

BEFORE THE GOVERNING BOARD
OF THE EMPIRE UNION SCHOOL DISTRICT
COUNTY OF STANISLAUS
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

OAH No. 2010020212

CERTAIN CERTIFICATED PERSONNEL
EMPLOYED BY THE EMPIRE UNION
SCHOOL DISTRICT,

Respondents.

PROPOSED DECISION

Marilyn Anne Woollard, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 27, 2010, in Modesto, California.

Roman J. Munoz, Attorney at Law, Kronick, Moskovitz, Tiedemann & Girard, represented the Empire Union School District (District). Assistant Superintendent for Human Resources, Dr. Michael Gonzalez was present on the District's behalf.

Ernest Tuttle, IV, Attorney at Law, Law Offices of Ernest Tuttle, IV, represented the 29 named respondents whose names are listed in Attachment A, incorporated here by reference.

Testimony was heard, documents were introduced, and the parties offered oral closing arguments. The record was then closed and the matter was submitted for decision on April 27, 2009.

FACTUAL FINDINGS

1. The District provides education to approximately 3,200 students in kindergarten through the eighth grade (K-8). It currently operates four K-6 elementary schools, one K-8 elementary school, and one middle school for seventh and eighth grade students.

2. Dr. Michael Gonzales is the District's Assistant Superintendent for Human Resources.

3. On March 9, 2010, Dr. Gonzales provided a written recommendation to the District's Governing Board (Board) that notice be given to respondents, pursuant to Education Code sections 44949 and 44955, that their services would not be required for the 2010 through 2011 school year.¹

4. On March 9, 2010, in response to this recommendation, the Board passed three resolutions: Resolution No. 187-030910 "Reduction and Elimination of Particular Kinds of Service for the 2010-2011 School Year" (PKS Resolution); Resolution No. 188-030910 "Establish Criteria for Order of Certificated Layoff and Reemployment Following Layoff for Employees with Equal Seniority" (Tie-Breaking Resolution); and Resolution No. 189-030910 "Regarding Definition of Competence for Assignments in the 2010-2011 School Year" (Competency Resolution).

5. Before March 15, 2010, Dr. Gonzales provided written notice to 38 certificated employees, including respondents, of his recommendation to the Board that their services would not be required for the 2010-2011 school year, as required by section 44949.

6. In response to this notice, as required by section 44949, subdivision (b), respondents filed timely requests for hearing to determine if there is cause for not reemploying them for the next academic year.

7. Any certificated employee who failed to file a request for hearing has waived his or her right to a hearing, and may be laid off by the District. (Educ. Code, § 44949, subd. (b).)

8. On March 31, 2010, Dr. Gonzales signed the Accusation in his official capacity, asking that the Board be authorized to give respondents final notice that their services would not be required for the 2010-2011 school year, pursuant to sections 44949 and 44955. Respondents were served with the Accusation, Resolutions 187-030910, 188-030910 and 189-030910, blank Notice of Defense, and copies of relevant statutes and related documents.

9. On April 15, 2010, the Board adopted Resolution No. 223-041510, "Conforming Resolution Regarding Reduction and Elimination of Particular Kinds of Service for the 2010-2011 School Year" (Conforming Resolution). The purpose of the Conforming Resolution was to correct an erroneous reference in the PKS Resolution to a reduction in the "K-6" self-contained Teaching program, and to accurately reflect a reduction in the "K-8" self-contained Teaching program. The Conforming Resolution provides that this correction "reflects the original intent of Resolution #187-030910." The Conforming Resolution did not change the particular kinds of services selected for reduction or the number of FTE to be reduced.

¹Unless otherwise indicated, all statutory references are to the California Education Code.

10. On April 16, 2010, Mr. Tuttle filed a Notice of Defense on behalf of the respondents.

11. On April 27, 2010, Dr. Gonzales made and signed the First Amended Accusation in his official capacity. The First Amended Accusation included reference to both the PKS and the Conforming Resolutions; it was in other respects unchanged.

12. Each respondent is presently a certificated permanent or probationary employee of the District.

13. *Particular Kinds of Services:* Pursuant to PKS/Conforming Resolutions, the Board resolved to eliminate the following particular kinds of services, totaling 40.42 full time equivalent (FTE) positions, for the 2010-2011 school year:

Reduction of the K-8 Self Contained Teaching program,
resulting in the elimination of 28 FTE certificated teacher services.

Reduction of the 7-8 Departmentalized Teaching Program,
resulting in the elimination of 11.42 FTE certificated teacher
services as follows:

1.00	FTE English/Language Arts
2.00	FTE Social Studies
1.00	FTE Math
1.00	FTE Science
2.00	FTE Physical Education
1.42	FTE Counselor
3.00	FTE Reading Specialist

Reduction of administrative staffing, resulting in the Elimination
of 1 FTE certificated Coordinator of Curriculum, Assessment, and
Professional Development.

14. The services identified in the Board's Resolutions are particular kinds of services that may be reduced or discontinued.

15. *District's Seniority List:* The District's seniority list was generated from data pertaining to certificated employees that is contained in its computerized position control system. Dr. Gonzales testified that the District passed out its seniority list to each of its school sites and certificated employees. All employees signed to indicate that the information contained in the seniority list was correct.

The seniority list was used by Dr. Gonzales and his personnel technician to develop an “Implementation of Layoff Resolution-2009” Chart (Chart).² The Chart identifies which certificated employees are affected by the PKS reduction, either directly through the reduction or elimination of a particular kind of service or as a result of being displaced by a more senior employee. The Chart identified employees for layoff in the inverse order of seniority. It identified the credentials held by each certificated employee and was used to apply the Board’s competency criteria. The Chart identified which certificated employees were within a seniority date “cluster” as to which the tie-breaking criteria must be applied.

At the hearing, respondents demonstrated that there were errors on the Chart pertaining to the credentials held by respondents Elias Ruiz (8/20/2007) and Anthony Monjure (8/26/2002). The District corrected the Chart and the corrected Chart was admitted without objection. The corrections to the Chart did not result in any change to the layoff notices to these two employees.

16. *Attrition:* As indicated in the PKS/Conforming Resolutions and in Dr. Gonzales’s testimony, in determining which certificated employees were affected by the reduction in force, the Board considered all positively assured attrition, including all deaths, resignations, retirements, non-reelections, and other permanent vacancies for 2010-2011.

Bumping and the District’s Competency Criteria

17. As set forth in section 44955, subdivisions (b) and (c), economic layoffs are generally to be carried out on the basis of seniority. A teacher with more seniority typically has greater rights to retain employment than a junior teacher. The District has an affirmative obligation to reassign senior teachers who are losing their positions into positions held by junior teachers if the senior teacher has both the credentials and competence to occupy such positions. That displacement of a junior teacher is known as “bumping.” The seniority rule is not absolute, and a junior teacher with a needed credential or skills may be retained even if a more senior teacher is terminated. Such “skipping” is recognized by statute (Ed. Code § 44955, subd. (d)(1)), and appellate law. (*Santa Clara Federation of Teachers, Local 2393 v. Governing Board of the Santa Clara Unified School District* (1981) 116 Cal.App.3d 831.) In order to depart from a seniority-based economic layoff, section 44955, subdivision (d)(1), requires the District to “demonstrates a specific need for personnel to teach a specific course or course of study... and that the certificated employee (to be skipped) has special training and experience necessary to teach that course or course of study...which others with more seniority do not possess.”

² Although the date on the Chart created some ambiguity, Dr. Gonzales testified that it pertains to District certificated employees in the 2009-2010 school year who are affected by the reduction in force for the 2010 – 2011 school year.

18. At hearing, the parties stipulated that respondent “David Kamp, seniority date of August 28, 2000, has the ability to displace [respondent] Javier Villanueva, seniority August 17, 2006, based upon his seniority as he renders the same services to the District based upon the credentials held.”

19. Dr. Gonzales testified that none of the certificated employees being laid off by the District has any displacement (“bumping”) rights except for Mr. Kamp.

Respondents contend that Anthony Monjure (seniority date August 26, 2002) and Malia Colombo (seniority date August 25, 2003) should be allowed to bump less senior middle school physical education (PE) teachers Karin D. Kreutzer and Miguel Gomez who did not receive layoff notices. Respondents argue that the District’s competence criteria are arbitrary and capricious as applied to them.

20. In its Competency Resolution (No. 189-030910), the Board established the following definition of “competence” for senior teachers affected by the reduction in force who wish to bump into a position held by a less senior employee.

Competence to provide a particular kind of service is defined as:

- (1) Holding a preliminary, professional clear, lifetime or other full credential in the subject matter which the employee intends to displace another employee and,
- (2) Has successfully taught one complete school year in the subject matter within the past ten school years, utilizing the full credential referenced above in #1.

21. Ms. Kreutzer holds a clear single subject PE credential. Mr. Gomez holds a preliminary single subject PE credential. During the 2009-2010 school year, both Ms. Kreutzer and Mr. Gomez taught PE full time at the District’s middle school.

The District does not dispute that respondents Monjure and Colombo have more seniority than either Ms. Kreutzer (seniority date August 22, 2005) or Mr. Gomez (seniority date August 20, 2007). Mr. Gomez is the least senior of these four employees. In the District’s view, neither Mr. Monjure nor Ms. Colombo is “competent” to bump into a middle school PE position under Resolution No. 189-030910.

22. *Anthony Monjure:* Respondent Monjure has taught in District self-contained classes under his multiple subject credential since his hire in August 26, 2002. During the 2009-2010 school year, Mr. Monjure was assigned to teach sixth grade at Hughes Elementary.

It is undisputed that Mr. Monjure currently has a clear single subject PE credential which was issued on February 13, 2009. It is also undisputed that he has never been assigned to teach PE using his single subject PE credential and does not have the “competence” to teach PE as that term as it is defined by the Competency Resolution.

23. Dr. Gonzalez testified that a single subject PE credential is required to teach PE in the middle school departmentalized program. While Mr. Monjure currently holds the credential required to teach PE in a departmentalized setting, he is not able to displace any junior PE teachers, because has not taught one full year within the past 10 school years, utilizing his PE credential.

Dr. Gonzales agreed that multiple subject teachers assigned to self-contained classrooms are authorized to teach PE. Under the collective bargaining agreement, the District provides fourth through eighth grade teachers with a “prep teacher” who instructs in certain subjects, including PE, while the assigned teacher is released for classroom preparation time. Dr. Gonzales testified that Mr. Monjure has not been responsible for PE instruction in his class for the past six years. During the 2009-2010 school year, prep teacher Karma Souza (seniority date 9/15/98) has provided 105 minutes a week in PE instruction to Mr. Monjure’s class using her multiple subject credential.

24. Mr. Monjure testified that during his eight years teaching in self-contained classrooms at the District, he has always used his multiple subject credential to teach PE lessons to his class. In the past, PE was not always the subject area in which the prep teacher was assigned. As a result, until last year, Mr. Monjure provided the required physical education instruction to his elementary students. Sixth graders are required to receive 200 minutes of PE instruction every two weeks. This year, the prep teacher only provides PE instruction two days a week; Mr. Monjure provides additional PE instruction on the other three days.

Mr. Monjure described his interest and experience in PE. His undergraduate minor concentration was in PE; he has always been interested in teaching PE eventually; and he has provided coaching services at the middle school level (flag football and wrestling) and at the elementary school (afterschool football program for fourth to sixth graders). He has also coached football and baseball outside the District. He conceded that a PE credential was not required to perform any of these activities.

Mr. Monjure cleared his single subject PE credential by taking required courses and successfully completing the California Subject Examination Test for teachers (CSET) in PE. He submitted his credential to the District prior to March 15, 2010. Since receiving his credential, there have been no openings in PE within the District for which he could apply.

25. Section 44955, subdivisions (b) and (c), provide in pertinent part as follows:

(b) . . . 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. . .

(c) Notice of such termination of services shall be given before the 15th of May in the manner prescribed in Section 44949, 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. . .³

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.

The courts have given school districts discretion to determine what constitutes "competence" for purpose of layoff and rehire. In *Martin v. Kentfield School Dist.* (1983) 35 Cal.3d 294, the Supreme Court considered the "certificated and competent" standard embodied in Education Code section 44956, concerning the reemployment rights of teachers who have been laid off under section 44955. As the court wrote, "[s]uch determinations, it has been held, involve 'discretionary decisions' which are within the 'special competence' of the school districts." (*Id.* at p. 299.) (See also, *King v. Berkeley Unified School Dist.* (1979) 89 Cal.App.3d 1016, 1023.)

The meaning of "certificated and competent" was reexamined in *Duax v. Kern Community College District* (1987) 196 Cal. App. 3d 555, 564, and was characterized as "a watershed inquiry." In *Duax*, the appellate court reviewed a competency standard contained in a PKS resolution passed by the board of trustees of a community college district under former section 87743, which required one year of full-time experience teaching or providing

³ Section 44844 pertains to employees employed before July 1, 1947. Section 44845 provides that "every probationary or permanent employee employed after June 30, 1947, shall be deemed to have been employed on the date upon which he first rendered paid service in a probationary position."

service in the particular subject area within the last 10 years. In analyzing this resolution, the court relied on appellate decisions issued in the context of reemployment rights following layoffs which construed similar statutory language, “certificated and competent,” under section 44956 and its predecessors. The court relied on *Martin, supra*, and *Forker v. Board of Trustees* (1984) 160 Cal. App. 3d 13, 19, in which the court noted that, as interpreted by *Martin*, the term “competent” relates to the specific skills or qualifications required of the applicant. From these authorities, the court in *Duax* concluded that “a board’s definition of competency is reasonable when it considers the skills and qualifications of the teacher threatened with layoff.” The court held the board’s competency resolution standard was one “clearly relating to skills and qualifications to teach,” and did not too narrowly define competency. While “other factors might have been taken into consideration” and other competency standards “might have been imposed by the board, there is no mandate that the board do so.” (Id. at 567.)

In this matter, there is no dispute that respondent Monjure did not satisfy the competency criteria. The competence criteria selected by the Board is not impermissibly narrow. The Board’s competency requirement, that a senior teacher seeking to bump a junior teacher be both certificated and have successfully taught at least one complete year teaching under the appropriate credential in the last 10 years, is reasonable and is not an abuse of discretion.

26. *Malia Colombo*: Dr. Gonzales testified that he was aware Ms. Colombo had applied for a supplemental authorization to teach PE on March 9, 2010, but the authorization has not been issued. As of March 15, 2010, Ms. Colombo did not possess a full single subject PE credential and has not taught for a full year under the appropriate credential. As a result, Ms. Colombo was not competent under Resolution No. 189-030910 to displace a junior employee with a PE credential.

27. Ms. Colombo teaches first grade at Hughes Elementary School under her multiple subject credential. She testified that she has a supplemental authorization in PE that is currently “pending” approval by the Commission on Teacher Competence (CTC). There are no “prep” teachers for elementary grades K through 3. Ms. Colombo teaches 200 minutes of PE every ten days to her students and has done so throughout the 2009-2010 school year. In previous years, Ms. Colombo taught self-contained classes in the middle school where she had prep release periods.

Ms. Colombo has had a long time interest in teaching PE. She completed the coursework necessary for her PE supplemental authorization, she filed her application and paid the filing fee to CTC. There is nothing else she needs to do to perfect her application. CTC granted her a temporary waiver to teach PE in grades K through 9 for the next year, through March 15, 2011. By that time, Ms. Colombo believes that CTC will have approved her supplemental authorization in PE, so that she will be able to teach PE over the course of the entire 2010–2011 school year. Ms. Colombo acknowledged that both Ms. Kruetzer and Mr. Gomez have PE credentials and that she has never taught PE at the middle school level.

28. Ms. Colombo's arguments are not persuasive. It is undisputed that she does not satisfy either component of the competency requirement of Resolution No. 189-030910. For the reasons set forth in Factual Finding 25, her claim that application of the competence criteria to her is an abuse of discretion is rejected.

29. *Elimination of 3 FTE Reading Specialist Positions:* Pursuant to the PKS/Conforming Resolutions, the Board included 3.00 FTE Reading Specialist in the particular kinds of services to be eliminated. Three permanent certificated employees assigned as reading specialists with the District during the 2009-2010 school year are: David Loucks, seniority date April 28, 1980; Susan M. Bergerson, seniority date August 29, 1991; and Amy Phillips, seniority date August 26, 1993. None of these employees was issued a layoff notice.

Respondents contend that the District's competency resolution is arbitrary and capricious as applied to them, because there was no evidence that the District applied the competency criteria to these reading specialists.

Dr. Gonzales testified that the competency criteria in Resolution No. 189-030910 only applies to certificated employees who were issued layoff notices. In the PKS/Conforming Resolutions, the District had eliminated the reading specialist "positions, not the people." The District did not issue layoff notices to the reading specialists because it intends to "reassign" these senior employees based on their credentials and as part of the District's reconfiguration once the layoff, additional resignations, and negotiations with the union regarding class size are worked out. Ms. Bergerson holds a multiple subject credential; however, none of the multiple subject respondents noticed for layoff were displaced by her. Dr. Gonzales did not know whether Ms. Bergerson had taught for a full year under her multiple subject credential within the past 10 years. He did not know what other positions Mr. Loucks and/or Ms. Phillips had taught within the last 10 years or whether any of the former reading specialists would satisfy the competency criteria.

30. Respondents' arguments are not persuasive. Section 44955 provides that a district affected by a reduction in particular kinds of services "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." Termination of all affected employees is not mandatory, as long as the District does not violate other statutory requirements (for example, if the district elected to reassign certificated employees who had less seniority than those subject to the layoff proceeding). The Board has discretion to "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. . ." In this matter, there is no evidence to support a finding that the District abused its discretion by not laying off senior reading specialists, but retaining them with the intention of reassigning them. There is no evidence about the positions to which the reading specialist will be assigned. This determination is contingent on a variety of factors that will be determined over the coming months. There is no requirement that the Competency Resolution enacted for purposes of this layoff proceed be applied to individuals who are not subject to layoff.

31. *District's Tie-Breaking Criteria:* In Resolution No. 188-030910, the Board adopted criteria to be used to break ties for permanent or probationary certificated employees sharing the same seniority date, as well as to establish the order of reappointment. Pursuant to this Resolution, if a tie between certificated employees still exists after considering all the listed criteria, "then seniority will be determined by a draw of numbers."⁴

32. To implement its reduction of 28 FTE in the K-8 Self-Contained Teaching program, the District issued layoff notices to 29 certificated employees holding multiple subject credentials, beginning with the least senior employees. The reason that 29 notices were issued instead of 28 was that four certificated employees with multiple subject credentials shared a seniority date of August 23, 1999. Three of these four employees would be laid off under the PKS/Conforming Resolutions; all four had to be noticed for layoff in order to break the tie. These employees are: Theresa A. Vargas, Joseph J. Tregea, Gina E. Matthews, and Elizabeth J. Mangnuson.

33. Dr. Gonzales testified that, at the time of the hearing, he had not implemented the tie-breaking criteria, but intended to do so before the final notice on May 15, 2010. For purposes of determining which respondents would be laid off, tie breaking was only necessary for the August 23, 1999 cluster. Tie breaking for any remaining respondents related to reemployment rights.

34. During the hearing, the parties entered into the following stipulation regarding tie breaking for the August 23, 1999 seniority cluster:

The parties stipulate the District has not applied the tie-breaking criteria as of the time of the hearing. Except for Respondents with Multiple Subject credentials with a seniority date of August 23, 1999, the tie-breaking criteria including the possibility of drawing of numbers, will be applied prior to May 5, 2010 to be (sic) determine reemployment rights. As for August 23, 1999, Multiple Subject Respondents, the tie-breaking must be completed with drawing of numbers as to Joseph Tregea, Gina Matthews, and Elizabeth Mangnuson.

⁴ The Tie-Breaking Resolution provides that the "Superintendent/designee shall determine the order of termination or reappointment solely on the basis of the needs of the District and the students considering one or more of the following criteria: BCLAD; Specialist credentials, such as a professional full credential in special education; National Board Certification; Credentials that authorize instruction in two or more desired areas such as math, science, special education; Years of experience in a similar position as a fully credentialed teacher in the California public school system prior to the date of first paid service in Empire Union School District; Possession of a professional clear, preliminary, lifetime, or other full credential in a hard to staff subject area such as math or science; Post-graduate degree in the area of service or potential areas of service; AB466 or SB472 training (40 Hours) in the core content areas of math and/or language arts; and/or Participation in the District Leadership Team or site level Leadership Team within the past two years. ¶Assuming that the preceding criteria do not resolve all ties between employees having the same seniority date, then seniority will be determined by a draw of numbers.

The parties further stipulate that Theresa Vargas has 9 years of prior teaching experience with full credentials which should be added to Ex. 10 (Chart).

35. Under the Tie-Breaking Resolution, an employee's "years of experience in a similar position as a fully credentialed teacher in the California public school system prior to the date of first paid service in Empire Union School District" is to be considered. Based upon the information received about respondent Vargas's previous experience in the public school system, the District agreed to rescind the layoff notice issued to her. The tie-break between the three remaining August 23, 1999 respondents is now needed solely to determine rehire positions as each is subject to layoff.⁵

36. The Board's decision to reduce or discontinue the particular kinds of services identified in the PKS/Conforming Resolutions was not arbitrary or capricious, but constituted a proper exercise of discretion.

37. The reduction or discontinuation of particular kinds of services is related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Board.

38. Except as previously noted, no certificated employee junior to any respondent was retained to perform any services which any respondent was certificated and competent to render.

LEGAL CONCLUSIONS

1. As set forth in Factual Findings 1 through 11, all notice and jurisdictional requirements set forth in sections 44944 and 44945 were met. The 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 notices, adequately describe particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

⁵ Consequently, respondents were not prejudiced by District's failure to break the seniority ties prior to issuing layoff notices.

2. The Governing Board may reduce, discontinue or eliminate a particular kind of service and then provide the needed services to the students in another manner. (*Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571; *California Teachers Association v. Board of Trustees of Goleta Union School Dist.* (1982) 132 Cal.App.3d 32.) A school board may reduce services within the meaning of the statute either by determining that a certain type of service shall not be performed at all or by reducing the number of district employees who perform such services. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

3. The services identified in the PKS/Conforming Resolutions are particular kinds of services that may be reduced or discontinued under sections 44949 and 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 discontinuance of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

4. As set forth in the Factual Finding 35, the Accusation must be dismissed as to respondent Theresa A. Vargas.

5. As set forth in the Factual Findings and Legal Conclusions as a whole, the District has established that no employees junior to respondents are being retained to perform the services which respondents are competent and certificated to render.

RECOMMENDATION

1. The layoff notice issued to respondent Theresa A. Vargas is rescinded and the First Amended Accusation served on her is hereby dismissed.

2. The District may give notice to the remaining respondents that it will not require their services for the 2010-2011 school year. Notice shall be given in inverse order of seniority.

DATED: May 5, 2010

MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings