

**BEFORE THE
GOVERNING BOARD OF THE
PIONEER UNION ELEMENTARY SCHOOL DISTRICT
KINGS COUNTY, CALIFORNIA**

In the Matter of the Accusations Against:

OAH No. 2010040110

TAYLOR FURTADO, RUTH GARCIA,
DOUGLAS HODSON, ERIN KOLWICZ,
AMY MORGAN, TRACY RYAN,

Respondents.

PROPOSED DECISION

Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 21, 2010, at Hanford, California.

Dwaine L. Chambers, Attorney at Law, represented the Pioneer Union Elementary School District.

James F. McBrearty, Attorney at Law, represented the Respondents.

Evidence was received and the matter was submitted for decision.

SUMMARY

The Governing Board (Board) of the Pioneer Union Elementary School District (District) decided to reduce or discontinue particular kinds of services provided by certificated personnel for the 2010-2011 school year for budgetary reasons. The decision was not related to the capabilities and dedication of the teachers whose services were proposed to be reduced or eliminated. District staff carried out the Board's decision by using a selection process involving review of seniority and credentials. The selection process complied with Education Code requirements.

FACTUAL FINDINGS

1. Diane J. Cox, Superintendent of the District, filed the Accusations in her official capacity.
2. Respondents are certificated employees of the District.

3. On February 24, 2010, Superintendent Cox recommended that the Board give notice that certain services performed by certificated employees, including Respondents, be reduced or eliminated, and that the services of Respondents would not be required for the ensuing school year.

4. On February 24, 2010, the Board adopted Resolution No. 022410A whereby the Board resolved to discontinue or reduce the particular kinds of services. The Board further determined that based on the discontinuance or reduction of services, it would be necessary to decrease the number of certificated employees at the close of the present school year by a corresponding number of full-time equivalent (FTE) positions as follows:

K-8 Elementary Teaching Positions	6.0 FTE
Middle School Counselor	1.0 FTE
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TOTAL CERTIFICATED POSITIONS	7.0 FTE

5. Pursuant to Resolution 022410A, the Board directed the Superintendent to notify the employees affected by the Board's resolution and give notice to said employees that their services would not be required for the ensuing school year and state the reasons therefore.

6. Resolution 022410A also stated "[t]hat deviations from the order of seniority in terminating a certificated employee of this District may be made and are directed to be made in accordance with Education Code section 44955, subdivision (c); the Governing Board hereby delegates, pursuant to Education Code section 35161 to the District Superintendent and the Superintendent's designee(s), the implementation and determination of such deviations from the order of seniority in terminating the District's certificated employees."

7. On or about March 2, 2010, Superintendent Cox notified Respondents in writing that it had been recommended their services would not be required for the next school year. The mailing included the reasons for the notification, a copy of the Accusation and other jurisdictional documents as required by the Education Code.

8. The Superintendent made and filed Accusations against each Respondent on March 23, 2010. The Accusations were properly served on all Respondents. Notices of Defense and Requests for Hearing were timely filed by all of the employees who appeared for the hearing. All jurisdictional requirements were met.

9. The District considered attrition, including resignations, retirements and requests for leave, in determining the necessary layoff notices to be delivered to employees.

10. The District maintains a seniority list which contains employees' seniority dates, current assignments and locations, advanced degrees, credentials, and authorizations. The District then identified the most junior employees working in a particular kind of service being reduced or discontinued and determined which employees would receive layoff notices.

11. The District rescinded the layoff notice served on Respondent Amy Morgan because the District was able to fund a categorical program with "Title I" funds. She was the most senior respondent with a seniority date of August 13, 2007. This is her correct seniority date because she was paid by the District to conduct testing for English Language Learners on the August 13 and 14, 2007.

12. (a) Respondents Taylor Furtado, Ruth Garcia, Erin Kolvicz, and Douglas Hodson share a seniority date of August 15, 2007. The Board Resolution set forth a selection process involving review of credentials and other criteria for breaking ties between employees with the same first dates of paid service. The District introduced exhibit 6 which is the collective bargaining agreement between the District and the Pioneer Teachers' Association. Section 12.5.1 of the agreement defines seniority for certificated employees as the unit member's initial date of service with the District. Section 12.5.1.1 states: "Unit members with the same initial date of service shall have their seniority number determined by lot. Date of Service is defined as the first day of paid duty in the District."

(b) The District contends that Respondents Furtado Garcia, Kolvicz, and Hodson are all excellent teachers and determined that they were equal in all of the tie-breaking criteria. It is noted however, the Respondent Garcia is the only teacher among the four with a Professional Clear, Bilingual, Cross Cultural, Language and Academic Development Certificate (BCLAD). Therefore, the District may have erred in applying the tie-break criteria with respect to Respondent Garcia. However, this error notwithstanding, the District followed the collective bargaining agreement, which specifically directs that any ties in seniority are to be resolved by conducting a lottery. In any event, all of the Respondents with the August 15, 2007 seniority date are subject to layoff. Therefore, it is unnecessary for the undersigned to determine whether the District properly applied its tie-breaking criteria, and of the effect of the collective bargaining agreement on the tie-breaking process.

13. The reduction or discontinuation of the particular kinds of services set forth in Factual Finding 4, related to the welfare of the District and its pupils.

14. Respondents are not certificated and competent to render a service being performed by any employee with less seniority who is being retained.

LEGAL CONCLUSIONS

1. All notices and other requirements of Education Code sections 44949 and 44955 were met. Therefore, jurisdiction was established for this proceeding as to all Respondents.

2. Cause was established as required by Education Code section 44955 to reduce the number of certificated employees due to the reduction or discontinuation of particular kinds of services. The Board's decisions to reduce or eliminate the identified services were neither arbitrary nor capricious. The decisions relate solely to the welfare of the District's schools and the pupils within the meaning of Education Code section 44949.

3. No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render.

ORDER

1. The Accusation against Respondent Amy Morgan is dismissed. The Accusations against all other Respondents are sustained.

2. Notice may be given to Respondents Taylor Furtado, Ruth Garcia, Douglas Hodson, Erin Kolwicz, and Tracy Ryan that their services will not be required for the 2010-2011 school year.

Dated: May 4, 2010

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings