

BEFORE THE
BOARD OF TRUSTEES
COMPTON COMMUNITY COLLEGE DISTRICT

In the Matter of the Accusation Against:

ANNARUTH GARCIA and
MOHAMMAD H. KHALILZADEH,

Respondents.

OAH No. 2017030985

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 27, 2017, in Compton. The record was closed and the matter submitted for decision at the conclusion of the hearing.

Aaron V. O'Donnell, Esq., Atkinson, Andelson, Loya, Ruud & Romo, represented the Compton Community College District (District).

Lawrence Rosenzweig, Esq., represented respondents Annaruth Garcia and Mohammad H. Khalilzadeh, who were also present.

As described in more detail below, cause was established for laying off respondents pursuant to Education Code sections 87740 and 87743.

FACTUAL FINDINGS

Parties and Jurisdiction

1. A. As authorized by Education Code section 71093¹, Resolution 2006-01 of the Board of Governors of the California Community Colleges, and Executive Order 2006-01 of the Chancellor of the California Community Colleges, the authority of the Board of Trustees of the District was suspended in 2006, and a Special Trustee was duly appointed and authorized to exercise any powers or responsibilities, or take any official actions with respect to the management of the District, that would have otherwise been within the powers and responsibilities of the Board of Trustees. Such action was due to financial mismanagement and the District's loss of accreditation. (Exs. 1 & 9.)

¹ All further statutory references are to the Education Code unless otherwise noted.

B. Pursuant to Assembly Bill 318 and section 74292, the Special Trustee, on behalf of the District, entered into a Memorandum of Understanding with the El Camino Community College District (El Camino), pursuant to which El Camino has provided an accredited educational program at the District, known as El Camino College Compton Center (Compton College). As a result, Compton College is an educational center of El Camino for purposes of providing accredited instruction. (Exs. 1 & 9.)

C. Despite its loss of accreditation and the provision of academic services by El Camino, the District remains the employer of the academic employees providing educational services at Compton College pursuant to section 74293, subdivision (a)(1). (Exs. 1 & 9.)

2. Respondents are academic employees of the District.

3. As described in more detail below, on February 21, 2017, the Board of Trustees and Special Trustee Thomas E. Henry determined it was necessary to decrease the number of academic employees at the close of the present academic year by a corresponding number of full-time equivalent (FTE) positions. The Board of Trustees and Special Trustee Henry directed the Provost/CEO, or designee, to proceed accordingly. (Ex. 1.)

4. On March 13, 2017, and pursuant to sections 87740 and 87743, the Board of Trustees and Special Trustee Henry were given written notice of recommendation by the Provost/CEO that notice should be given to respondents that their services will not be required for the 2017-2018 academic year. (Ex. 2.)

5. On March 14, 2017, respondents were advised in writing that it had been recommended to the Board of Trustees and Special Trustee Henry that they be given notice pursuant to sections 87740 and 87743 that their services will not be required for the 2017-2018 academic year. (Exs. 3-4.)

6. On or about March 16, 2017, respondents submitted written requests for a hearing to determine if there is cause for not reemploying them for the 2017-2018 academic year. (Ex. 5.) On the same date, a Notice of Defense was submitted on their behalf by counsel. (*Ibid.*)

7. On April 11, 2017, the Accusation was made and filed by Rachelle Sasser in her official capacity as the District's Chief Human Resources Officer, alleging cause exists to not reemploy respondents for the following academic year. (Ex. 6-7.)

8. A. After two consecutive academic years in which the District met the requirements of comprehensive state assessment, the Board of Trustees is preparing to regain its full legal authority to act on behalf of the District. (Ex. 9, attachments 4-5.) Therefore, on February 14, 2017, the Board of Governors of the California Community Colleges announced that governance of the District would be returned to the Board of Trustees. (Ex. 9, attachment 6.)

B. On March 20, 2017, the Chancellor of the California Community Colleges appointed Erik Skinner, Deputy Chancellor of the California Community Colleges, to replace Mr. Henry as the Special Trustee for the District. However, the Special Trustee now has authority only to stay and rescind any decisions made by the Board of Trustees. (Ex. 9, attachment 7.)

C. Based on the above, the Board of Trustees has the authority to decide this matter, subject only to Special Trustee Skinner's stay and rescind power.

The Layoff Resolution

9. On February 21, 2017, the Board of Trustees and Special Trustee Henry adopted Resolution No. 02-21-2017C to reduce or discontinue the following particular kinds of services, no later than the beginning of the 2017-2018 academic year:

<u>Services</u>	<u>FTE Positions</u>
Computer Information Systems (CIS) Instructional Services	1.0
Office Administration Instructional Services	1.0
Recreation Instructional Services	1.0
	=====
Total FTE Reductions	3.00

10. Despite making encouraging progress, the District has not obtained financial stability and independent accreditation such that it is still required to have a Special Trustee and relationship with El Camino. In recent years, the District has also struggled in some subject areas with student interest and enrollment. To address this situation, in spring 2016 Compton College established a task force to study the low enrollment problem and make appropriate recommendations. (Ex. 10.) The task force reviewed the past five academic years for all programs offered. By a report dated December 6, 2016, the task force reported back to the Provost/CEO. The task force made many recommendations, including that reductions be made in the areas of Recreation, CIS, and Office Administration Instructional Services. The Board of Trustees and Special Trustee Henry were advised of these findings no later than February 17, 2017, and they relied on this information when making Resolution No. 02-21-2017C. (*Ibid.*)

11. The services or programs set forth above are particular kinds of services which may be reduced or eliminated within the meaning of section 87743.

12. The particular kinds of services listed above will be reduced or discontinued no later than the beginning of the 2017-2018 academic year. It is necessary to decrease the number of permanent and probationary academic employees by a corresponding number of FTE positions as a result of the reduction in services. As a result, it will be necessary to terminate respondents' employment by the end of the academic year because they are rendering services to be reduced or discontinued.

The Seniority List and Layoffs

13. The District maintains a seniority list which contains employees' seniority dates, current assignments, credentials, and faculty service area (FSA) designations made by the District and El Camino. The seniority list was based on information from the District's human resources records. It does not contain the name of part-time or adjunct instructors. (Sasser testimony; ex. 8.) The accuracy of the seniority list was not challenged, except as discussed below.

14. A. The seniority list designates respondent Garcia's seniority date to be October 4, 1998. However, respondent Garcia contends she began teaching at the District at the beginning of the fall 1998 semester, and that the fall semesters always begin in August. Thus, she contends her correct seniority date is sometime in August 1998.

B. Based on the above, the parties stipulated on the record that respondent Garcia's seniority date should be adjusted to a date at the beginning of the fall 1998 semester, the exact date of which is subject to further investigation and determination.

C. The adjustment to her seniority date will not otherwise affect her layoff.

15. The District used the seniority list to determine the least senior employees currently assigned in the services being reduced or eliminated. The District then determined whether those least senior employees held credentials or an FSA in another area and were thus entitled to bump other employees with less seniority in such an area. The District determined respondents did not and could not bump other less senior employees. In determining who would be laid off for each kind of service reduced or discontinued, the District counted the number of reductions not covered by known vacancies and determined the impact on incumbent staff in inverse order of seniority. (Sasser testimony; ex. 8.)

16. The District considered all known attrition in determining the actual number of necessary layoff notices to be delivered. (Sasser testimony; ex. 8.)

17. No junior employee is scheduled to be retained to perform services that a more senior employee subject to layoff is certificated and competent to render. Ms. Sasser testified that temporary employees have taught this school year and it is possible some will teach next school year, though the schedule and assignments for the fall semester have not been made yet. However, she testified that no temporary employee will be teaching next school year in the areas subject to reduction. Nor did respondents prove that the District will be using temporary employees to teach in those areas.

Professor Annaruth Garcia

18. Respondent Garcia is the least senior employee providing services in the area of Office Administration Instruction Services, which is one of the three services being reduced.

19. In December 2016, respondent Garcia timely applied to add an FSA in the area of business education pursuant to section 87743.2. The District is considering her application. However, even if her application is approved, she would be the least senior employee in that area and still subject to layoff.

20. Respondent Garcia testified she participated in a meeting with an employee of another community college district concerning the possibility of Office Administration Instruction Services being offered as non-credit courses in the future. Respondent Garcia contends that meeting demonstrates the subject area she currently teaches may not be reduced next school year at the District. However, her contention is not persuasive. She simply attended a meeting exploring the possibility of such courses being offered for no credit. It was not established that such classes in fact would be offered, whether they would be offered at the District or another community college district, or whether a non-credit course would qualify as a service for purposes of this proceeding.

21. Respondent Garcia also testified she believes her layoff was motivated by her supervisor's personal dislike for her. However, her contention is unpersuasive for several reasons. Though she believes her supervisor does not like her because he "intimidates her" and makes comments about her accent, she admitted that he has always given her "great" or "good" evaluations. Moreover, her supervisor was not part of the aforementioned task force which recommended the reduction of her subject area. Respondent Garcia admitted in her testimony that interest and enrollment for her area of instruction was so low she previously participated in outreach programs at WalMart and Target in order to recruit potential students. In fact, enrollment in the courses respondent Garcia has taught for the past semesters was low enough that she had to be given special projects in other areas to maintain her full-time schedule. This latter fact corroborates the chronic low enrollment in her subject area, which is the reason the District has decided to reduce those services.

Professor Mohammad H. Khalilzadeh

22. Respondent Khalilzadeh is the least senior employee providing services in the area of CIS, which is one of the three services being reduced.

23. By a letter dated March 13, 2017, respondent Khalilzadeh applied to the District for an FSA in the area of automotive technology pursuant to section 87743.2. However, his request was untimely and therefore the District may not consider it in this proceeding.²

² "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." (Ed. Code, § 87743.3.)

24. A. Respondent Khalilzadeh testified he first asked about an FSA in automotive technology toward the end of the last fall semester. He testified he did not timely submit his application for an additional FSA in that area because of the District's delay in advising him what materials he needed to submit and to whom to submit them. He intimated in his testimony that the District's delay was purposeful.

B. His contention is not persuasive for several reasons. As discussed in detail above, respondent Garcia was able to timely submit her application for an additional FSA without incident. Ironically, respondent Khalilzadeh was involved in the task force before he withdrew from it sometime in fall 2016. (Ex. 10, p. 6.) He therefore was on notice that his job was in jeopardy months before the FSA application deadline. He also admitted on cross-examination that, after expressing interest in applying for an additional FSA, he was told he had to submit a letter of interest and his transcript to Human Resources, but that he could not remember the exact dates involved. Under these circumstances, it was not established the District delayed in reacting to respondent Khalilzadeh's FSA application or otherwise impeded his ability to apply for an additional FSA.³

25. Two other employees (numbers 1 and 88 on the seniority list) are currently teaching overload assignments (total coursework beyond one FTE position) in automotive technology. Respondent Khalilzadeh argues those overload courses could be reassigned to him next semester and, if coupled with his current administrative assignments, he would have a full-time assignment. However, as discussed above, respondent Khalilzadeh's application for an additional FSA in automotive technology was late and may not be considered by the District in this case. Moreover, the District has discretion to "make assignments and reassignments in a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render." (Ed. Code, § 87743.) It is established case law that this language provides school districts discretion to define positions in the manner which they will be taught and that they are not required to split full-time positions into part-time assignments in order to implement a layoff. (*Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334, 342.) The question of what happens if the District grants respondent Khalilzadeh an additional FSA in automotive technology vis-a-vis retaining employee number 88 on the seniority list to teach that subject area (who is junior to respondent) is not at issue in this proceeding.

26. Finally, respondent Khalilzadeh testified he was allowed to teach robotics for the District in 2009 by simply submitting his transcript but not formally requesting an additional FSA. He argues that he should be similarly allowed to do so next school year. However, to the extent teaching robotics requires an additional FSA, section 87743.3 prevents the District from considering respondent Khalilzadeh for robotics since he did not submit an application for an additional FSA covering robotics. In any event, respondent Khalilzadeh failed to prove any employee, let alone one junior to him, is or will be assigned to teach that course in the next academic year.

³ Even if so, the language of section 87743.3 cited above suggests his recourse would be a grievance, as opposed to challenging the processing of his FSA application in this case.

LEGAL CONCLUSIONS

1. The party asserting a claim or making charges in an administrative hearing generally has the burden of proof. (*Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155.) As no other law or statute requires otherwise, the standard of proof in this case requires proof by a preponderance of the evidence. (Evid. Code, § 115.) Therefore, the District bears the burden of establishing cause to affirm the proposed layoff decisions by a preponderance of the evidence.


2. All notice and jurisdictional requirements of sections 87740 and 87743 were met. (Factual Findings 1-8.)

3. The District met its burden of establishing by a preponderance that cause exists within the meaning of sections 87740 and 87743 for terminating respondents' employment for the 2017-2018 academic year. Respondents are the least senior employees teaching in the areas subject to reduction. They are not qualified and competent to render a service being performed by any employee with less seniority who is being retained, within the meaning of section 87743. Cause for not reemploying respondents relates solely to the welfare of the District and the students thereof within the meaning of sections 87740 and 87743. (Factual Findings 1-26.)

ORDER

The Accusation is sustained against respondents. The District may give a final notice of layoff to respondents. Notice shall be given to respondents that their services will not be required for the 2017-2018 school year, and such notice shall be given in inverse order of seniority.

Dated: May 3, 2017

DocuSigned by:

ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearing