

BEFORE THE GOVERNING BOARD OF THE  
SANTA ANA UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Layoff/Accusation  
Against:

OAH NO. L2006030442

86 CERTIFICATED EMPLOYEES,

Respondents.

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge (ALJ), at Santa Ana, California on April 3, 2006.

Keith V. Breon, Esq. of the Law Offices of Breon & Schaeffer, A Professional Law Corporation, represented the Santa Ana Unified School District (the district).

Marianne Reinhold, Esq. of Reich, Adell, Crost & Cvitan represented 85 of the 86 certificated employees affected by the proposed layoffs (respondents) who appeared at the hearing.

The remaining respondent of the 86 certificated employees affected by the proposed layoffs, Mr. Leo Trevino (respondent), represented himself.

Oral and documentary evidence was received and the record was left open until closing arguments/briefs (post-hearing briefs) could be submitted by the parties. The parties had until 5:00 p.m. on May 25, 2006 to file their post-hearing briefs. The post-hearing briefs were received, read and considered and this matter was deemed submitted on May 25, 2006.

FACTUAL FINDINGS

The ALJ makes the following Factual Findings:

1. On February 28, 2006, the Board of Education of the District (the Board) adopted a resolution recommending a reduction in particular kinds of services provided by the district for the 2006-2007 school year due to a decline in the average daily attendance in the district. (Exhibit B.) The resolution called for a reduction in services equaling 113 Full-Time Equivalent (FTE) positions. The resolution called for the following reductions in Particular Kinds of Services (PKS): "113 FTE K-5

elementary classes” due to the fact that the district would be reducing or discontinuing the current levels of K-5 classes based on “loss of student enrollment.” (Exhibit B.)

The parties do not dispute the fact that the services listed above are PKS, which may be reduced or discontinued within the meaning of Education Code section 44955.

2. The district's and the Board's decisions to reduce or discontinue the services listed in Finding 1, above, is neither arbitrary nor capricious; rather, it is due to the decline in average daily attendance and is therefore a proper exercise of the district's and the Board's discretion(s).

3. The reduction and discontinuation of services 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 Board.

4. All respondents affected by the layoffs received written notice, on or before March 15, 2006, notifying them that the Superintendent of the district had recommended they not be re-employed in the 2006-2007 school year.

5. Each respondent submitted a timely request for a hearing to determine if cause exists for not re-employing them for the ensuing year.

6. On March 10, 2006, the district's Assistant Superintendent, on behalf of the District, timely notified respondents, pursuant to California Education Code sections 44949 and 44955, of the district's intent not to reemploy them for the upcoming school year. That same date, March 10, 2006, respondents were also served with a copy of the Board's resolution number 05/06-2643, a blank “Request for Hearing,” and other related materials.

7. Subsequently, on March 17, 2006, the Accusation and related materials were served on each respondent.

8. Each respondent timely submitted a Notice of Defense.

9. Each respondent was properly noticed of the date, time and place of the instant hearing. Any respondent who failed to appear at the instant hearing was properly noticed of the hearing.

10. All prehearing jurisdictional requirements have been met.

11. As of the date of hearing the number of certificated employees affected by the layoffs was reduced to 87, due to attrition (retirements, etc.).

12. The district and respondents agreed that during the post-hearing briefing time the district would check its records and reaffirm its determinations of seniority. As a result of the records check one of the respondents, Walter Valencia, is no longer being considered for layoff and respondent Gary Brooks was removed from the layoff list, thus reducing the number of layoffs to 86 FTE.

13. On April 25, 2006, the district drafted a revised layoff list. The parties stipulated that the revised list would be identified as Joint Exhibit 3. The parties also stipulated that "Respondents' Request for Seniority, etc., Checking" be marked as Joint Exhibit 1, the "District's Response to Seniority, etc., Questions" be marked as Joint Exhibit 2, and the Collective Bargaining Agreement be marked as Joint Exhibit 4. The Joint Exhibits were so marked and are received in evidence.

14. The respondents listed on Joint Exhibit 3 with Layoff numbers (LO#) 1 through 86 are the individuals currently slated for potential layoff.

15. The respondents identified in Joint Exhibit 3 were selected for notice of layoff pursuant to a seniority list based on the first day of paid service of each respondent. The respondents were ranked for layoff in the inverse order of their date of employment. As to respondents who have the same date of hire/employment, the District used appropriate, written, tie-breaking criteria to rank those employees.

16. Certain respondents identified in Exhibit 3 question the dates used by the Board and the district as their "Seniority Date". Some respondents believe they should have received credit for the time they worked as Pre-Interns, under emergency credentials, and/or as Interns.

Respondents who worked as Pre-Interns and /or with Emergency Credentials:

- |                          |                                |
|--------------------------|--------------------------------|
| 1. Aceves- Bravo, Yadira | 36. Manriquez, Denise          |
| 2. Acuna, Maria          | 37. Marinez, Ana               |
| 3. Ayoub, Nagraim        | 38. Medrano, Sahara Belen      |
| 4. Barajas, Sonia        | 39. Mohammadi, Dawn            |
| 5. Barraza, Diane        | 40. Myers, Kyle                |
| 6. Blanco, Sandra        | 41. McCready, Maria            |
| 7. Bruhl, Jimmy          | 42. Noriega, Belinda           |
| 8. Burger, Libna         | 43. Newland, Tai               |
| 9. Chavez, Robert        | 44. Olmos, Guadalupe           |
| 10. Contreras, Laura     | 45. Pabon, Namir               |
| 11. Diaz, Pablo          | 46. Pedraza-Mendoza, Jose Luis |
| 12. Do, Denise           | 47. Pedroza, Maria             |
| 13. Emenger, Melanie     | 48. Pena, Lorena               |
| 14. Flores, Iliana       | 49. Perez-Bouquet, Leticia     |

- |                            |                             |
|----------------------------|-----------------------------|
| 15. Florez-Munoz, Susanne  | 50. Prado, Nereida          |
| 16. Gabriele, Dawn         | 51. Ramirez, Miriam         |
| 17. Galviz, Sandra         | 52. Raymont, William        |
| 18. Garcia, Jesus          | 53. Ridell, Bruce           |
| 19. Garner-Marcelo, Sonta  | 54. Romeo, Sharon           |
| 20. Gentilini, Ana         | 55. Sanchez, Adriana        |
| 21. Gomez-Hill, Erin       | 56. Sanchez, Lisette        |
| 22. Gonzalez-Perez, Miriam | 57. Schneider, Cruz         |
| 23. Greenwood, Joy         | 58. Silva, Jesus            |
| 24. Heard, Anthony         | 59. Silva-Hill, Blanca      |
| 25. Higgins, Devon         | 60. Solis, Bertha           |
| 26. Jespereson, Martin     | 61. Turner, Kyanne          |
| 27. Jimenez-Pazos, Rafael  | 62. Valdiva-Rubio, Lorena   |
| 28. Lee, Theresa           | 63. Vega-Contino, Betsy     |
| 29. Ludlum, Amy            | 64. Vergil, Ariadna         |
| 30. Lopez, Oscar           | 65. Whitaker, Rosa          |
| 31. Macias-Sanchez         | 66. Woods-Delesio, Jennifer |
| 32. Madrigal-Chavez        | 67. Yepes, Angela           |
| 33. Maldonado, Elizabeth   | 68. Yepes, Jose             |
| 34. Maldonado, Gloria      | 69. Zor, Greg               |
| 35. Maldonado, Ricardo     |                             |

Respondents who worked as Interns:

1. Brooks, Rosalie (Intern date: 12/8/03; Credential: 10/4/04; Seniority date: 10/4/04)
2. Cortez, Andrea (Intern date: 7/13/01; Credential: 6/17/04; Seniority date: 7/26/04)
3. Gomez, Maria Guadalupe (Intern date: 8/8/02; Credential: 9/16/03; Seniority date: 9/16/02)
4. Pena, Lorena (Intern date: 2/7/02; Credential: 1/28/04; Seniority date: 1/28/03).

17. The respondents listed in Finding 16 did not receive any credit for the time they worked under their emergency credentials, or as Pre-Interns. Of the Interns, only Gomez and Pena received credit for one year prior service as interns. The decision whether to grant credit for the categories listed in Finding 16 was pursuant to district policy. As testified to by the former Executive Director of Human Resources, individuals working under a Pre-Intern credential or emergency credential were not credited for that work in calculating seniority. Instead, they were given a seniority date based on the first date of paid service after having obtained their preliminary or clear credentials. Interns working under a district Intern credential or a University Intern credential, however, were supposed to be given credit for up to one year service under the intern credentials, provided the service was rendered during the academic

year immediately preceding the date upon which they received their preliminary or clear credential. This did not happen in the case of Brooks, Rosalie or Cortez, Andrea.

18. Two respondents, Edwards, Teri and Rossano, Cecelia, hold Learning Handicapped (LH) credentials. They received layoff notices notwithstanding the fact that there are teachers holding LH credentials, assigned to LH programs, with less seniority.

19. The seniority dates for certain of the respondents, who worked as long-term substitutes, were properly determined by the district: Dozal, Carrie; Leibman, Seth; Ortiz, Julie; Pitman, Marin; Post, Robin; Tourgeman, Tammy; and Yee, Lindsay.

20. In respondents' closing brief, the following respondents contend that they are entitled to earlier seniority dates because they returned to service within 39 months of resigning: Bola, Marianne; Brooks, Gary; Brown, Sandra; and Jacobs, Linda. However, these contentions were not presented during the evidentiary hearing. Consequently, the district was deprived of the ability to question these respondents and present other relevant evidence concerning this issue. Thus, the evidence presented was insufficient to establish the validity of these respondents' claims.

21. In respondents' closing brief, certain respondents contend that respondents with consents for Math or Science should not have been skipped. Again, evidence concerning these contentions was not presented during the evidentiary hearing and support for these contentions is lacking<sup>1</sup>.

22. One respondent, Benavides, Bertha, testified that she has a Supplemental Authorization in Spanish and that she can teach Spanish classes in grades K-8. Accordingly, she contends that she should be assigned to a Spanish class and not be subjected to layoff. The evidence established, however, that the only Spanish classes currently available in the district are at the high school level. Since high school Spanish teachers are required to teach students in grade levels 10, 11, and 12, respondent Benavides' Supplemental Authorization does not authorize her to teach Spanish in the available Spanish assignments.

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<sup>1</sup> It bears noting that the failure of respondents to present certain theories and evidence during the evidentiary hearing is through no fault of counsel for respondents. It was clearly established during the hearing that counsel for respondents had requested that respondents contact counsel in advance of the hearing so that evidence in support of all theories could be presented. The response to counsel's notice and request was minimal. Accordingly, counsel for respondents was forced to consult with certain of the respondents during the course of the hearing and counsel put forth their best professional efforts to address all issues brought to counsel's attention during the hearing.

23. Certain respondents contend that they should have been exempted from layoff because they would have obtained "consent" authorizations to teach Mathematics and/or Science if they knew about them and the "consent" authorizations would have altered their current layoff situation by allowing them to be skipped. Ridill, Bruce; Diaz, Pablo; Collins, Stephanie; McCready, Maria; and Ayoub, Lormar testified that although they qualified for consents to teach Math or Science they did not currently have such consents because they were not aware that they could have applied for them. The evidence established that teachers in the district with enough units to qualify for consents to teach Math or Science must first be selected for the Math or Science teaching assignment. The consents then require approval of the Board and are active for a limited term; one-year. Accordingly, since these respondents do not have current "consents," they were properly noticed of potential layoff.

### LEGAL CONCLUSIONS

1. Jurisdiction for the instant proceedings exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections have been provided, as required.
2. The services listed in Factual Finding 1 are PKS within the meaning of Education Code section 44955.
3. Based on the Factual Findings, considered in their entirety, cause exists to reduce the number of certificated employees of the District by 86 FTE positions, due to a decline in enrollment, as described in Factual Finding 2.
4. Cause to reduce or discontinue services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.
5. The district properly determined that respondents who initially worked for the district as Pre-Interns or under Emergency Credentials should not be credited for the time they worked as Pre-Interns or under their Emergency Credentials. Emergency permit or Pre-intern Credential holders are unable to count their teaching time, while so permitted or credentialed, toward seniority. (See *Summerfield v. Windsor Unified School District* (2002) 95 Cal.App. 4<sup>th</sup> 1026.) That being the case, it seems equally reasonable to hold that such employees, being but employees on a potentially temporary basis; year-to-year, cannot amass seniority as either probationary or permanent certificated employees of the district, absent specific statutory authority enabling them to "tack" such service. No such authority exists.

As stated in *Santa Barbara Federation of Teachers v. Santa Barbara High School District* (1977) 76 Cal.App.3d 223, 228: "The statutory classification system . . . is both complex and obscure; several sections of the code appear to conflict with one another. At the core of the classification scheme is a division of teachers into four basic categories: permanent, probationary, substitute and temporary." But the code is not consistent in its use of, or reference to, substitute and temporary employees. For example, Education Code section 44915 provides that "school districts shall classify as probationary employees, those persons . . . who have not been classified as permanent employees or substitute employees." No mention is made of those who have been classified as temporary employees. In another example, Education Code section 44917 seems to blur the categories of substitute and temporary employees.

Making sense of the conflicting Education Code sections is a difficult process and cases interpreting the Code sections provide no clear and consistent guidance. However, considering the limited-term nature of the employment of emergency-permitted teachers, as envisioned by Education Code section 44300, it cannot have been the intent of the Legislature to require that school districts afford probationary status, and the legal rights that status confers, upon teachers working for potentially limited-terms. Similarly, it cannot have been the intent of the Legislature to require that school districts afford probationary status, and the legal rights that status confers, upon Pre-interns, individuals who have not yet exhibited the minimum qualifications to hold preliminary or clear teaching credentials. Consequently, the district acted properly in not awarding seniority to the respondents listed in Factual Finding 16 who worked as Pre-Interns or with Emergency Credentials.

6. The two respondents listed in Factual Finding 18; Edwards, Teri and Rossano, Ceclia, shall have their notices rescinded.

7. Two respondents, who worked as Interns, shall have their seniority dates changed to conform to the district's policy of being credited for up to one year service under their Intern credentials since their Intern services were rendered during the academic year immediately preceding the date upon which they received their preliminary or clear credentials. (Finding 17.) Brooks, Rosalie's seniority date shall be changed from 10/4/04 to 12/8/03 and Cortez, Andrea's seniority date shall be changed from 7/26/04 to 6/17/03. The current layoff list anticipates the potential layoff of teachers with seniority dates between January 20, 2003 and November 29, 2004. Consequently, the change in Brooks' and Cortez' seniority dates do not exempt them from potential layoff as members of the list of 84.

8. Based on the modifications set forth in Legal Conclusions 6 and 7, above, cause exists to notify the remaining respondents listed Joint Exhibit 3 with LO# 1 through 86 that their services will not be needed during the 2006-2007 school year due to reduction or discontinuance of PKS.

## ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. The Accusation is sustained, in part. The District may notify the following respondents that their services will not be needed during the 2006-2007 school year due to decline in enrollment and the resulting need to reduce or discontinue PKS:

- |                                |                                |
|--------------------------------|--------------------------------|
| 1. Kim, Irene                  | 2. Ramos, Rafael               |
| 3. Taylor, Daniel C.           | 4. Vazquez, Benjamin R.        |
| 5. Stahle, Catherine           | 6. Park, Anna                  |
| 7. Kerely, Kristi L.           | 8. Chavez, Patricia            |
| 9. Jacome, Geraldine           | 10. Rubio, Maria               |
| 11. Shier, Susanne R.          | 12. Vettirli, Holly Anne       |
| 13. Hernandez, Karen Teresa    | 14. Post, Robin C.             |
| 15. Benavides, Bertha          | 16. Thomure-Albrecht           |
| 17. Ishimaru, Ken S.           | 18. Dozal Carnie, Carrie Lynn  |
| 19. Brooks, Rosalie Francis    | 20. Tourgeman, Tammy           |
| 21. Heard, Anthony R.          | 22. Simon, Matthew Josep       |
| 23. Olmos, Guadalupe           | 24. Yee, Lindsay Christie      |
| 25. Ladd, Catherine K.         | 26. Prado, Nereida K.          |
| 27. Flores-Munoz Susanne M.    | 28. Maldonado, Gloria          |
| 29. Moureaux, Sarah            | 30. Cortez, Andrea             |
| 31. Ortiz, Julie L.            | 32. Acuna, Maria               |
| 33. Ludlum, Amy E.             | 34. Maldonado, Gloria          |
| 35. Sanchez, Lisette           | 36. Bola, Marianne             |
| 37. Mohammadi, Dawn S.         | 38. Zor, Greg C.               |
| 39. Gomez, Antonia             | 40. Kausrud, Kayleen M.        |
| 41. Pitman McElfresh, Marin R. | 42. Ayoub, Nahrain             |
| 43. Galvis, Sandra             | 44. Yepes, Jose Fernando       |
| 45. Silva-Hill, Blanca Isabel  | 46. Valdivia Rubio, Lorena     |
| 47. Pabon, Namir               | 48. Mendiola, Michael A        |
| 49. Solis, Bertha              | 50. Barajas, Sonia             |
| 51. Liebman, Seth L.           | 52. Cushing, Patricia A.       |
| 53. Morales-Mandler, Elvia     | 54. Pedraza Mendoza, Jose L.   |
| 55. Espinoza, Aida V.          | 56. Collins, Stephanie L.      |
| 57. Cervantes, Jennifer        | 58. Romero, Candice S.         |
| 59. Marine, Lynn               | 60. Gomez Hill, Erin K.        |
| 61. Yepes, Angela              | 62. Madrigal-Chavez, Alexandra |
| 63. Sanchez, Adriana           | 64. Trevino, Leo A.            |
| 65. Esparza, Iida              | 66. Greenwood, Joy A.          |
| 67. Bruhl, Jimmy F.            | 68. Silva, Jesus               |
| 69. Garner-Marcelo, Sonta R.   | 70. Diaz, Pablo E.             |

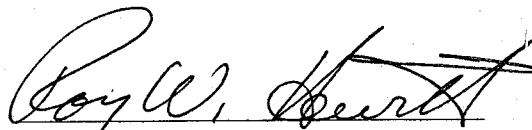


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|-------------------------------|--------------------------|
| 71. Garcia-Serrato, Martha D. | 72. Martinez, Ana Lilia  |
| 73. Burger, Libna K.          | 74. Lee, Teresa D.       |
| 75. Myers, Kyle L.            | 76. Aceves Bravo, Yadira |
| 77. Garcia, Jesus Jose        | 78. Gentilini, Ana Maria |
| 79. Montero, Carlos A.        | 80. Higgins, Devon C.    |
| 81. Bianco, Sandra T.         | 82. Newland, Taia        |
| 83. Lopez, Delia              | 84. Flores, Lliana       |
| 85. McCready, Maria A.        | 86. Jespersen, Martin R. |

3. The Accusation is dismissed as to those respondents not listed above, and the District may not notify those respondents that their services will not be needed during the 2006-2007 school year.

4. Respondents Brooks, Rosalie's seniority date shall be changed from 10/4/04 to 12/8/03 and respondent Cortez, Andrea's seniority date shall be changed from 7/26/04 to 6/17/03.

Dated: May 3, 2006.



ROY W. HEWITT

Administrative Law Judge  
Office of Administrative Hearings