

BEFORE THE GOVERNING BOARD
MONTEREY PENINSULA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Niklas Andersson, et al,

Respondents.

OAH No. N2005030357

PROPOSED DECISION

This matter was heard before Steven C. Owyang, Administrative Law Judge, State of California, Office of Administrative Hearings, in Monterey, California, on April 21, 2005.

Sarah L. Kaatz, Lozano Smith, represented the Monterey Peninsula Unified School District.

Michelle A. Welsh, Stoner, Welsh & Schmidt, represented respondents Niklas Andersson, Therese Beaudry, Jennifer Bernier, Erica Clay, Anne Congleton, Alicia Davis, James Fortune, Laurie Hersey, Robin Jensen, Desma Johnson, Wendy Kelton, Donna Koenig, Liana Lingofelt, Melissa Magreta, Mary Clare Martin, Daniel Mathieson, Heather Miller, Anthony Morales, Jessaca Palumbo, Thomas D. Perlman, Cheryl Redding, Allyson Schweifler, Morgan Sera, Bryan Shaw, Russell Shugars, Brent Silva, Evelyn Soto, David Steinberg, and Lori Winn.

No appearance was made by or on behalf of respondents Gina Harris, Lindsay Sullivan, and Stephanie Wright.

The matter was submitted on April 21, 2005.

FACTUAL FINDINGS

1. John Lamb, Interim Superintendent, Monterey Peninsula Unified School District, made and filed the accusation in his official capacity.
2. On March 7, 2005, upon the recommendation of Superintendent Daniel Callahan, the governing board of the Monterey Peninsula Unified School District adopted Resolution No. 04/05-18, in which the board resolved to reduce or discontinue the following particular kinds of services for the 2005-2006 school year and directed the superintendent or

his designee to send notice to certificated employees that their services would be terminated at the end of the 2004-2005 school year:

Elementary School Classroom Teachers (K-5)	10.0 FTE
Middle School Teachers	
Core	2.0
English	1.0
Opportunity	1.0
Physical Education	1.0
Science	2.0
Social Studies	<u>1.0</u>
	8.0 FTE
High School Teachers	
English	2.0
Spanish	1.0
Music	0.5
Physical Education	1.0
Social Studies	<u>2.0</u>
	6.5 FTE

Total Full-Time Equivalent Reduction	24.5 FTE
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3. On March 14, 2005, upon the recommendation of Superintendent Daniel Callahan, the governing board of the Monterey Peninsula Unified School District adopted Resolution No. 04/05-123, in which the board resolved to reduce or discontinue the following particular kinds of services for the 2005-2006 school year and directed the superintendent or his designee to send notice to certificated employees that their services would be terminated at the end of the 2004-2005 school year:

Elementary School Classroom Teachers (K-5)	12.0 FTE
Middle School Teachers	
Core	2.0
English	1.0
Social Studies	<u>1.0</u>
	4.0 FTE
High School Teachers	
English	1.0
Social Studies	<u>1.0</u>
	2.0 FTE

Total Full-Time Equivalent Reduction	18.0 FTE
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4. As a result of the March 7 and March 14, 2005, resolutions, the district plans a reduction of 42.5 FTE (full-time equivalent) positions.

5. Respondents are certificated employees of the district. All respondents were properly and timely served with notice of layoff. All respondents were properly and timely served an accusation, statement to respondent, notice of defense, notice of hearing, and relevant statutes. All respondents, except Stephanie Wright, have made a timely request for hearing and timely notice of defense. Stephanie Wright did not file a notice of defense in this matter, and was not present or otherwise represented. All jurisdictional requirements of Education Code sections 44949 and 44955 have been met.

6. A total of 16 certificated employees notified the district before March 15, 2005, that they will resign or retire at the end of the 2004-2005 school year. The governing board took those resignations and retirements into consideration in coming to its resolutions to reduce or eliminate particular kinds of services. Those resignations and retirements do not reduce the number of employees to be terminated.

7. Since the March 7 and March 14, 2005, resolutions, 10 certificated employees have notified the district that they will resign or retire at the end of the 2004-2005 school year. Seven of those employees are elementary school classroom teachers, a service being reduced or discontinued under the board resolutions; the other three teach in subjects not being reduced or discontinued. The resignations and retirements of the seven elementary school classroom teachers constitute "positively assured attrition" that reduces by seven the number of elementary school classroom teachers the district may terminate. (*Lewin v. Board of Trustees* (1976) 62 Cal.App.3d 977, 982.)

8. At its March 7, 2005, meeting, the board also adopted resolutions to non-reelect emergency credentialed employees and to release temporary certificated employees. The release of those employees does not create vacancies into which respondents are entitled to move.

9. In determining which permanent and probationary employees would be subject to layoff in this proceeding, the district elected to "skip" teachers possessing Bilingual, Crosscultural Language and Academic Development (BCLAD) certificates. Resolution No. 04/05-18 and Resolution 04/05-23 contained no authorization for skipping any employees. A district may deviate from terminating employees in strict seniority order if it demonstrates a specific need to retain junior employees possessing training or experience that more senior employees do not have. Education Code section 44955, subdivision (d), gives the authority for making these skipping determinations to the district; it does not require pre-March 15 board action.

10. The district has a shortage of teachers qualified to teach bilingual classes, and may be out of compliance with legal requirements to provide bilingual education. Teachers with BCLAD certificates are qualified to teach bilingual classes, but teachers with such

certification are difficult to find. Teacher Veronica Valencia possesses a BCLAD certificate, and currently teaches a bilingual class for the district. The district intends to skip Valencia because of her BCLAD certification. Valencia will again be teaching a bilingual class in the 2005-2006 school year, and is appropriately being skipped.

11. At its March 7, 2005, meeting, the board adopted Resolution No. 04/05-17, which established tie-breaking criteria to be used to determine the order of termination of employees having the same seniority date. In the tie-breaking process, employees earn points in five specified criteria. If a tie remains after application of the five criteria, a sixth criterion is applied, under which the employee receives one point for each college/university semester unit or district unit earned after the bachelor's degree. A teacher's tie-breaker score is listed in two parts, for example 17/63, in which 17 is the teacher's point total under the first five criteria and 63 is the teacher's score under the sixth criterion.

12. Erica Clay is a sixth grade teacher employed by the district. She is listed number 46 on the district's seniority list, with a seniority date of July 26, 2004. The district does not plan to reduce or discontinue any sixth grade teaching positions, but appropriately gave Clay a notice of layoff because more senior employees qualified to teach sixth grade may "bump" Clay.

13. James Fortune teaches at Seaside High School. He is listed number 35 on the district's seniority list, with a seniority date of July 28, 2004. Fortune worked as a substitute teacher for the district in prior school years, but the evidence did not establish how many days Fortune worked in those years. Starting around July 21, 2004, Fortune attended an "AVID" training program in Sacramento. The district did not pay Fortune for his attendance at the training, but did reimburse his travel and lodging expenses. The evidence did not establish that Fortune's attendance at the training was mandatory, or that his first date of paid service in a probationary position was other than July 28, 2004.

14. Robin Jensen teaches at Seaside High School. She is listed number 13 on the district's seniority list, with a seniority date of September 27, 2004, and a tie-breaker score of 15/112. Jensen and the district stipulated that her correct tie-breaker score is 22/119.

15. Desma Johnson teaches Spanish and English at Seaside High School. She is listed number 79 on the district's seniority list, with a seniority date of August 4, 2003. She began teaching for the district on January 6, 2003, with an emergency credential. Johnson is one of only two African American teachers at Seaside High School, which has a largely minority student body. Johnson did not establish that she may be retained for purposes of maintaining racial or ethnic diversity. At hearing, the district stipulated that Johnson's seniority date is January 6, 2003.

16. Donna Koenig is a physical education teacher at Seaside High School. She is listed number 30 on the district's seniority list, with a seniority date of August 2, 2004. Koenig taught as a substitute teacher in the 2003-2004 school year, starting October 27,

2003. The evidence did not establish how many days Koenig worked in the 2003-2004 school year. Koenig is the only female physical education teacher at Seaside High School. Female supervision for girls' physical education is required, but the district will be able to assign other female employees to provide this function if necessary. The evidence did not establish that Koenig's seniority date is incorrect, or that she must be retained to provide female supervision for girls' physical education at Seaside High School.

17. Anthony Morales teaches at Central Coast High School. He is listed number 102 on the district's seniority list, with a seniority date of July 28, 2003, and a tie-breaker score of 15/72.66. Morales and the district stipulated that his 15/72.66 tie-breaker score is correct.

18. Cheryl Redding is a second grade teacher at J.C. Crumpton Elementary School. She is listed number 50 on the district's seniority list, with a seniority date of July 26, 2004. Redding worked as a substitute teacher for the district in prior school years. The evidence did not establish how many days Redding worked in prior school years. Redding attended a Houghton Mifflin reading workshop that began July 21, 2004, and was paid a stipend by the district for her attendance. The evidence did not establish that Redding's attendance at the workshop was mandatory, or that her first date of paid service in a probationary position was other than July 26, 2004.

19. Allyson Schweifler teaches at Ord Terrace Elementary School. She is listed number 48 on the district's seniority list, with a seniority date of July 26, 2004. Starting July 20, 2004, Schweifler attended an "AB 466 Harcourt" math training program, and was paid a stipend by the district for her attendance. The evidence did not establish that Schweifler's attendance at the training program was mandatory, or that her first date of paid service in a probationary position was other than July 26, 2004.

20. Bryan Shaw teaches health and social science at Seaside High School. He is listed number 93 on the district's seniority list, with a seniority date of July 28, 2003, and a tie-breaker score of 11/57. Shaw and the district stipulated that his correct tie-breaker score is 17/63. Shaw and the district further stipulated that the accusation against him will be rescinded. In the 2005-2006 school year, Shaw will only be teaching health.

21. No permanent or probationary employee with less seniority is being retained to render a service for which respondents are certificated and competent.

LEGAL CONCLUSIONS

1. Cause for the elimination of 42.5 FTE positions exists in accordance with Education Code sections 44949 and 44955. This cause relates solely to the welfare of the district and the pupils thereof.

2. The district must use the resignations and retirements of seven elementary school classroom teachers to reduce the number of certificated employees whose

employment will be terminated (Factual Finding 7). Prior to issuing final notices of termination, the district shall also consider additional positively assured attrition in services being reduced or discontinued occurring up to the date of the board's final action in this matter.

3. The district has appropriately skipped Veronica Valencia, who will continue to teach a bilingual class (Factual Findings 9 and 10). Accordingly, notice shall not be given to Valencia that her services will not be required for the 2005-2006 school year.

4. The district shall correct Robin Jensen's tie-breaker score to 22/119 (Factual Finding 14).

5. The district shall correct Desma Johnson's seniority date to January 6, 2003 (Factual Finding 15).


6. The district has stipulated that Bryan Shaw's correct tie-breaker score is 17/63 and further that the district will rescind the accusation against him (Factual Finding 20). Accordingly, the district shall correct Shaw's tie-breaker score, and shall not notify Shaw that his services will not be required for the 2005-2006 school year.

7. All contentions made by respondents not specifically addressed above are found to be without merit and are rejected.

ORDER

Except as limited by Legal Conclusions 1 through 7, inclusive, notice may be given to respondents that their services will not be required for the 2005-2006 school year.

DATED: May 4, 2005


STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings