

BEFORE THE
GOVERNING BOARD
ARCADIA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Certain Certificated Employees of the
Arcadia Unified School District,

Respondents.

OAH Case No. 2011030353

PROPOSED DECISION

Mark Harman, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 18, 2011, in Arcadia, California.

Margaret A. Chidester and Alexandria M. Davidson, Attorneys at Law, represented Beverly Klatt, Ed.D. (Klatt), Director of Personnel Services of the Arcadia Unified School District (District).

Glenn Rothner, Anthony Resnick, and Richa Amar, Attorneys at Law, represented all respondent teachers identified in Appendix A attached hereto, and Brian Zurla, whom the District stipulated could participate as a respondent in this proceeding (collectively Respondents), except for Cecile Allen, Irene Cheng, Melanie Coulter, Michael Despard, Daniella Fey, Kit Fung, Lindsay Hamilton, Jessica Hung, Emily Kalmbach, Nandita Pal, and Donald Young. The following Respondents did not appear at the hearing: Cecile Allen, Daniella Fey, Jessica Hung, Emily Kalmbach, Susan Kim, Kristen Mora, Sherwin Olavi, Nandita Pal, and Jennifer Tran.

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2011-2012 school year under Education Code¹ sections 44949 and 44955. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2011-2012 school year.

Oral and documentary evidence was received at the hearing. The record was closed and the matter was submitted for decision on April 18, 2011.

¹ All further statutory references are to the Education Code.

FACTUAL FINDINGS

1. Klatt and her staff were responsible for the technical aspects of this reduction in force proceeding. Klatt filed the Accusation in her official capacity.

2. Respondents are certificated employees of the District.

3. On February 22, 2011, the Board of Education of the District (Board) adopted Resolution No. 1237 (the Resolution), reducing or discontinuing the following services for the 2011-2012 school year:

| <u>Subject Area</u> | <u>FTE² Reduction</u> |
|---|----------------------------------|
| K-5 teaching positions | 21.00 |
| 6-8 teaching positions: Core | 4.60 |
| 6-8 teaching positions: English | 1.40 |
| 6-8 teaching positions: ELD | 0.80 |
| 6-8 teaching positions: Math | 2.60 |
| 6-8 teaching positions: Science | 2.40 |
| 6-8 teaching positions: Social Science, History | 0.80 |
| 6-8 teaching positions: Physical Ed, Dance | 2.60 |
| 6-8 teaching positions: Ind. Tech, Video Production, Computers, Photography | 1.60 |
| 6-8 teaching positions: Journalism | 0.20 |
| 6-12 Counseling positions | 3.00 |
| 9-12 teaching positions: Careers and Technology - Peer Mentoring, Leadership Dynamics, Life Management, College Knowledge, Cross-Age Teaching/Lit. | 1.00 |
| 9-12 teaching positions: Careers and Technology – Computer Science, Web Design | 0.60 |
| 9-12 teaching positions: English | 3.20 |
| 9-12 teaching positions: ELD | 1.20 |
| 9-12 teaching positions: Math | 3.00 |
| 9-12 teaching positions: Physical Ed, Health | 2.20 |
| 9-12 teaching positions: Performing Arts - Music | 1.00 |
| 9-12 teaching positions: Performing Arts- Dance | 0.20 |
| 9-12 teaching positions: Science - Physics, Biology, Biophysical | 2.00 |
| 9-12 teaching positions: Social Science | 2.00 |

² Full-time equivalent position.

| | |
|--|------------------|
| 9-12 teaching positions: Visual Arts - Art, Studio Art, Design | 1.00 |
| 9-12 teaching positions: World Languages – Spanish | 1.20 |
| 9-12 teaching positions: World Language - Japanese | 0.40 |
| 9-12 teaching positions: World Language - Chinese | 1.00 |
| 9-12 teaching positions: Athletic Director | 0.50 |
| 9-12 teaching positions: Activities Director | 0.50 |
| 9-12 teaching positions: Librarian | 1.00 |
| Adult Education teaching position | 0.57 |
| District Curriculum Coordinator | 1.00 |
| Dean | 1.00 |
| TOTAL | 65.57 FTE |

4. Klatt thereafter provided a written “Preliminary Notice Not To Reemploy” (preliminary notice) to 115 certificated employees, including Respondents. The preliminary notice states that it had been recommended to the Board, and the Board had determined, to give a preliminary notice to each of these employees that their services would not be required for the 2011-2012 school year due to the Board’s decision to discontinue certain particular kinds of services. Each Respondent was served with a preliminary notice on or before March 15, 2011. The preliminary notice describes the particular kinds of services to be reduced pursuant to the Resolution, as set forth in factual finding number 3, *ante*. The preliminary notice also notifies each employee of his or her right to request a hearing to determine if there is cause for not reemploying him or her for the ensuing school year, and that a written request for a hearing must be filed on or before March 18, 2011. A total of 63 certificated employees, including Respondents, filed timely their requests for a hearing in this matter.

5. On or about March 17, 2011, the District filed and served the Accusation and other required documents on 63 employees who had timely filed a request for hearing. Respondents, with the exception of Brian Zurla, thereafter timely filed notices of defense, seeking a determination of whether cause exists for not reemploying them for the 2011-2012 school year.

6. The parties stipulated that all prehearing jurisdictional requirements were met.

7. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.

8. The Board took action to reduce or discontinue the services set forth in factual finding number 3 because of the uncertainty surrounding future State funding and because the District has experienced declining enrollment. The decision to reduce these services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

9. The reduction of services set forth in factual finding number 3 is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

10. The District maintains a seniority list which contains employees' seniority dates (first date of paid service), credential information, and current assignments.

11. The Resolution includes criteria for breaking seniority ties for employees who share the same first date of paid service in a probationary position (seniority date). The order of termination is determined by reference to the tiebreaker criteria and points that are to be assigned for, among other things, bilingual credentials, English learner certifications, total number of credentials, earning a master's degree, obtaining national board certification, serving in specific positions, and total number of services provided. The more points awarded to a teacher, the higher his or her seniority within the group of teachers who share the same seniority date. In the event of a tie after reference to all listed criteria, a lottery would be held. Respondents raised only one issue regarding the application of the tie-breaking criteria: the Resolution provides for assigning one point for earning a master's degree, but makes no provision for awarding a point for earning a doctorate degree. Nevertheless, the District assigned one point to Respondent Kyle Blotzer (Blotzer), a physical education teacher, for earning her doctorate degree. This increased Blotzer's total points and allowed her to avoid a tie-breaking lottery with other employees who shared Blotzer's seniority date, August 18, 2003, and total points; however, neither Blotzer nor the next most senior person teaching physical education, Daniel Johns, are subject to layoff in this proceeding because they both are able to bump into the positions of more junior employees. The issue of Blotzer's total points, therefore, does not affect the order of layoff, and will not be decided herein.

12. The District used the seniority list to determine the least senior certificated employees currently assigned in the particular kinds of services that it was seeking to reduce in this layoff proceeding. The District then determined how many certificated employees assigned in the particular kinds of services are retiring or resigning; whether the least senior certificated employees in these particular kinds of services hold other credentials, can perform in other service areas, and are entitled to bump other more junior certificated employees; whether certain certificated employees should be skipped and retained; how many certificated employees are bumping into each service area; and how many certificated employees in each service area must be reassigned or laid off.

13. According to the District's seniority list, Respondent Kristen Tedei (Tedei) is currently teaching five periods of algebra at Arcadia High School and has a seniority date of August 24, 2009. The District has identified Tedei as a probationary 2 employee, and she is subject to layoff due to the reduction of 3.00 FTE's of mathematics instruction in grades 9-12. Tedei was a student intern when she served as a temporary teacher in the District in the 2008-2009 school year. She returned to teach at the District in the 2009-2010 school year, once again

under a temporary contract. She was hired as a probationary employee in the 2010-2011 school year. The District then reclassified her as a probationary employee for her service in the 2009-2010 school year, as required under section 44918, because she became a probationary employee in 2010-2011. Tedei maintains that, because she was an intern in the 2008-2009 school year, she should be classified as a probationary employee during this period under section 44885.5; however, section 44885.5 requires the District to classify as probationary, any person employed as a “district intern.” Tedei was a university intern in 2008-2009, e.g., an intern who is still matriculating and earning university credits for an internship. She was not a district intern. The District assigned the correct seniority date for Tedei.

13. Julia Kennedy (Kennedy) has been teaching adapted physical education (APE) to students with disabilities since 1979, originally with the Los Angeles County Office of Education, and later with the District. She possesses two clear single subject credentials, as an APE Specialist and physical education teacher. Kennedy has a seniority date with the District of August 18, 2003, and is slated for a 0.50 FTE layoff in this proceeding due to being bumped by a more senior certificated employee who is competent to teach APE. Kennedy maintains that the District should have “skipped” her under the Resolution’s skipping criteria, which states that the Board will seek to exempt from the order of layoff certificated personnel “who possess a credential authorizing service in special education, who are presently assigned within the scope of that credential, and who will be assigned within the scope of that credential for the 2011-2012 school year.” Although the students that Kennedy teaches have special needs, Kennedy does not possess a credential that specifically authorizes her to perform special education services. Assuming for purposes of argument that Kennedy’s credential authorizes her to perform special education services, a point that the District does not concede, Kennedy failed to demonstrate all criteria the District must establish to “skip” her under section 44955, subdivision (d)(1).

13b. Under section 44955, subdivision (d)(1), junior teachers may be given retention priority over senior teachers if the District can demonstrate a specific need for personnel to teach a specific course or course of study, and the junior teachers possess special skills or capabilities to teach that course of course of study, 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.) The District intends to retain Blotzer, a more senior teacher than Kennedy. Blotzer possesses a credential to teach APE. Blotzer’s current assignment is a position as a middle school physical education instructor that is being discontinued under the Resolution. The District asserts that Blotzer is qualified to teach the APE courses that Peter Taynton, a junior teacher currently teaching a 0.50 FTE assignment of APE, and 50 percent of Kennedy’s assignment. Kennedy thereby will retain 50 percent of her assignment. These facts demonstrate that the District cannot skip Kennedy, because one necessary criterion for skipping is missing, i.e., there is a senior person who is qualified to teach the APE classes that Kennedy teaches.

14. Nicholas Lemas currently teaches four periods of physical education and one period of athletics as the head baseball coach at Arcadia High School. He possesses clear single subject credentials in physical education and health sciences. He has a master's degree. His seniority date is August 21, 2006, and he is identified as #396 on the seniority list. Although the District intends to discontinue 2.20 FTE's of 9-12 physical education and health, Lemas, although the District determined that it will be releasing temporary employees serving in those positions and that it is not necessary to layoff Lemas to accomplish the reduction of 2.20 FTE's; however, the District has determined that employees senior to Lemas who are subject to layoff are credentialed and qualified to bump into Lemas's position. Liza Tedford (Tedford) has a seniority date of September 7, 1993. She is credentialed to teach physical education, with a special authorization in dance. She teaches four periods of dance at the high school, and is taking a 0.20 FTE leave of absence, which she has a right to return to. The Resolution proposes reducing performing arts/dance teaching services by 0.20 FTE's, leaving 0.60 FTE's of dance. This means Tedford will need to bump one or more junior employees corresponding to 0.40 FTE to retain a full position. The District determined that Tedford will be able to bump Blotzer for 0.20 FTE and Lemas for 0.20 FTE, leaving Lemas with a 0.80 FTE position. Daniel Johns (Johns) has a seniority date of August 18, 2003. He is credentialed to teach physical education and currently teaches seventh and eighth grade physical education classes. Johns is subject to a 1.00 FTE layoff based on the reduction called for by the Resolution of 2.60 FTE's in 6-8 physical education services. The District determined that Johns can bump into the remaining 0.80 FTE of Lemas's position. Lemas challenges this bumping analysis, maintaining that he teaches health courses in the fall (but not currently during spring of 2011), and that neither Tedford nor Johns is credentialed or competent to teach health. Lemas's argument fails on two counts. First, the District may rely on Lemas's current assignment, which does not include a health course, to determine whether other employees subject to layoff who have more seniority than Lemas are credentialed and competent to teach Lemas's position. Second, Lemas has not established facts demonstrating that the District will not be able to offer health courses unless Lemas is retained.

15. The District in its seniority list identifies Respondents Jane Ellis, Lindsay Hamilton, Jessica Hung, Emily Kalmbach, and Adriana Perez as performing services pursuant to temporary contracts, and the District has released these Respondents from their employment effective at the conclusion of the 2010-2011 school year. The District served "precautionary" preliminary notices "out of an abundance of caution." It further maintains these employees do not possess rights to participate in this layoff proceeding. In this proceeding, none of these Respondents has contested the District's classification of them as temporary certificated employees. The District's classification of these Respondents is presumed to be proper.

16. Certain Respondents received a preliminary notice due to the possible outcomes of the District's bumping and/or tiebreaking analyses. Based on the evidence presented, all of the District's tiebreaking and bumping analyses are upheld in this proceeding, and therefore, preliminary notices as to the following Respondents may be rescinded: Valdoria Axtell,

Heather Brown-Hom, Irene Cheng, Melanie Coulter, Mylinh Crew, Michael Despard, Karen Frontino, Kit Fung, Daniel Johns, David Jones, Leslie Klipstein, Cindi Lee, Raymond Mynster, Nandita Pal, Jennifer Prince, Heather Sark, Caven Shen, Sarah Steinberg, Liza Tedford, Jennifer Tran, John Tung, Donald Young, and Brian Zurla.

17. Except as provided herein, no junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 6.

2. The services listed in factual finding number 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 7.

3. Cause exists under sections 44949 and 44955 for the reduction of the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 17.

4. Cause exists to terminate the services of Respondents Cecile Allen, Hiroko Arndt (0.40 FTE layoff), William Barton, Kristen Eichhorst, Daniella Fey, Chih-Yun Jong, Julia Kennedy (0.50 FTE layoff), Susan Kim, Nicholas Lemas, Terry Liu, Christopher Marston, Kristen Mora, Esther Oh, Sherwin Olavi, Kristen Tedei, and Matthew Woodin (0.80 FTE layoff), by reason of factual finding numbers 1 through 17, and legal conclusion numbers 1 through 3.

5. Cause exists to dismiss the Accusation against Respondents who are not affected by this layoff proceeding but who received preliminary notices, as follows: Valdoria Axtell, Heather Brown-Hom, Irene Cheng, Melanie Coulter, Mylinh Crew, Michael Despard, Karen Frontino, Kit Fung, Daniel Johns, David Jones, Leslie Klipstein, Cindi Lee, Raymond Mynster, Nandita Pal, Jennifer Prince, Heather Sark, Caven Shen, Sarah Steinberg, Liza Tedford, Jennifer Tran, John Tung, Donald Young, and Brian Zurla, based on factual finding numbers 1-17

6. Temporary teachers may be released at the pleasure of the Board. (§ 44949, subd. (a).) The statutory layoff provisions do not apply to them. (*Zalac v. Governing Board of the Ferndale Unified School District* (2002) 98 Cal.App.4th 838.) Respondents Jane Ellis, Lindsay Hamilton, Jessica Hung, Emily Kalmbach, and Adriana Perez are temporary employees. The Accusation with respect to them may be dismissed, as set forth in factual finding number 15.

ORDER

1. The Accusation is sustained with respect to Respondents Cecile Allen, Hiroko Arndt (0.40 FTE layoff), William Barton, Kristen Eichhorst, Daniella Fey, Chih-Yun Jong, Julia Kennedy (0.50 FTE layoff), Susan Kim, Nicholas Lemas, Terry Liu, Christopher Marston, Kristen Mora, Esther Oh, Sherwin Olavi, Kristen Tedei, and Matthew Woodin (0.80 FTE layoff), and the District may notify them that their services will not be needed during the 2011-2012 school year due to the reduction of particular kinds of services.

2. The Accusation may be dismissed with respect to Respondents Valdoria Axtell, Heather Brown-Hom, Irene Cheng, Melanie Coulter, Mylinh Crew, Michael Despard, Karen Frontino, Kit Fung, Daniel Johns, David Jones, Leslie Klipstein, Cindi Lee, Raymond Mynster, Nandita Pal, Jennifer Prince, Heather Sark, Caven Shen, Sarah Steinberg, Liza Tedford, Jennifer Tran, John Tung, and Donald Young, based on factual finding numbers 1-17

3. Respondents Jane Ellis, Lindsay Hamilton, Jessica Hung, Emily Kalmbach, and Adriana Perez are temporary employees who are not subject to this layoff proceeding. The Accusations against them are dismissed for that reason.

Dated: May ___, 2011

MARK HARMAN
Administrative Law Judge
Office of Administrative Hearings

Arcadia Unified School District
OAH Number: 2011030353
(Appendix A)

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|--------------------------|---------------------|
| 1. Allen, Cecile | 40. Tedford, Liza |
| 2. Arndt, Hiroko | 41. Tran, Jennifer |
| 3. Axtell, Valdoria | 42. Tung, John |
| 4. Barton, William | 43. Woodin, Matthew |
| 5. Brown-Hom, Heather | 44. Young, Donald |
| 6. Cheng, Irene | |
| 7. Coulter, Melanie | |
| 8. Crew, Mylinh | |
| 9. Despard, Michael | |
| 10. Eichhorst, Kristen | |
| 11. Ellis, Jane | |
| 12. Fey, Daniella | |
| 13. Frontino, Karen | |
| 14. Fung, Kit | |
| 15. Hamilton, Lindsay | |
| 16. Harris, Loni | |
| 17. Hung, Jessica | |
| 18. Johns, Daniel | |
| 19. Jones, David | |
| 20. Jong, Chih-Yun | |
| 21. Kalmbach, Emily | |
| 22. Kennedy, Julia | |
| 23. Kim, Susan | |
| 24. Klipstein, Leslie | |
| 25. Lee, Cindi | |
| 26. Lemas, Nicholas | |
| 27. Liu, Terry | |
| 28. Marston, Christopher | |
| 29. Mora, Kristen | |
| 30. Mynster, Raymond | |
| 31. Oh, Esther | |
| 32. Olavi, Sherwin | |
| 33. Pal, Nandita | |
| 34. Perez, Adriana | |
| 35. Prince, Jennifer | |
| 36. Sark, Heather | |
| 37. Shen, Caven | |
| 38. Steinberg, Sarah | |
| 39. Tedei, Kristen | |

