

BEFORE THE STATE ADMINISTRATOR
VALLEJO CITY UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Non-Reemployment of
60.80 Full Time Equivalent Certificated
Employees

OAH No. N2007030972

PROPOSED DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Vallejo, California, on April 26, 2007.

Lawrence M. Schoenke, Attorney at Law, Miller Brown & Dannis, 71 Stevenson Street, Nineteenth Floor, San Francisco, California 94105, represented the Vallejo City Unified School District.

Sarah Sandford-Smith Batt and David Weintraub, Attorneys at Law, Beeson, Taylor & Bodine, 1404 Franklin Street, Fifth Floor, Oakland, California 94612, represented respondents Ronald Beverly, Mary Carhidi-Wise, James Connelly, Debra deSchroderkat, Gena Hamlin, Deborah Kreisman and Sandy Shifts.

No appearance was made by or on behalf of any other respondents.

The matter was deemed submitted for decision on April 26, 2007.

FACTUAL FINDINGS

1. On March 7, 2007, the state administrator of the Vallejo City Unified School District adopted Resolution No. 2365, in which the state administrator resolved to reduce or eliminate the following particular kinds of services no later than the beginning of the 2007-2008 school year and directed his designee to send appropriate notice to employees whose positions might be lost by virtue of this action:

PARTICULAR KINDS OF SERVICES	FULL TIME EQUIVALENT POSITIONS
7-12 Sciences	5.00
7-12 PE	2.80
7-12 Social Science	3.00
7-12 Electives: Computers, Business Applications, Business Academy, Woodshop, Leadership, Virtual Enterprise	5.20

Categorically Funded Instructional Associate	1.10
Categorical Funded District Teacher Leader	1.80
Categorical Funded Staff Development Teacher	1.00
Categorical Funded District ELA Teacher Leader	3.40
Categorical Funded EL Teacher Leader	.50
Categorical Funded District SAIT Teacher Leader	.60
Categorical Funded Teacher Leader	32.40
Elementary Prep Time Teacher	2.00
9-12 High School Counselor	2.00
TOTAL	60.80

2. On March 15, 2007, Director of Human Resources Nona Cohen-Bowman gave written notice to 62 employees that recommendation for their non-reemployment for the 2007-2008 school year was being made under Education Code sections 44949 and 44955. Thirteen employees, the respondents in this proceeding, filed timely requests for hearing: the seven respondents listed above and Loraine Lee, Letha Little, Tiffany Jackson, Kevin Steele, Sandra Nahal, Miriam Castorena, and Mark Christian.

3. On March 7, 2007, the state administrator adopted Resolution No. 2366, establishing criteria for determining seniority for those employees with the same first date of paid service. In those tie-breaking criteria, employees were awarded the following points for specified certification types.

CERTIFICATION TYPE		POINTS
1.	Certificates: BCLAD or CLAD	1
2.	Special Education Credential (Professional Clear, Life, General, Preliminary)	1
3.	Credentials: Standard Elementary or Secondary, General Elementary or Secondary, Single Subject, Multiple Subjects, Mathematics, English Professional Clear, Life, General	2
	Preliminary	1
4.	Credentials with Supplemental Authorizations (per authorization)	1

Any ties remaining after application of these criteria are to be resolved by lottery.

4. The district is experiencing financial difficulties and the reductions in service are purely economic in nature. None of the reductions will prevent the district from providing mandated services. The reductions are in the interest of the schools and their students.

5. Erica Hightower is a first year probationary teacher with a seniority date of September 19, 2006. She holds a multiple subjects credential. Hightower was mistakenly not provided with a March 15 layoff notice even though she is junior to 13 employees who are senior to her, possess the same credential and did receive layoff notices. Those 13 employees, all of whom share a seniority date of August 21, 2006, include respondents Carhidi-Wise, Kreisman, Shifs, deSchroderkat, and Little. Because the district failed to send Hightower a March 15 notice, she must be retained for the 2007-2008 school year. Respondents contend that the district must therefore retain all employees senior to her who are similarly credentialed and competent. This contention cannot be sustained. When junior employees are incorrectly retained, the district is not required to retain all similarly situated senior employees, but only "a corresponding number" of them. (*Alexander v. Board of Trustees of the Delano Joint Union High School District* (1983) 139 Cal.App.3d 567, 576.) Accordingly, the retention of Hightower requires the district to retain the most senior employee who is similarly credentialed and competent.

It is impossible to determine at this point who that "most senior" employee is. All of the senior employees sharing Hightower's credentials and competence have August 21, 2006 seniority dates. The district has not yet applied the tie-breaking criteria set forth in Finding 3 to those employees. On or before May 7, 2007, the district must apply those criteria to all affected employees in order to determine which one is "most senior." The employee so identified must be retained for the 2007-2008 school year.

6. Resolution No. 2365 called for the reduction of 2.80 FTE positions in physical education. However, because a 1.0 FTE physical education teacher resigned, it was necessary to layoff only two individuals to achieve this reduction. Receiving March 15 layoff notices were respondent Mark Christian, a 1.0 FTE physical education teacher with a November 13, 2006 seniority date, and respondent Ronald Beverly. Beverly is a 1.0 FTE physical education teacher with a seniority date of August 21, 2006. Mark Thompson is also a 1.0 FTE physical education teacher with an August 21, 2006 seniority date. He did not receive a March 15 layoff notice. Although the district did not apply the tie-breaking criteria to these latter two employees, it determined that Beverly would receive a March 15 notice and Thompson would not because Beverly holds only a provisional intern permit while Thompson holds a preliminary single subject physical education credential with an "embedded" CLAD certificate.

Although he holds only a provisional intern permit, Beverly is entitled to the same layoff rights as the fully-credentialed Thompson. (*California Teachers Association v. Vallejo City Unified School District* (2007) 2007 DJDAR 4251.) Thus it was improper to "skip" Thompson while laying off Beverly. However, no prejudice to Beverly resulted from this. Had the tie-breaking criteria been applied, Thompson would have scored more points

than Beverly and would have been considered the "more senior" employee. Cohen-Bowman testified that Thompson was entitled to two tie-breaker points – one for his preliminary credential and one for his CLAD certificate – while Beverly was entitled to only one tie-breaker point. Cohen-Bowman said Beverly was entitled to that point because of his provisional permit. However, the tie-breaking criteria do not award any points for a provisional permit. Points are awarded only for clear, life, general, or preliminary credentials. The seniority list shows that Beverly holds a CLAD certificate, although it appears this may be only an emergency certificate,¹ and it is possible Cohen-Bowman felt Beverly was entitled to one tie-breaking point for that certificate since the criteria do not distinguish between clear and emergency CLAD certificates. But whether Beverly is entitled to a point for his CLAD certificate or not is immaterial; at most, he is entitled to one tie-breaking point and is therefore considered "junior" to Thompson. The district may retain Thompson while laying off Beverly.

However, the district may not lay off Beverly for his entire 1.0 FTE position. The resignation of one employee and the layoff of junior employee Christian account for 2.0 FTE of the 2.80 FTE reduction. Therefore, Beverly may be laid off for only 0.8 FTE. He must be retained for the remaining 0.2 FTE.

7. Respondents assert that in AB 1802, the state created a fund into which districts could tap, "with no questions asked," to receive additional funding for counseling. While several other Solano County school districts have applied for and received these funds, the district has not. Because the district has failed to obtain available funds for its counseling program, respondents assert that the district cannot show "necessity" for the counseling reduction.

AB 1802, passed in 2006, was enacted as Education Code section 52378, creating the Middle and High School Supplemental Counseling Program to provide additional counseling services for pupils in grades 7 to 12. As a condition of receiving funds under the program, a school district must comply with numerous requirements specified in the statute; it is not simply a matter of applying for and receiving the funds. Regardless of whether or not they are easily obtained, the district has not applied for and received the additional counseling funds, nor is it required to do so. The district's failure to seek these funds does not undercut the previously-made finding that the service reductions being made are in the interest of the schools and their students. A district need not show a specific need to reduce a specific service. It is sufficient to show a general need to reduce services. Which services are then reduced is within the district's discretion, provided that all mandated services are still provided. The evidence showed that even with the counseling reductions, the district will continue to meet the mandated pupil personnel services requirements.

¹ The seniority list characterizes the term of Beverly's CLAD certificate as "TCEM." No testimony was offered as to the meaning of this designation. In their hearing brief, respondents refer to Beverly's CLAD certificate as "temporary."

8. Except as set forth above, no employee with less seniority than any of the respondents is being retained to render a service for which any of the respondents are certificated and competent.

LEGAL CONCLUSIONS

1. Cause for the elimination of 60.80 FTE positions exists in accordance with Education Code sections 44949 and 44955. Except as set forth below, cause further exists to give respondents notice that their services will not be required for the 2006-2007 school year. This cause relates to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

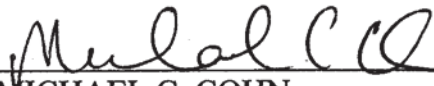
2. As set forth in Finding 5, the district must apply the tie-breaking criteria to all employees with a seniority date of August 21, 2006, who have the same credentials and competence as Erica Hightower, and must retain the employee who ranks first following application of those criteria.

3. As set forth in Finding 6, the district must retain respondent Ronald Beverly for a 0.2 FTE position.

ORDER

Except as set forth in Legal Conclusions 2 and 3, notice may be given respondents that their services will not be required for the 2007-2008 school year.

DATED: May 3, 2007



MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings