

AZUSA UNIFIED SCHOOL DISTRICT

Resolution to Decrease the Number of Certificated Employees Due to a Reduction or Elimination of Particular Kinds of Services

Resolution No. 22-23:29

WHEREAS, the Governing Board of the Azusa Unified School District (“District”) adopted Resolution 22-23:20 on February 7, 2023, authorizing and directing the Superintendent, or designee, to initiate and pursue procedures necessary to reduce or discontinue the equivalent of 35.0 full-time certificated employees of the District pursuant to Education Code sections 44949 and 44955 because of a reduction or discontinuance of particular kinds of services;

WHEREAS, a layoff hearing was convened on April 10, 2023, by the Office of Administrative Hearings, State of California, for those certificated employees who requested a hearing;

WHEREAS, a Proposed Decision was issued by Administrative Law Judge Thomas Heller of the Office of Administrative Hearings, a true and correct copy of which is attached hereto as “Attachment 1,” and is by this reference made a part hereof;

WHEREAS, the Board has duly considered said Proposed Decision;

WHEREAS, the employee(s) listed on “Attachment 2” did not request a hearing and, therefore, sufficient cause exists for not reemploying the certificated employee(s) listed on “Attachment 2”;

WHEREAS, the Board finds that those matters found in said Proposed Decision do constitute sufficient cause for not reemploying the certificated employee(s) listed on “Attachment 3”; and

WHEREAS, the Board finds that the Proposed Decision, including Factual Findings, Legal Conclusions, and Order, should be adopted as the decision of this Board;

NOW, THEREFORE, BE IT RESOLVED by the Governing Board of the Azusa Unified School District as follows:

- A. That the aforesaid Proposed Decision be, and hereby is, adopted as the Decision of the Governing Board of the Azusa Unified School District, and said Decision shall be effective immediately;
- B. That the Superintendent of the Azusa Unified School District, or designee, is authorized and directed to notify those certificated employees noted in the Proposed Decision and on Attachments 2 and 3, pursuant to Education Code sections 44949 and 44955, that their services will not be required by this District for the ensuing

2023-2024 school year. Said Notice shall be given by serving upon the certificated employees a true copy of this Resolution.

- C. That the Superintendent, or designee, is authorized and directed to take any other action necessary to effectuate the intent of this resolution and finalize layoffs.

PASSED AND ADOPTED at a special meeting of the Governing Board of the Azusa Unified School District on May 9, 2023, by the following vote:

AYES: _____
NOES: _____
ABSENT: _____
ABSTAIN: _____

President, Board of Education
Sabrina Bow, Ed.D.

I hereby certify that the foregoing is a true and correct copy of a Resolution of the Governing Board of the Azusa Unified School District of Azusa, California, adopted by said Governing Board at its meeting on May 9, 2023.

Clerk, Board of Education
Gabriella Arellanes

Attachment 1 to Resolution No. 22-23:29

**BEFORE THE
GOVERNING BOARD OF THE
AZUSA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Reduction in Force of:

**CERTIFICATED TEACHERS OF THE AZUSA UNIFIED SCHOOL
DISTRICT,**

Respondents.

OAH No. 2023030605

PROPOSED DECISION

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on April 10, 2023, in Azusa, California.

Melanie A. Petersen, Esq., and Margret Flodeen, Esq., Fagen Friedman & Fulfrost, LLP, represented the Azusa Unified School District (District).

Carlos R. Perez, Esq., and Alejandra Gonzalez-Bedoy, Esq., represented respondents Patrick Barnes, Virginia Bonilla, Anita Diaz, Christopher Fragoso, Andrew Kleger, Desarie Moreno, Elia Pacheco Amaro, and Lorissa Payne.

The parties presented witness testimony and documentary evidence. After the hearing, the administrative law judge held the record open for briefing at the parties' request. The District and respondents filed their briefs on April 10 and April 14, 2023,

respectively, after which the record closed and the matter was deemed submitted for decision.

SUMMARY

The District's Board of Education (Board) resolved to reduce or discontinue particular kinds of teaching services, making it necessary to terminate or reduce the employment of a corresponding number of certificated employees by the end of the 2022-2023 school year. Respondents are eight teachers who challenge their possible layoffs. The District proved that six of the teachers (Patrick Barnes, Anita Diaz, Andrew Kleger, Desarie Moreno, Elia Pacheco Amaro, and Lorissa Payne) may be notified their services will not be required for the upcoming school year. The District did not prove it may lay off the other two teachers (Virginia Bonilla and Christopher Fragoso). Therefore, the District shall reemploy them for the upcoming school year.

FACTUAL FINDINGS

Background and Procedural History

1. The District serves about 7,200 students at nine elementary schools, three middle schools, two comprehensive high schools, a continuation school, and an adult school. It employs just over 1,300 staff, including about 400 certificated employees. Respondents are eight certificated employees who each hold full-time equivalent (FTE) teaching positions in the District: four in elementary (K-6) education, two in secondary mathematics, and two in secondary English language arts. According to District records, each of them is a probationary employee.

2. On February 7, 2023, the Board adopted Resolution No. 22-23:20 to reduce or discontinue particular kinds of services corresponding to 35 FTE teacher positions. The services to be reduced or discontinued included services in elementary education (23 FTE), secondary English language arts (3 FTE), secondary math (3 FTE), secondary world language (2 FTE), secondary art (1 FTE), and secondary music (3 FTE). The Board determined this action was in the best interest of the District and the welfare of its schools and pupils.

3. The Board also determined the action would require the termination or reduction in services of a corresponding number of certificated employees at the end of the 2022-2023 school year. The Board directed the Superintendent or a designee to send appropriate notices to all employees whose services would possibly be terminated or reduced. The Board further resolved that: (1) the District would "skip" and retain teachers using their Bilingual, Cross cultural, Language and Academic Development (BCLAD) certificate in the District's Dual Language Immersion program; and (2) a senior employee in a position to be reduced or discontinued must be both credentialed and competent to perform the service being performed by a junior employee in order to "bump" the junior employee.

4. The District identified 22 teachers for possible layoff under the resolution, and the District delivered preliminary layoff notices to 21 of them on or before March 15, 2023. Joyce Jordan, a secondary art teacher identified for possible layoff, did not receive a notice due to a state grant that allowed the District to retain Jordan as an elementary school art teacher. Fewer than 35 teachers had to be notified due to expected retirements and other separations from service.

5. The notices informed the teachers that the Assistant Superintendent of Human Resources had recommended to the Board that the District not re-employ

them for the 2023-2024 school year. Thirteen teachers requested a hearing, and the District resolved five of those requests before the hearing. Respondents are the other eight teachers who requested a hearing on the proposed layoffs.

6. On or about March 17, 2023, the District served its Statement to Respondent, Statement of Reduction in Force, and a blank Notice of Participation in Reduction in Force Hearing form, accompanied by relevant sections of the Education Code and Government Code on each respondent. Respondents submitted Notices of Participation to request a hearing.

Hearing

DISTRICT'S CASE

7. Jorge Alonso Ronquillo is the District's Assistant Superintendent for Human Resources. He has held that position since 2018. Ronquillo testified the proposed layoffs were a difficult but necessary decision arising from District facilities operating at or below 50 percent utilization due to lower student enrollment. It is difficult for the District to offer robust and rigorous programs for students when school sites lack enough students to participate in the programs.

8. To improve student programs and facility utilization, the District has decided to close two elementary schools, consolidate all three middle schools into one middle school, and close one comprehensive high school. As a result, the District recommended to the Board to reduce the District's certificated staff for next year, which led to the Board's resolution. Since the Board adopted the resolution, the number of teacher positions that need to be reduced or discontinued has decreased to seven FTE positions in K-6 education, three FTE positions each in secondary math and secondary English language arts, and one FTE position each in secondary world

language, secondary art, and secondary music. The decrease has allowed the District to rescind of some of the preliminary layoff notices.

9. Ronquillo testified that based on the District's seniority list, the eight remaining respondents are subject to layoff due to the elimination of their corresponding teaching positions. For the four respondents who are K-6 teachers (Bonilla, Diaz, Moreno, and Pacheco Amaro), the seniority list does not show any less senior K-6 teachers outside the Dual Language Immersion program whom the District plans to retain as K-6 teachers. Pacheco Amaro currently teaches in the Dual Language Immersion program under an emergency credential, but she did not receive her BCLAD certificate for next year by March 15, 2023, making her subject to the Board's layoff resolution as a K-6 teacher. Ronquillo testified the District will likely rehire Pacheco Amaro in the Dual Language Immersion program next year if she obtains the certificate.

10. Diaz and Moreno both have seniority dates of August 16, 2021, although their hire dates are earlier because they were temporary teachers before becoming probationary teachers. Bonilla's seniority date is listed as November 3, 2021, a date later than Diaz, Moreno, and three other K-6 teachers who received preliminary layoff notices that the District later rescinded (Jessica Eagleson, Gretchen Lee, and Chenoa Jaramillo). Lee and Jaramillo will remain as K-6 teachers, while Eagleson has an additional credential allowing the District to place her in a different position. Bonilla's hire date is October 20, 2014, which the District contends is not her seniority date because Bonilla only held a Child Development Site Supervision Permit until October 2021. According to the District, Bonilla could not receive credit toward permanent status under that provisional permit.

11. For the two respondents who are secondary English language arts teachers (Kleger and Payne), the only less senior English teacher (Christopher Lam) received a preliminary layoff notice and did not request a hearing. For the two respondents who are secondary math teachers (Fragoso and Barnes), the only two less senior math teachers (David Ghermezi and Frida Gomez-Hernandez) also received preliminary layoff notices and did not request a hearing. The Board's resolution calls for the reduction or elimination of three FTE positions in math, not four, but the District notified four teachers for possible layoff as a precaution. Fragoso and Barnes have the same seniority date (August 11, 2022), which requires the District to apply "tiebreaking" criteria that the Board adopted in January 2023. Applying those criteria, Fragoso prevails over Barnes because Fragoso holds a clear credential and is at a higher step on the salary schedule than Barnes, who holds a preliminary credential. Therefore, Fragoso will be retained over Barnes if the Board's resolution is upheld.

RESPONDENTS' CASE

12. Bonilla disagrees with the District's contention that her seniority date is November 3, 2021. She believes her correct seniority date is October 20, 2014, when the District first hired her. Bonilla presented a signed Notice of Employment from the Board stating she was hired as a probationary teacher on that date. She testified she was told at the time she would become a permanent employee after two years, and all documents she received from the District after two years listed her as a permanent employee. Bonilla worked as a preschool teacher continuously from when she was hired until November 2, 2021, when she became an intern in a combination fourth and fifth grade class. A District representative told her she lost her permanent status by becoming an intern, which Bonilla disputes.

13. Pacheco Amaro does not dispute her seniority date but objects to the District not telling her she needed her BCLAD certificate sooner. She testified the District told her she needed it by June 2023; no one ever told her she could be laid off unless she had it by March 15, 2023. After receiving the preliminary layoff notice, she took and passed the test for the certificate the next day. She now must meet with the District's credential analyst to apply for the certificate from the Commission on Teacher Credentialing. Had Pacheco Amaro known she could be laid off without the certificate, she would have obtained it sooner.

14. Diaz testified she was first hired as a long-term substitute teacher at the beginning of the 2016-2017 school year. After 10 days as a substitute, the District offered her a contract as a temporary teacher. Diaz remained a temporary teacher until August 2021, when she signed a contract to become a probationary teacher. She believes she should have been offered a probationary contract sooner. Other temporary teachers who worked for less time at the District became probationary teachers before Diaz did.

Analysis of Evidence

15. The evidence supports a finding that the Board's decision to reduce particular kinds of services is reasonably based on the welfare and needs of the District and its pupils. The District's facilities are operating at or below 50 percent utilization due to lower student enrollment, making it difficult for the District to offer robust and rigorous programs for students. The proposed reduction in services is reasonable given these facts, and no evidence indicates the Board's decision is fraudulent, arbitrary, capricious, or an abuse of its discretion to govern the manner of teaching in the District.

16. The evidence also demonstrates that the Board regularly considered and adopted the resolution, and the District gave prompt and detailed notices to respondents of the proposed layoffs and their rights. Pacheco Amaro's objection that the District did not tell her she needed her BCLAD certificate by March 15, 2023, does not concern an element of the notice required for the layoffs.

17. As to Barnes, Diaz, Fragoso, Kleger, Moreno, Pacheco Amaro, and Payne, no permanent or probationary employee with less seniority is being retained to render a service that they are certificated and competent to perform. For Barnes, Fragoso, Kleger, and Payne, the only less senior teachers in their positions received preliminary layoff notices and did not request a hearing. For Diaz, Moreno, and Pacheco Amaro, the seniority list does not show any less senior K-6 teachers outside the Dual Language Immersion program whom the District will retain as K-6 teachers. Diaz's testimony that she was a temporary teacher for years and passed over for a probationary position does not support a finding that her seniority date is incorrect.

18. As to Bonilla, her contract with the Board proves she was hired as a probationary employee on October 20, 2014. Her hiring in that capacity and her uninterrupted service since then make that date her seniority date, even if she did not receive credit toward permanent status as the District contends. Bonilla's alleged inability to receive credit toward permanency under a provisional permit did not delay her seniority date until November 3, 2021, as stated on the District's seniority list. Applying the correct seniority date of October 20, 2014, the District is retaining two probationary K-6 teachers with less seniority than Bonilla in the same teaching capacity: (1) Gretchen Lee; and (2) Chenoa Jaramillo. Although both of those K-6 teachers received preliminary layoff notices, the District later rescinded them.

19. As to Frago and Barnes, the evidence supports a finding that Frago prevails under the District's tiebreaking criteria with Barnes. The Board resolved to reduce or discontinue three secondary math positions, but the District sent preliminary layoff notices to four secondary math teachers, two of whom did not challenge their layoffs. Those two teachers and Barnes are subject to layoff to eliminate the three positions, and laying off Frago as well would be inconsistent with the Board's resolution to eliminate just three secondary math positions.

LEGAL CONCLUSIONS

Legal Standards

1. "[W]henver a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year" and a school district's governing board deems a resulting layoff to be necessary, "the governing board 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." (Ed. Code, § 44955, subd. (b).) In such a layoff, "[e]xcept as otherwise provided by statute, the services of no permanent employee may be terminated . . . 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." (*Ibid.*) "Essentially this language provides "'bumping'" rights for senior certificated and competent employees, and "'skipping'" authority for a district to retain 'junior employees who are certificated and competent to render services which more senior employees are not. [Citations.]" (*Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 135, quoting *Alexander v. Board of Trustees* (1983) 139 Cal.App.3d 567, 571.)

2. "Likewise, a probationary employee may 'bump' another probationary employee with less seniority." (*Bakersfield Elementary Teachers Assn. v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260, 1273 (*Bakersfield*)). Seniority is determined as of the date the employee "first rendered paid service in a probationary position." (Ed. Code, § 44845; *Bakersfield, supra*, 145 Cal.App.4th at p. 1273.) "As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof." (Ed. Code, § 44955, subd. (b).)

3. "[N]o later than March 15 of the school year preceding dismissal, the district must give a notice (preliminary notice) to each certificated employee of the decision recommending he or she not be re-employed for the ensuing year, stating the reasons therefore and the employee's entitlement to a hearing." (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 631-632 (*Allen*)). "The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year." (Ed. Code, § 44949, subd. (b).) If a hearing is requested, the school district files and serves a District Statement of Reduction in Force, which the employee answers with a Notice of Participation. (Gov. Code, §§ 11503, subd. (b), 11505.) "The hearing takes place before an administrative law judge who prepares a proposed decision which the board may or may not accept." (*Allen, supra*, 144 Cal.App.3d at p. 632; see Ed. Code, §§ 44949, 44955.)

4. "Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced." (Ed. Code, § 44949, subd. (c)(3).) If a governing board decides to terminate a teacher's services, "[n]otice of such termination of services shall be given before the 15th of May in the manner prescribed in Section 44949." (Ed. Code,

§ 44955, subd. (c).) "Any employee not given the preliminary and final notices and the right to the hearing is deemed re-employed for the following year. [Citations.]" (*Allen, supra*, 144 Cal.App.3d at p. 632; see Ed. Code, §§ 44949, 44955.)

5. The layoff decision of a governing board need only be reasonable under the circumstances. (*Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 796, 807-808 (*Campbell*).) "In determining whether the decision of a school board is reasonable as distinguished from fraudulent, arbitrary, or capricious, its action is measured by the standard set by reason and reasonable people, bearing in mind that such a standard may permit a difference of opinion on the same subject.' [Citation.]" (*Id.* at p. 808.)

Analysis

6. The services identified in the Board's resolution are curricular offerings that are "particular kind[s] of service[s]" that may be reduced or eliminated. (Ed. Code, § 44955, subd. (b); *California Teachers Assn. v. Board of Trustees* (1982) 132 Cal.App.3d 32, 36.).

7. The Board's layoff decision is reasonable under the circumstances. (*Campbell, supra*, 76 Cal.App.3d at pp. 807-808.) The Board's decision is the product of a District recommendation designed to improve student programs and improve utilization of District resources. The decision to reduce or eliminate the positions for these reasons is within the Board's discretion. No evidence indicates either the decision or the underlying recommendation is fraudulent, arbitrary, or capricious. (See *Campbell, supra*, 76 Cal.App.3d at p. 808.)

8. The District satisfied the jurisdictional and notice requirements for the proposed layoffs as to respondents. Pacheco Amaro's objection that the District did

not tell her she needed her BCLAD certificate by March 15, 2023, does not concern an element of the notice required for the layoffs.

9. The proposed layoffs are “related to the welfare of the schools and the pupils of the schools.” (Ed. Code, § 44949, subd. (b)(3).) Eliminating positions based on the teaching needs of the District is related to the welfare of the schools and to the pupils of the schools.

10. As to Barnes, Diaz, Fragoso, Kleger, Moreno, Pacheco Amaro, and Payne, no permanent or probationary employee with less seniority is being retained to render a service that they are certificated and competent to perform. The District’s seniority list and Ronquillo’s testimony support this conclusion. Furthermore, Diaz’s testimony that she was a temporary teacher for years and passed over for a probationary position does not support a finding that her seniority date is incorrect.

11. Based on the above, there is sufficient cause for not reemploying each of the above respondents other than Fragoso for the ensuing school year. (Ed. Code, § 44949, subd. (b).) As to Fragoso, the layoff of Barnes and two other secondary math teachers who did not challenge their layoffs (David Ghermezi and Frida Gomez-Hernandez) accomplishes the Board’s directive to reduce or eliminate three FTE positions in secondary math. Fragoso prevails over Barnes under the District’s tiebreaking criteria, and laying off Fragoso would eliminate a fourth secondary math teacher, which is not authorized under the resolution. Therefore, Fragoso is not subject to layoff.

12. As to Bonilla, seniority is determined as of the date the employee “first rendered paid service in a probationary position.” (Ed. Code, § 44845; *Bakersfield, supra*, 145 Cal.App.4th at p. 1273.) Bonilla first rendered paid service in a probationary

position on October 20, 2014, not on November 3, 2021, as stated on the District's seniority list. While Bonilla only held a provisional credential from October 2014 until October 2021, the District acknowledges that "[c]ertificated employees who hold a provisional credential are properly classified as probationary employees, even though they do not earn credit towards permanency." (District Br. at p. 2; *California Teachers Assn. v. Vallejo City Unified School Dist.* (2007) 149 Cal.App.4th 135, 151.) The District's contention that Bonilla did not earn credit towards permanency because of the provisional credential does not affect Bonilla's seniority date, which is October 20, 2014, not November 3, 2021.

13. Applying the correct seniority date for Bonilla, the District is retaining two other probationary K-6 teachers with less seniority than Bonilla in the same teaching capacity: (1) Gretchen Lee; and (2) Chenoa Jaramillo. Although both of these K-6 teachers received preliminary layoff notices, the District later rescinded them. With the correct seniority date for Bonilla, she is entitled to "bump" those employees, and she cannot be laid off if they remain employed. Since they will remain employed, the District may not lay off Bonilla for the upcoming school year.

ORDER

1. The District Statement of Reduction in Force is sustained in part.
2. Notice may be given to respondents Patrick Barnes, Anita Diaz, Andrew Kleger, Desarie Moreno, Elia Pacheco Amaro, and Lorissa Payne that their services will not be required for the 2023-2024 school year.

3. The District Statement of Reduction is Force is overruled as to respondents Virginia Bonilla and Christopher Fragoso. The District shall reemploy them for the 2023-2024 school year.

DATE: 05/04/2023



Thomas Heller (May 4, 2023 12:09 PDT)

THOMAS HELLER

Administrative Law Judge

Office of Administrative Hearings

**LIST OF PERSON(S) WHO DID NOT REQUEST A HEARING
AND WHOSE SERVICES WILL BE REDUCED OR DISCONTINUED
FOR THE 2023-2024 SCHOOL YEAR**

Anthony Vilar
Christopher Lam
David Ghermezi
Frida Gomez-Hernandez
Jennifer Wong
Josefine Weber
Joyce Jordan
Lilian Pinedo Arroyo
Mary MacDonaugh

**LIST OF PERSON(S) WHO REQUESTED A HEARING
AND WHOSE SERVICES WILL BE REDUCED OR DISCONTINUED
FOR THE 2023-2024 SCHOOL YEAR**

Anita Diaz
Andrew Kleger
Desarie Moreno
Elia Pacheco Amaro
Lorissa Payne
Patrick Barnes
Virginia Bonilla