

LOZANO SMITH

Partnering for Excellence in Education and Government

CLIENT NEWS BRIEF

No. 11

February 2009

CALIFORNIA COURT OF APPEALS DECISION ADDRESSES "SKIPPING" IN CERTIFICATED LAYOFF

In Bledsoe v. Biggs Unified School District (2008) 170 Cal.App. 4th 127 ("Bledsoe"), the California Court of Appeal recently held that in a layoff, a school district could "skip" teachers with lower seniority teaching community day school classes and instead lay off teachers with higher seniority, where the community day school teachers had special training and experience necessary to teach those classes. This case reaffirms that there are certain circumstances where seniority may be bypassed to retain a certificated employee who is uniquely qualified for a position.

Education Code section 44955, subdivision (d)(1) states that where a school district has need for personnel with specialization in either pupil personnel services or health, or someone who has special training and experience necessary to teach a specific course or course of study, and a more senior teacher does not possess such specialization or training, the district may deviate from terminating certificated employees by seniority.

In Bledsoe, the school district retained two teachers who had several years of experience teaching community day school classes and had proven effective in instructing these students. The two teachers had training in psychological and behavioral studies that helped them to better educate in the community day school environment, and one teacher had a multi-subject credential. Though a more senior teacher, Mr. Bledsoe, was qualified to teach community day school, the two less senior teachers had more of the training and experience necessary for successfully teaching these types of classes, which the more senior teacher did not possess. Under these circumstances, the appellate court affirmed the district's decision to deviate from seniority in laying off certificated personnel.

The court also addressed the fact that the school district did not apply its tie-breaking criteria prior to Mr. Bledsoe's layoff, even though he and another teacher were hired at the same time. The court held that the district should have conducted a tie-breaker prior to Mr. Bledsoe's layoff. However, the court found that in this particular case, the error was harmless because the other teacher would have won the tie-breaker. This serves as a

reminder of the importance of establishing tie-breaking criteria and applying them before a layoff hearing.

For more information regarding this case, conducting certificated layoffs, or any other employment law matters, please contact any of our seven offices statewide.

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.



Written by

Sarah E. Kalas and David A. Moreno.

David (dmoreno@lozanosmith.com) is a shareholder in the Fresno office; and Sarah (skalas@lozanosmith.com) is an associate in the Monterey office.