

BEFORE THE
GOVERNING BOARD OF THE
PIONEER UNION SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

ERIKA A. MARURI,

OAH No. 2010030042

Respondent.

PROPOSED DECISION

This matter was heard before Rebecca M. Westmore, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 21, 2010, in Somerset, California.

Allen R. Vinson, Attorney at Law, appeared on behalf of the Pioneer Union School District.

Peter M. McEntee, Attorney at Law, appeared on behalf of respondent, Erika A. Maruri, who was present throughout the hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on April 21, 2010.

FACTUAL FINDINGS

1. Richard L. Williams is the Superintendent of Pioneer Union School District (District). His actions and the actions of the District's Governing Board (Board) were taken in their official capacities.

2. Respondent is a permanent certificated employee of the District.

3. On March 10, 2010, the Board adopted Resolution No. 470, entitled "Resolution of Intention to Dismiss Certificated Employees." Pursuant to Resolution No. 470, the Board determined that it was necessary and in the best interest of the District to reduce or eliminate particular kinds of services (PKS) and to decrease a corresponding number of certificated District employees not later than the beginning of the 2010-2011 school year. In order to limit the number of reductions, the District considered all positively-assured attrition, including

deaths, retirements, and other permanent vacancies. The Board directed Superintendent Williams to send appropriate notices to all employees whose services will be terminated by virtue of the PKS reductions and eliminations. The PKS reductions and eliminations are based solely upon economic reasons, and are not related to the skills, abilities or work performance of the affected teachers.

4. Pursuant to Resolution No. 470, the Board resolved to reduce 2.00 full-time equivalent (FTE) K - 8th grade classroom teaching positions.

5. On March 11, 2010, in accordance with Resolution No. 470, and pursuant to Education Code sections 44949 and 44955, the District personally served notice on respondent advising that her services would not be required for the 2010-2011 school year. Respondent timely filed a Request for Hearing to determine if there is cause for not reemploying her for the ensuing school year.

6. On March 24, 2010, Superintendent Williams made and filed the Accusation against respondent. On March 26, 2010, respondent timely filed a Notice of Defense to the Accusation.

7. On April 8, 2010, the Board adopted Resolution No. 472, entitled "Determination of District Needs for 2010-2011," which set forth the following tie-breaking criteria to be used in determining the order of termination of certificated employees who first rendered paid service to the District on the same date:

1. Individuals who hold regular valid California teaching credentials (not emergency credentials, intern credentials, or waivers) will be given preference. If this factor is identical, then;
2. Individuals with the greatest number of valid California teaching credentials authorizing service in the greatest number of K-8 teaching positions. If this is identical, then;
3. Individuals with valid California teaching credentials authorizing service in the area of English, mathematics, science, will be given preference. If this factor is identical, then;
4. Individuals with recent experience in K-8 multiple grade instruction.

District's Layoff Procedures

8. The District maintains a Certificated Employee – Date of Hire List (Seniority List) which contains data obtained from the District's records and its employees, including, but not limited to, employees' names, locations, service dates, credentials and tenure status. Erika

A. Maruri and Kathy Kaher first rendered service to the District on the same day in August 2006, and are affected by the reduction in particular kinds of services. Both certificated employees received preliminary layoff notices.

9. At hearing, Superintendent Williams asserted that the “tie-breaking” criteria were developed based on the needs of the district and the students. When the District employed the “tie-breaking” criteria to determine the order in which Ms. Maruri and Ms. Kaher would be rehired, the District determined that Ms. Kaher was entitled to seniority over Ms. Maruri. According to Superintendent Williams, Ms. Maruri and Ms. Kaher were “tied” at levels 1 and 2. However, Ms. Kaher was determined to be more senior to respondent at level 3, based on her credentials and supplemental authorization. Superintendent Williams asserted that because Ms. Kaher has a supplemental authorization to teach English, and Ms. Maruri has a supplemental authorization to teach Music, Ms. Kaher would be accorded preference under Resolution No. 472, because English is one of the subject areas listed at Level 3 of the criteria, while Music is not.

Jurisdictional Issue

10. As a consequence of the reduction in force, both Erika Maruri and Kathy Kaher received preliminary notices of layoff as both are the least senior multiple subject credentialed teachers. The District recently offered a retirement incentive package to two specific certificated teachers. One of the teachers, Janese Favret, has submitted her retirement paperwork to the District, which will be considered by the Board on May 5, 2010. If Ms. Favret retires on or before May 5, 2010, it will become necessary for the District to determine the relative seniority of Ms. Maruri and Ms. Kaher prior to May 7, 2010, because one certificated employee will be retained to fill the vacant position created by the retirement of Ms. Favret.

11. The District argued that as the Board has not yet acted on Ms. Favret’s retirement paperwork, there has been no final attrition, and consequently there is no jurisdiction to apply the “tie-breaking” criteria in this matter. While it is true that the Board is only required to consider positively-assured attrition, and as of the date of this hearing there was no positively-assured attrition, it is appropriate to determine the proper application of the “tie-breaking” criteria in this matter in the event that retention of one certificated employee is necessary.

Discussion

12. **Erika Maruri** has a seniority date of August 2006. She holds a Clear Multiple Subject Credential, Supplemental Authorization in Music, and Cross-cultural, Language and Academic Development (CLAD) Certificate. She is currently assigned to teach 6th grade and two elective classes: Physical Education and 6th through 8th grade Skills for Adolescents at Mountain Creek Middle School. Ms. Maruri also provides Spanish translation services between the District and the parents of students in the District.

13. **Kathy Kaher** has a seniority date of August 2006. She holds a Clear Multiple Subject Credential and Supplemental Authorization in English. She is currently assigned to teach 3rd through 5th grade at Walt Tyler Elementary School.

14. At hearing, Ms. Maruri argued that the District developed the “tie-breaking” criteria with full knowledge of the results, and therefore did not consider the needs of the district and students. Ms. Maruri also argued that the District applied the “tie-breaking” criteria inappropriately, and that she should be credited for levels 1 through 4 of the “tie-breaking” criteria based on her credentials and teaching assignments. Ms. Maruri believes that her Clear Multiple Subject Credential authorizes her to teach English, mathematics, science, social studies and physical education, and that her Supplemental Authorization in Music authorizes her to teach Music to K – 8th grade. Finally, Ms. Maruri argued that because she should be credited for levels 1 through 4 of the “tie-breaking” criteria, there continues to be a tie between Ms. Kaher and Ms. Maruri, and therefore it would be reasonable for the District to apply the criteria set forth in the District’s 2009 Resolution No. 450, in which the District purportedly considered “accumulative classroom instructional experience” as “tie-breaking” criteria.

15. Level 3 of the District’s “tie-breaking” criteria set forth in Resolution No. 472 (Factual Finding 7) provides that “[i]ndividuals with valid California teaching credentials authorizing service in the area of English, mathematics, science, will be given preference.” While Ms. Maruri’s Clear Multiple Subject Credential allows her to teach multiple subjects in a self-contained classroom, neither her Multiple Subject Credential, nor her Supplemental Authorization in Music allow her to teach English, mathematics or science in a departmentalized class. Ms. Kaher’s Supplemental Authorization in English, however, allows her to teach English in a departmentalized class. Therefore, Level 3 of the District’s “tie-breaking” criteria entitles Ms. Kaher to seniority over Ms. Maruri in the event the District has an opportunity to rehire a certificated teacher prior to the 2010-2011 school year.

16. It is within the discretion of the Board to establish its “tie-breaking” criteria. Respondent did not establish that the Board violated its discretion, or engaged in arbitrary or capricious action when it established the “tie-breaking” criteria. Application of the “tie-breaking” criteria resulted in determining the order of termination solely on the basis of the needs of the district and the students thereof. Respondent’s assertion that the District should apply the 2009 “tie-breaking” criteria that is superseded by the 2010 “tie-breaking” criteria is found to be without merit and is rejected.

LEGAL CONCLUSIONS

1. The District employees who received notices that their services would not be required in the 2010-2011 school year are not being laid off for reasons related to their ability or performance.

2. Jurisdiction in this matter exists pursuant to Education Code sections 44949 and 44955. The District has the burden of proving by a preponderance of the evidence that the proposed reduction or elimination of particular kinds of services and the preliminary notice of layoff served on respondents are factually and legally appropriate. The District has met its burden. The anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under section 44955. As stated in *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under that section, and, “in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction.” The District must be solvent to provide educational services and cost savings are necessary to resolve its financial crisis. The Board’s decision to reduce particular kinds of services was a proper exercise of its discretion. In addition, all notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 were met. The notice sent to respondent indicates the statutory basis for the reduction of services and adequately describe the particular kinds of services to be reduced, and, therefore, were sufficiently detailed to provide them due process. (*Ibid.*, at p. 627; see also, *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831; *Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838; and *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

3. The Governing Board may reduce, discontinue or eliminate a particular kind of service and then provide the needed services to the students in another manner. (*Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571; *California Teachers Association v. Board of Trustees of Goleta Union School Dist.* (1982) 132 Cal.App.3d 32.) A school board may reduce services within the meaning of the statute either by determining that a certain type of service shall not be performed at all or by reducing the number of district employees who perform such services. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.) As set forth in Factual Finding 4, the services identified in Resolution No. 470 are particular kinds of services that may be reduced or discontinued under Education Code sections 44949 and 44955. The Board’s decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuance of services relates solely to the welfare of the District’s schools and pupils within the meaning of Education Code sections 44949 and 44955.

4. Education Code section 44955, subdivision (b), provides in pertinent part:

Whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, ...or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, 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. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section 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.

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. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

5. Pursuant to Education Code section 44955, subdivision (b), cause exists to give notice to respondent Erika A. Maruri that her services will not be required for the 2010-2011 school year because of the reduction or elimination of particular kinds of services. No certificated employees with seniority dates junior to Ms. Maruri are being retained to teach classes for which she is certificated and competent to teach.

RECOMMENDATION

1. Final notice may be given to respondent Erika A. Maruri that her services will not be required for the 2010-2011 school year.

2. In the event that the District has an opportunity to rehire one certificated employee for the 2010-2011 school year, Kathy Kaher is entitled to seniority over Erika A. Maruri.

DATED: May 5, 2010

REBECCA M. WESTMORE
Administrative Law Judge
Office of Administrative Hearings