

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

In the Matter of the Accusation
Against:

BERNARDINO RODRIGUEZ and
CARLOS TORRES,

Respondents.

OAH No. L-2004030076

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge, on April 26, 2004, in Lynwood. Complainant Lynwood Unified School District was represented by Warren S. Kinsler, Attorney at Law. Respondents Bernardino Rodriguez and Carlos Torres were present during the hearing and represented by Michael R. Feinberg, Attorney at Law.

During the hearing, complainant presented documentary evidence (Exhs. 1 - 11) and the testimony of Diane Lucas, Assistant Superintendent of Human Resources. Respondents presented documentary evidence (Exhs. A - P) and the testimony of respondents Carlos Torres and Bernardino Rodriguez and teacher Thomas Foltz. In rebuttal, complainant presented the testimony of Linda Hembrick, Director of Secondary School Improvement and Regional Occupational Programs, and Jose Urias, Principal of Lynwood High School.

At the conclusion of the hearing, the parties requested that they be allowed to file written argument. The request was granted and, on May 5, 2004, complainant and respondents timely filed written arguments which were marked as Exhibit 12 and Exhibit Q, respectively.

Oral and documentary evidence having been received, the Administrative Law Judge submits this matter for decision on May 5, 2004, and finds as follows:

FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on March 10, 2004, the Accusation was made and filed by Yvonne Contreras solely in her official capacity as Acting Superintendent of the Lynwood Unified School District (hereinafter District).

2. Respondents Bernardino Rodriguez and Carlos Torres, and each of them, are certificated employees of the District.

3. On or about February 24, 2004, pursuant to Education Code Sections 44949 and 44955, the Superintendent of the District gave written notice to the Governing Board of his recommendation that certificated employees Rodriguez and Torres be notified that their services will not be required for the 2004 - 2005 school year and set forth the reasons for his recommendation. Due to the low number of students registering for auto shop and electronic shop classes, the District staff had determined that it was necessary to reduce or discontinue particular services in those two fields by reducing the concomitant number of teachers.

4. (A) On February 24, 2004, pursuant to said recommendation of the Superintendent, the Governing Board of the Lynwood Unified School District adopted Resolution No. 03-04/57 and determined that it was necessary to reduce or discontinue the particular kinds of services of the District in auto shop classes and instruction by 1.0 full-time equivalent position and in electronic shop classes and instruction by 1.0 full-time equivalent position for the 2004-2005 school year. The Governing Board further determined that it was necessary by reason of the reduction or discontinuance of those particular kinds of services to decrease the number of certificated employees by the equivalent of 2.0 full-time equivalent employees for the 2004-2005 school year.

(B) On February 24, 2004, pursuant to Resolution No. 03-04/57, the Governing Board of the District resolved to reduce the particular kinds of services to be provided by the District in auto shop and electronic shop classes and instruction by 2.0 full-time equivalent positions and, due to the reduction or discontinuance of those particular kinds of services, to not reemploy the legal number of employees for the 2004-2005 school year. The Governing Board further resolved that the Superintendent or his designee give Notice of Recommendation Not to Reemploy in accordance with the provisions of Education Code Section 44949 and 44955 to the number of certificated employees allowed pursuant to Education Code Section 44955.

5. On or about March 9, 2004, pursuant to the resolution of the Governing Board and the provisions of Education Code Sections 44949 and 44955, the Assistant Superintendent of Human Resources for the District gave written notice to respondents Rodriguez and Torres, and each of them, that the Superintendent had recommended to the Governing Board that notice be given that their services will not be required for the ensuing 2004-2005 school year. The notice was entitled, "Notice of Recommendation that Your Services Will Not Be Required for the Ensuing School Year (2004-2005)". Said written layoff notice informed respondents that the reason for the recommendation was that the Governing Board had decided to reduce particular kinds of certificated services not later than the commencement of the ensuing school year and the services to be reduced and discontinued were auto shop and electronic shop classes and instruction by 1.0 full-time equivalent position each. The written notice further informed respondents that they were serving within a particular kind of service that was being reduced or discontinued and their seniority, ranking, and credentials

did not allow them to bump a more junior certificated employee. A copy of the resolution of the Governing Board was also served upon respondents.

6. The District's layoff notice dated March 9, 2004, was sufficient in providing notice to respondents under Education Code Sections 44949 and 44955. Respondents were each properly and timely served with the written notice of layoff under Education Code Sections 44949 and 44955. Respondents were not prejudiced by errors or omissions in the notice, if any, with respect to the description of the Governing Board's resolution, their current positions and assignments, or any other matters.

7. On or about March 9, 2004, with the notice of recommendation that their services will not be required for the ensuing school year, the District also properly and timely served respondents Rodriguez and Torres, and each of them, with the Accusation, copies of Education Code Sections 44949 and 44955 and pertinent sections of the Government Code, Request for Hearing/Notice of Defense, and a Notice of Hearing.

8. Later in March 2004, respondents Rodriguez and Torres made timely requests for a hearing to determine if there is cause for not employing them for the ensuing school year. Respondents, and each of them, acknowledged service of a copy of the Accusation. All pre-hearing jurisdictional requirements have been met by the parties to this matter.

9. On February 24, 2004, the Governing Board of the District resolved and took action to reduce or discontinue certain services or programs offered by the District for the 2004 - 2005 school year in the following full-time equivalent positions (hereinafter FTE):

<u>SERVICE OR PROGRAM</u>	<u>FULL-TIME EQUIVALENT POSITIONS</u>
Auto Shop Classes/Instruction	1.00
Electronic Classes/Instruction	1.00

The reduction or discontinuance of the services or programs set forth hereinabove constitute a total of 2.0 full-time equivalent positions.

10. (A) The services or programs set forth in Findings 3 – 5 and 9 above are particular kinds of services which may be reduced or discontinued within the meaning of Education Code Section 44955.

(B) In or about April 2003, which was during the spring semester of the 2002-2003 school year, the District distributed class registration forms to eighth and/or ninth grade students of the District. These students would be incoming freshmen and/or sophomores at Lynwood High School in the fall of the next school year. The District has or operates a single high school for its secondary school students. The class registration forms are used by the District to assess what and how many classes will be necessary to accommodate the

students' class requests and to prepare a master class schedule for the ensuing school year. For the fall semester of the 2003-2004 school year, the principal of the high school determined from the class registration forms that approximately 25 students registered for auto shop classes and approximately 10-12 students registered for electronic shop classes. The normal number of students in a regular class at the high school would be 30 students; the normal number of students in an auto or electronic shop class would be 20-25 students.

(C) Based on the registrations for auto shop and electronics shop classes, the principal reported to the District that student interest in these two subjects was low such that the prospective enrollment would not fill more than one or two classes or justify the retention of a full-time teacher in either subject. The District thereupon determined that services in auto and electronic shop classes and instruction must be reduced or discontinued by 1.0 FTE each for the ensuing school year.

(D) The determination of the Governing Board of the District to reduce or discontinue these services or programs is within the sound discretion of the District and is not arbitrary or capricious.

Dates of First Paid Service

11. (A) Respondent Bernardino Rodriguez is the sole auto shop class teacher at Lynwood High School and possesses a professional clear designated subject vocational education teaching credential in the subject of automobile mechanics. Rodriguez attained his vocational education teaching credential on or about November 10, 1998. According to the District's seniority list for certificated personnel, Rodriguez has a seniority date with the District of July 1, 1999.

(B) However, respondent Rodriguez has been actually working as an auto shop teacher for the District since July 29, 1996, when he was hired as a new employee to replace a teacher and soon after he attained his preliminary credential. His preliminary designated subjects vocational education teaching credential in automotive mechanics became valid on July 3, 1996. His initial salary with the District as auto shop teacher was \$26.75 per hour. It was not established, however, that Rodriguez was hired as a temporary or part-time employee. Nor was it established that the District and respondent Rodriguez entered into any employment contract, including a contract that demonstrates Rodriguez was hired as temporary, substitute, or non-probationary teacher.

12. (A) Respondent Carlos Torres is the sole electronics shop class teacher at Lynwood High School. He possesses a professional clear designated subject vocational education teaching credential in electronics assembly, electronic consumer products service, and electronic publishing. According to the District's seniority list for certificated employees, Torres has a seniority date with the District of October 1, 2000.

(B) However, respondent Torres has been working for and employed by the District for over 30 years. He first worked as a classified employee; his duties included working as an instructional assistant in electronics. In October 1995, Torres became employed as an electronics teacher for the District.

(C) On or about September 10, 1992, Torres received a preliminary designated subjects vocational education teaching credential in computer operations, accounting, computerized accounting, small business management, and income tax preparation. The preliminary credential was valid for five years. To renew his credential, Torres was required to receive a recommendation from an approved local education agency and complete a minimum of two years of full-time teaching, nine semester units or 135 clock hours in an approved program of personalized preparation, and a health education unit.

(D) On or about September 1, 1995, Torres received his preliminary designated subjects vocational education teaching credential in electronics assembly, electronic consumer products service, and electronic publishing. On October 10, 1995, the Governing Board of the District approved Torres' "new" "employment" as an electronics and ROP teacher at the high school and ROP program. His salary was \$25.47 per hour. At that time, the District did not classify Torres' employment status as probationary, permanent, or temporary. On or about October 1, 2000, Torres attained his present professional clear designated subjects vocational education teaching credential.

(E) It was not established that Torres was hired as a temporary or part-time employee. Nor was it shown that the District provided notice to or entered into a contract with Torres that demonstrated that he was hired as a temporary, substitute, or non-probationary teacher.

13. On March 27, 2001, the Governing Board of the District approved the partial funding of Rodriguez's auto shop position and Torres' electronics shop position from ROP/Vocational Education sources for the next three months. The Personnel Schedule Report shows that both Rodriguez and Torres were earning \$32.46 per hour. On said date, Rodriguez and Torres, while earning salaries at said hourly rate, were already considered permanent certificated employees.

14. On September 11, 2001, the Governing Board retroactively approved the District's change in Torres' employment status from an hourly-salaried electronics instructor to a monthly-salaried, contract electronics instructor, group IV, step 6. Inasmuch as the change of employment status was made effective to October 1, 2000, Torres was given credit for two years of employment experience beginning with the 2000-2001 school year. His new salary was \$4,772 per month. The District made the change of status for Torres pursuant to an agreement with the Lynwood Teachers' Association and because Torres attained his professional clear designated subjects vocational education credential on October 1, 2000.

15. (A) Based on Findings 11 and 14 above, respondent Rodriguez's date of first paid service, or seniority date, with the District as a permanent, certificated employee is deemed to be July 29, 1996.

(B) Based on Findings 12 – 14 above, respondent Torres' date of first paid service, or seniority date, with the District as a permanent, certificated employee shall be deemed to be October 10, 1995.

(C) Based on the provisions of Education Code Section 44916, because the District did not provide notice to respondents Rodriguez and Torres that they were hired as temporary or substitute teachers, and the evidence does not demonstrate that they taught or worked as temporary, substitute, or part-time employees, respondents must be considered to have been probationary employees when they both first joined the District as teachers. (See Kavanaugh v. West Sonoma County Union High School District, 29 Cal. 4th 911 (Jan. 2003).) As such, respondents' dates of first paid service to the District must be determined as of the date when they were hired as probationary certificated employees.

Auto Mechanics and Electronics/Computers

16. (A) In prior school years, respondent Rodriguez taught five or six classes each semester in auto shop and instruction at the high school. He has certifications in automobile mechanics and was the only auto shop teacher. Last summer, however, the principal at the high school advised Rodriguez that no auto shop classes were to be offered for the ensuing school year due to low registration. For this school year, Rodriguez was placed on special assignment and has been teaching at the high school as a substitute teacher. He has taught science and Spanish and is currently teaching graphic communications and special education.

(B) Students at the high school have asked Rodriguez why auto shop was not being offered as a class this year. He circulated a petition among students at the high school and obtained signatures of many students who indicated interest in receiving instruction in automotive technology. In addition, a fellow high school biology teacher asked students in his classes whether or not they were interested in taking auto shop classes and obtained affirmative answers from a majority of them. While instruction in auto shop and mechanics would certainly expand students' career choices, especially for those students who do not matriculate to college, the District demonstrated that student registrations for auto shop classes were low in number, evidencing a lack of interest among the student body. It was not established that the reduction or discontinuance of auto shop classes and instruction was necessarily contrary to the welfare of the District's schools and pupils.

17. (A) As set forth in Findings 3 – 5, 11, 13, and 15 – 16 above, respondent Rodriguez is the only automobile mechanics or auto shop teacher at the high school and, as such, the most junior of the District's auto shop teachers. Other than his designated subjects vocational education credential in automotive mechanics, Rodriguez does not hold any other

credential that would allow him to teach other subjects or to be reassigned to provide other services to the District.

(B) It was not established that there are any certificated employees with less seniority than respondent Rodriguez who are being retained by the District to render services which Rodriguez is certificated and competent to provide.

(C) Respondent Rodriguez may be terminated pursuant to the District's reduction or discontinuance of the 1.0 full-time equivalent position in auto shop classes and instruction.

18. (A) In years prior to the current school year, respondent Torres taught five electronic shop classes at elementary and advanced levels. In his electronic classes, Torres taught, in part, computer repair which entailed the reassembly of computers and the installation and trouble-shooting of software programming. Torres obtained computers that were considered surplus or scrap from fellow staff members at the high school. His electronics classes also involved the repair and/or servicing of consumer electronic products such as video cassette recorders, printers, small radios, and tape or compact disc players.

(B) For the current school year, respondent Torres has been acting as a "supernumerary" or substitute teacher. He has taught graphic communications and four classes in social science for the special education program. Recently, Torres was reassigned to teach primary subjects to seventh to eleventh grade students at the District's suspension center. In this matter, Torres contends that he has the credentials and experience to teach computers, including computer repair, for the District.

19. (A) Permanent certificated employee Natarajan Srinivasan teaches Introduction to Computers at Lynwood High School. Srinivasan holds a professional clear designated subjects vocational education teaching credentials in computer applications and zoology and a designated subject credential in supervision and coordination. Srinivasan has a seniority date or date of first paid service with District of July 1, 1996, and is junior to respondent Torres in terms of seniority with the District.

(B) In the introduction to computers class(es), Srinivasan teaches high school students the basics or fundamentals of using computers, including keyboarding, use of operating systems and software, and word processing. It was not established that respondent Torres possesses the requisite credential to teach introduction to computers; Torres' vocational education credential is in electronics assembly, electronic consumer products service, and electronic publishing.

20. (A) Permanent certificated employee Lorraine J. Abbass teaches computer science at Lynwood High School. Abbass holds a preliminary single subject credential in business and a professional clear designated subjects vocational education credential in business management and computer applications. Abbass has a seniority date with the District of August 27, 2001, and is therefore junior to respondent Torres in terms of tenure with the District.

(B) In her computer science classes, Abbass teaches business applications of the computer, including preparation of business plans, operation of a business, and the use of spreadsheets. Her computer science course has been approved as an elective for admission to the University of California system. It was not established that respondent Torres possesses the requisite credential to teach computer science or computer applications; his credential is electronics assembly, electronic consumer products service, and electronic publishing and not in computer applications.

21. (A) Permanent certificated employee Phillip Dominguez teaches computer repair at the District's high school. Dominguez has attained a professional clear single subject credential in business and a preliminary designated vocational education credential in business management and computer systems operation. He also holds an authorization in cross-cultural, language, and academic development. Dominguez has a seniority date with the District of June 1, 2003, and is therefore considered to be junior to respondent Torres in seniority.

(B) Moreover, Dominguez has undergone special training in teaching computer repair such that students who successfully complete his class or classes are entitled to receive certificates which make them eligible or marketable for employment in the field. While a portion of his electronics shop classes included computer repair, it was not established that respondent Torres has attained the requisite credential to teach computer repair, for he is credentialed in electronics assembly and consumer products service and publishing and not in computers.

22. (A) As set forth in Findings 3 – 5, 12 – 15, and 18 – 21 above, respondent Torres is the sole electronic shop teacher at the high school and, as such, the most junior of the District's electronic shop teachers. Other than his designated subjects vocational education credential in electronics assembly, electronic consumer products service, and electronic publishing, Torres does not hold any other credential that would allow him to teach other subjects or to be reassigned to provide other services to the District.

(B) It was not established that there are any certificated employees with less seniority than respondent Torres who are being retained by the District to render services which Torres is certificated and competent to provide.

(C) Respondent Torres may be terminated pursuant to the District's reduction or discontinuance of the 1.0 full-time equivalent position in electronic shop classes and instruction.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Jurisdiction exists for the subject proceedings pursuant to Education Code Section 44949 and 44955; and all notices, accusations, and other related papers and reports required by Sections 44949 and 44955 have been provided in timely manner. As such, complainant District has complied with the requirements of said sections.

2. Cause exists pursuant to Education Code Sections 44949 and 44955 to reduce by 2.0 full-time equivalent positions, including 1.0 full-time equivalent position in auto shop classes and instruction and 1.0 full-time equivalent position in electronic shop classes and instruction, the concomitant number of certificated employees of the District due to the reduction or discontinuance of particular kinds of services, as set forth in Findings 3 – 10 above. Said cause relates solely to the welfare of the schools of the District and the pupils thereof within the meaning of Education Code Section 44949.

3. Cause also exists, due to the reduction or discontinuance of particular kinds of services pursuant to Education Code Section 44955, to give notice to respondents Torres and Rodriguez that their services will not be required for the ensuing school year, based on Findings 3 – 10, 15, 17, and 22 above. There are no certificated probationary or permanent certificated employees with less seniority than respondents who are being retained by the District for the 2004 - 2005 school years to render services which respondents are certificated and competent to provide.

4. Grounds also exist to modify respondents' dates of first paid service to the District pursuant to Education Code Sections 44916 and Sections 44949 and 44955 in that respondents must be deemed to have been hired as probationary, certificated employees when they each joined the District as teachers, based on Finding 15 above.

* * * * *

WHEREFORE, the Administrative Law Judge makes the following Order:

ORDER

1. The Accusation, Case No. L-2004030076, against respondents Bernardino Rodriguez and Carlos Torres, and each of them, is sustained and notice may be given to both of them that their services will not be required for the ensuing 2004 - 2005 school year

because of the reduction or discontinuance of particular kinds of services, based on Conclusions of Law nos. 1 – 3 above.

2. Before giving notices to respondents, the District shall determine and take into account positively assured attrition among certificated employees, if applicable, in deciding how many and when certificated employees should be terminated before the ensuing 2004 - 2005 school year.

3. If applicable, the District shall give notice to respondents in the inverse order of seniority with the District pursuant to the provisions of Education Code Section 44955.

4. The seniority dates, or dates of first paid service with District, of respondents Rodriguez and Torres shall be changed on the official seniority list and books and records of the District to July 29, 1996, and October 10, 1995, respectively, based on Conclusion of Law no. 4 above.

Dated:

Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings