, Sandra Ozornio-Caballero, Maria L. Pacheco-Renteria, Robert S. Schonwald, Victor S. Torres, and Larry Jerome Watson, none of whom appeared or offered any evidence at hearing.

The District's Seniority List

11. The District maintains a seniority list for all certificated employees. The seniority list contains the following information for each certificated employee: name, seniority date, name of employee bargaining unit, description of current position, employee status (i.e., permanent, probationary, or temporary), type of credential, credential subject, and whether the employee is authorized to teach English Learners. The District also maintains seniority lists for each employee bargaining unit (i.e., Stockton Teachers Association, Stockton Pupil Personnel Association, and United Stockton Administrators), as well as management employees who are not represented by an employee bargaining unit (e.g., superintendent of schools, assistant superintendent of curriculum and instruction, etc.).

12. After rescission of the preliminary layoff notices issued to respondents Julie Backster, Maria L. Beggs, Crystal Earhart Brown, Louis R. Campos, Marlesse R. Cavazos, Kevin A. Romero, Stephanie Anne Sanchez, and Yankik E. Ruley; no permanent or probationary certificated employee with less seniority is being retained to render a service for which any respondent is certificated and competent to perform.

13. The reduction or elimination of the particular kinds of services set forth in Resolution No. 12-38 are related to the welfare of the schools and the students thereof within the meaning of Education Code sections 44949 and 44955. The governing board's decision to reduce or discontinue these services is neither arbitrary nor capricious, but rather a proper exercise of its discretion.

LEGAL CONCLUSIONS

1. Education Code section 44955, subdivision (b), provides the following with regard to a school district's authority to lay off certificated employees.

Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which

school is in session shall have declined below the corresponding period of either of the previous two school years, whenever the governing board determines that attendance in a district will decline in the following year as a result of the termination of an interdistrict tuition agreement as defined in Section 46304, whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions 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.

In computing a decline in average daily attendance for purposes of this section for a newly formed or reorganized school district, each school of the district shall be deemed to have been a school of the newly formed or reorganized district for both of the two previous school years.

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. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

2. Education Code section 44949 provides the following with regard to a school district's jurisdiction to layoff certificated employees:

(a) 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 for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

Until the employee has requested a hearing as provided in subdivision (b) or has waived his or her right to a hearing, the notice and the reasons therefor shall be confidential and shall not be divulged by any person, except as may be necessary in the performance of duties. However, the violation of this requirement of confidentiality, in and of itself, shall not in any manner be construed as affecting the validity of any hearing conducted pursuant to this section.

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the employee. 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. The notice provided for in subdivision (a) shall advise the employee of the provisions of this subdivision.

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of 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.

(2) The discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate.

(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. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds.

The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section as may be necessary to effectuate this section.

(d) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.

(e) If after request for hearing pursuant to subdivision (b) any continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in subdivision (c) which occur on or after the date of granting the continuance and the date prescribed in subdivision (c) of Section 44955 which occurs after the date of granting the continuance shall be extended for a period of time equal to the continuance.

The District complied with all notice and jurisdictional requirements set forth above, and no respondent argued otherwise. (Factual Findings 1, 2, 5 through 7 and 10.)

3. The services identified in Resolution No. 12-38 are particular kinds of services that may reduced or eliminated under Education Code section 44955. The governing 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 discontinuance of services relates solely to the welfare of the District's schools and their pupils within the meaning of Education Code section 44949.

4. Pursuant to the parties' stipulations discussed in Factual Finding 9, the District shall rescind the preliminary layoff notices issued to respondents Julie Backster, Maria L. Beggs, Crystal Earhart Brown, Louis R. Campos, Marlesse R. Cavazos, Kevin A. Romero, Stephanie Anne Sanchez, and Yankik E. Ruley. The parties' stipulation constitutes a judicial admission. (See, *Gonzales v. Pacific Greyhound Lines* (1950) 34 Cal.2d 749, 754-758.) "A judicial admission is a party's unequivocal concession of the truth of the matter, and removes the matter as an issue in the case." (*Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 48.)

5. Except for those certificated employees whose preliminary layoff notices are to be rescinded as discussed in Legal Conclusion 4, the District correctly identified the certificated employees providing the particular kinds of services that the governing board directed be reduced or discontinued in Resolution No. 12-38.

6. After the adjustments discussed in Legal Conclusion 4, no permanent or probationary employee with less seniority is being retained to render a service for which any respondent is certificated and competent to perform.

7. Except for those certificated employees whose preliminary layoff notices are to be rescinded as discussed in Legal Conclusion 4, cause exists to give notice to respondents that their services will be reduced or will not be required for the 2013/2014 school year because of the reduction or discontinuance of particular kinds of services.

RECOMMENDATIONS

1. Cause exists for the Stockton Unified School District to reduce or eliminate 95.20 full-time equivalent certificated positions at the end of the 2012-2013 school year.

2. As set forth in Legal Conclusion 4, the Stockton Unified District shall rescind the preliminary layoff notices issued to respondents Julie Backster, Maria L. Beggs, Crystal Earhart Brown, Louis R. Campos, Marlesse R. Cavazos, Kevin A. Romero, Stephanie Anne Sanchez, and Yankik E. Ruley.

3. Other than as set forth in Recommendations No. 2, notice may be given to respondents that their services will be reduced or will not be required for the 2013-2014 school year. Notice shall be given in inverse order of seniority.

DATED: April 23, 2013

COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings