

BEFORE THE
BOARD OF TRUSTEES OF THE
LONG BEACH COMMUNITY COLLEGE DISTRICT
STATE OF CALIFORNIA

In The Matter Of The Accusation Against:

OAH No. 2013030375

Dale W. Carlson, Juliana Edlund, Robert J. Gibson, Larry Gustafson, Charles Guitierrez, John K. Louie, Christopher Oshita, Maximino Pena, Daniel D. Perkins, Rodolfo R. Sanchez, Peter Sparks, Danny S. Tan, Kenneth Tsuji, and Gabor I. Vass,

Respondents.

PROPOSED DECISION

Administrative Law Judge Amy C. Yerkey, State of California, Office of Administrative Hearings, heard this matter on April 24, 2013, in Long Beach, California.

Warren S. Kinsler, of Atkinson, Andelson, Loya, Rudd & Romo, represented the Long Beach Community College District (District).

Jean Shin, Staff Attorney, California Teacher's Association, represented Dale W. Carlson, Juliana Edlund, Robert J. Gibson, Larry Gustafson, Charles Guitierrez, John K. Louie, Christopher Oshita, Maximino Pena, Daniel D. Perkins, Rodolfo R. Sanchez, Peter Sparks, Danny S. Tan, Kenneth Tsuji, and Gabor I. Vass (Respondents).

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2013-2014 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2013-2014 school year.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

- 1. Complainant, Eloy Ortiz Oakley, filed the Accusation while acting in his official capacity as the District Superintendent-President.
- 2. Respondents are certificated employees of the District.
- 3. On February 26, 2013, the District Board of Trustees adopted Resolution number 022613A, reducing or discontinuing the following services for the 2013-2014 school year:

<u>Service</u>	<u>Full-Time-Equivalent Positions</u>
Air Conditioning, Refrigeration and Heating Instructional Services	1.0
Auto Body Technology Instructional Services	2.0
Automotive Technology Instructional Services	3.0
Aviation Maintenance Instructional Services	4.0
Carpentry Instructional Services	1.0
Commercial Music Instructional Service	1.0
Diesel Mechanics Instructional Services	1.0
Interior Design Instructional Services	1.0
Photography Instructional Services	2.0
Real Estate Instructional Services	1.0
Welding Instructional Services	<u>2.0</u>
Total	19.0

- 4. By March 15, 2013, Respondents received notice that their services will not be required for the 2013-2014 school year due to the reduction or discontinuance of particular kinds of services.
- 5. Respondents timely requested hearings. The District issued and served an accusation, notice of hearing and other documents required to be served. Respondent thereafter filed notices of defense to determine if there is cause for not reemploying them for the 2013-2014 school year.
- 6. All prehearing jurisdictional requirements have been met.
- 7. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 88743.¹

¹ All further references are to the Education Code.

8. The Board of Trustees took action to reduce or discontinue the services set forth in factual finding number 3 primarily because the District is uncertain about its budget for the 2013-2014 school year, and it has been operating at a deficit for the past four years. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

9. The reduction of services set forth in factual finding number 3 is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Board of Trustees.

10. Rose Del Gaudio (Del Gaudio), the District's Executive Vice President of Human Resources, testified at the hearing. She explained that each District faculty member is assigned one or more faculty service areas ("FSA") in which s/he is certified to teach. Certification can be obtained either by meeting the required academic standards or by demonstrating other skills and experiences that would qualify an individual to teach a particular subject. The determination of an individual's eligibility to be certified in a particular FSA is initially made by the District's Human Resources Department at the time a faculty member is first hired. Thereafter, a faculty member may apply to the Equivalency Committee for further FSA certifications. The burden to establish additional competencies is on the applicant. Significantly, any dispute arising from an allegation that a faculty member has been improperly denied an FSA must be procedurally addressed as a grievance. As established through Del Gaudio's testimony, none of the Respondents had been granted claimed certifications and they had not exhausted the grievance procedures with regard to additional FSAs.

11. Respondents Daniel Perkins, Gabor Vass, Rodolfo R. Sanchez, Maximino Pena and Kenneth Tsuji testified at the hearing. Each set forth information they believed would qualify them for additional FSAs, which might permit them to "bump" into other teaching positions. None of the Respondents exhausted the grievance procedures regarding FSA designations and therefore did not establish they were certificated and competent to bump into the positions in question.

12. No certificated employee junior to any Respondent was retained to render a service which any Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to Education Code section 87740 and 87743, by reason of factual findings 1 through 6.

2. Education Code section 87743.3 provides: "Each faculty member shall qualify for one or more faculty service areas at the time of initial employment. A faculty member shall be eligible for qualification in any faculty service area in which the faculty member has met both minimum qualifications pursuant to Section 87356 and district competency

standards. After initial employment, a faculty member may apply to the district to add faculty service areas for which the faculty member qualifies. The application shall be received by the district on or before February 15 in order to be considered in any proceeding pursuant to Section 87743 during the academic year in which the application is received. Any dispute arising from an allegation that a faculty member has been improperly denied a faculty service area shall be classified and procedurally addressed as a grievance.”

3. Article XVI of the Agreement between the Long Beach Community College District and Community College Association – Long Beach City College (“collective bargaining agreement” or “contract”) provides:

“A. Faculty Service Areas

1. Pursuant to the provisions of Education code Section 87743.3, there shall be one faculty service area to be known as the Long Beach Community College Faculty Service Area.

2. Faculty means those full-time probationary or tenured employees who are employed in positions that are not designated as supervisory or management . . . and for which minimum qualifications for hire have been specified in the regulations the Board of Governors adopted

3. Competency Standards

All faculty who meet the requirements of 3.a. and any one of the conditions listed under 3.b. shall be considered competent in a specific discipline.

a. Meet the minimum qualifications as adopted by the Board of Governors and as described [by statute]. Equivalency granted at the time of initial employment in the District shall meet the minimum qualifications for the faculty member in the discipline for which it was granted.

and

b. Any one of the following:

(1). Possess a valid credential authorizing service in the discipline through either a major or minor, or

(2). Previous approval by the Board of Trustees to teach in a discipline in which the Board of Trustees has deemed the faculty member to have either a major or minor, or

- (3). Prior college teaching experience in a course that is identical to, or that shares most of the major elements with, any course taught in the discipline in the Long Beach Community College District, or
- (4). Possess a Bachelor’s degree or higher showing a major or minor in the discipline, or
- (5). Possess the equivalent of a minor, which shall be a minimum of twenty-four (24) semester units in the discipline with a minimum of twelve (12) upper division or graduate level units, or
- (6). For disciplines in which a Master’s degree is not available or generally expected, possess a degree plus appropriate experience plus any required certificate or license as specified in the Board of Governor’s Discipline list for the discipline or the equivalent.

4. For purposes of determining competency under XVI.A.3.b.(3) a Course Equivalency Committee shall be formed when proof of previous college teaching experience in a discipline has been provided to the District. The Course Equivalency Committee shall determine whether this experience is identical to, or shares most of the major elements with, a course taught in the discipline at Long Beach City College.

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4. Both the statutes and the collective bargaining agreement are quite clear; to be considered competent to teach in a discipline, a faculty member must possess a FSA in the discipline. Because none of the Respondents possess additional FSAs in areas where they may be eligible to bump, they are not competent to teach in those areas, at least for the purposes of a reduction in force proceeding.

5. Respondents seek to establish their competency at the hearing, essentially requesting that the Administrative Law Judge award them certifications in the instant proceeding. There is a well established legal precedent that a person may not apply to the courts for relief unless he has first exhausted his administrative remedies.² In this case, Respondents chose not to proceed with the administrative process for obtaining the FSA to which they claims entitlement; therefore, they are not entitled to relief in this proceeding from the consequences of that failure. Respondents’ arguments to the contrary lack merit and is not supported by legal authority.

² The general rule is “where an administrative remedy is provided by statute, relief must be sought from the administrative body and that remedy exhausted before the courts will act.” *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 292.

6. Cause exists under sections 88743 for the District to reduce or discontinue the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 9.

7. No junior academic faculty is being retained to perform services that Respondents are qualified and competent to render.

8. Cause exists to terminate the services of Respondents Dale W. Carlson, Juliana Edlund, Robert J. Gibson, Larry Gustafson, Charles Guitierrez, John K. Louie, Christopher Oshita, Maximino Pena, Daniel D. Perkins, Rodolfo R. Sanchez, Peter Sparks, Danny S. Tan, Kenneth Tsuji, and Gabor I. Vass, by reason of factual finding numbers 1 through 12, and legal conclusion numbers 1 through 7.

ORDER

The Accusation is sustained and the District may notify Respondents Dale W. Carlson, Juliana Edlund, Robert J. Gibson, Larry Gustafson, Charles Guitierrez, John K. Louie, Christopher Oshita, Maximino Pena, Daniel D. Perkins, Rodolfo R. Sanchez, Peter Sparks, Danny S. Tan, Kenneth Tsuji, and Gabor I. Vass that their services will not be needed during the 2013-2014 school year due to the reduction of particular kinds of services.

DATED: May 3, 2013

AMY C. YERKEY
Administrative Law Judge
Office of Administrative Hearings