

BEFORE THE GOVERNING BOARD
MONTEREY PENINSULA COMMUNITY COLLEGE DISTRICT
COUNTY OF MONTEREY, CALIFORNIA

In the Matter of the Accusation Against:

KEVIN BRANSFIELD, A.J. FARRAR,
CAROLYN HANSEN, KIMBERLY
CHRISTOFF-MANSFIELD, DAVID
MICHAELS, DANIEL PHILLIPS,
NANCY PREDHAM, WALTER WHITE
and JANINE WILSON,

Respondents.

OAH No. 2011031098

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, State of California, Office of Administrative Hearings, heard this matter on April 28, 2011, in Monterey, California.

Louis T. Lozano, Attorney at Law, Lozano Smith, represented the Monterey Peninsula Community College District.

Priscilla Winslow, Attorney at Law, California Teachers Association, represented respondents Kevin Bransfield, Carolyn Hansen, David Michaels, Nancy Predham and Walter White, who were present, and A.J. Farrar, Daniel Phillips and Janine Wilson, who were not present.

There was no appearance by or on behalf of respondent Kimberly Christoff-Mansfield.

The matter was submitted on April 28, 2011.

FACTUAL FINDINGS

1. Douglas R. Garrison made and filed the accusation in his official capacity as Superintendent/President of the Monterey Peninsula Community College District.

2. Respondents Kevin Bransfield, Kimberly Christoff-Mansfield, A.J. Farrar, Carolyn Hansen, David Michaels, Daniel Phillips, Nancy Predham, Walter White and Janine Wilson are academic employees of the district.

3. On March 8, 2011, the district's Governing Board adopted Resolution No. 2010-2011/96, reducing or eliminating particular kinds of services for the 2011-2012 academic year and directing the superintendent/president to give appropriate notices to academic employees whose positions will be affected by the action.

4. Prior to March 15, 2010, Superintendent/President Garrison gave written notice to respondents and other academic employees of the recommendation that their services will not be required for the 2011-2012 academic year. The reasons for the recommendation were set forth in these preliminary layoff notices.

5. Respondents filed timely requests for hearing to determine if there is cause for terminating their services for the 2011-2012 academic year. An accusation was served on respondents, and all respondents are deemed to have filed timely notices of defense. All prehearing jurisdictional requirements have been met.

6. On March 8, 2011, in order to address a projected budget shortfall, the board took action to reduce or discontinue the following particular kinds of services (PKS) for the 2011-2012 academic year:

PKS	FTE¹
Academic Support Center Services	1.0
Administration of Justice Courses	1.0
Coaching services/Physical Education Courses	1.0
Dance Courses	1.0
Horticulture Courses	1.0
Interior Design Courses	1.0
International Students Program Services	1.0
Photography Courses	1.0
Physics/Astronomy Courses	1.0
American Sign Language Courses	1.0
Counseling Services	2.0
TOTAL	12.0 FTE

7. Respondents argue that the district's financial situation does not justify the PKS reductions and proposed layoffs. Although the district expects a reduction in funding next year, it intends to maintain a 10 percent budget reserve, in accordance with board policy. The current budget for the district is approximately \$36 million, meaning that the reserve is approximately \$3.6 million. This reserve amount is well in excess of the \$1.9 million projected salary savings from layoffs required under the worst-case financial scenario. Respondents are not persuasive in their argument that the proposed layoffs should be disallowed, i.e., the district should be forced to use its budget reserve to keep from making the PKS reductions. The board has a duty to assure the fiscal solvency of the district, and its

¹ FTE stands for full-time equivalent position.

policy of maintaining a 10 percent budget reserve is a proper exercise of its discretion in fulfilling this duty, particularly in these times of economic uncertainty.

8. Education Code section 87743² is the statute which authorizes community college districts to lay off academic employees when such layoffs are necessitated by the reduction or elimination of particular kinds of services for the following academic year. That statute provides:

However, the services of no tenured employee may be terminated under this section while any probationary employee, or any other employee with less seniority, is retained to render a service in a *faculty service area* in which the records of the district maintained pursuant to Section 87743.4 reflect that the tenured employee possesses the minimum qualifications prescribed by the board of governors and is competent to serve under district competency criteria. [Italics added.]

Section 87743 requires a district 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.”

9. In 1991, the district and the Monterey Peninsula College Teachers Association (MPCTA) negotiated provisions of their contract regarding placement of faculty members in faculty service areas (FSAs). The preamble to these provisions explained: “The function of Faculty Service Areas (FSAs) is to provide a rational and workable framework within which seniority and ‘bumping’ rights can be exercised by faculty when a reduction-in-force (RIF), or layoff, is being effected.” Under the contract provisions, the district places a faculty member in an FSA at the time of initial employment, and the faculty member is deemed permanently competent in such FSA unless he or she receives an unsatisfactory evaluation in that FSA. After initial employment, a faculty member may apply for placement in an FSA for which he or she has the minimum qualifications. To establish and maintain competency in an employee-initiated FSA, the faculty member must have taught or provided the service in the FSA for two semesters within the past three years and received at least one satisfactory evaluation. Disputes over the denial of an FSA are subject to grievance. The contract incorporates an agreed list of FSAs.

10. Section 87743.4, which is referenced in section 87743, provides:

Each district shall maintain a permanent record for each faculty member employed by the district of each faculty service area for which the faculty member possesses the minimum qualifications for service and in which he or she has established competency

² All statutory references are to the Education Code.

pursuant to district competency standards. The record shall be maintained in the faculty member's personnel file.

11. Several of the respondents were unaware of FSAs until recently, and they testified that had they known about FSAs and their importance in a layoff, they would have pursued placement in another FSA. Also, two respondents testified that their personnel files do not show their FSAs. These respondents are all members of MPCTA and have received a copy of the union contract containing the provisions on FSAs.

12. In 2008, a faculty committee made recommendations to update the 1991 FSA list, but the recommendations were not adopted. In October 2009, MPCTA President Mark Clements requested a copy of the current FSAs, seniority list and hiring dates from Barbara Lee, Associate Dean of Human Resources. In his e-mail to Lee, Clements stated: "While we are not in the position of other colleges in lay-offs. [*Sic.*] I want to be proactive in protecting our members and do what we can to be prepared." Lee believes she provided Clements with the items he requested.

13. Respondents challenge the proposed layoffs on the grounds that the district violated their due process rights by failing to notify them of their FSAs. However, there is no legal requirement that the district notify faculty members of their FSAs or their rights relating to FSAs under the contract negotiated with their union. The district apparently did not have FSAs in all faculty personnel files, as required by section 87743.4, but any faculty member who did not know his or her FSA could have obtained that information by asking the district. Also, the faculty union could have provided information to its members about FSAs.

14. Respondent Carolyn Hansen, who has a seniority date in 1980, teaches American Sign Language full-time in the World Languages Department. Hansen has a special education teaching credential, and prior to 1995 she provided counseling and other supportive services for deaf/hearing impaired students and physically disabled students. When a list of faculty members and their FSAs was compiled in 1991, Hansen was listed as having FSAs in Sign Language and Special Education. However, the Special Education FSA has an asterisk after it, denoting "Employee Initiated and/or Must Maintain Competency to Retain FSA." Hansen was not aware of her FSAs, and she never applied for the Special Education FSA. She was also not aware that she had to do something to maintain her competency in Special Education.

15. Respondents' counsel seemed to be asserting that Carolyn Hansen should have bumping rights in the Special Education FSA, since the asterisk on the FSA list must have been a mistake. But even if Hansen did not apply for her Special Education FSA (i.e., the FSA was not employee-initiated), the asterisk could mean that for some other reason she was required to maintain competency to retain the FSA. Since she has not provided services in Special Education since 1994, Hansen is no longer competent in that FSA, and she has not established that she should be deemed permanently competent. Hansen does not have bumping rights in the Special Education FSA.

16. Most of the services to be reduced or eliminated next year have only one full-time faculty member in that FSA, and those employees are subject to layoff in this proceeding. Respondents contend that these PKS reductions and layoffs should be disallowed because the college did not follow its Procedure for Academic Program Discontinuance. However, the college does not plan to discontinue any of the programs included in the PKS reductions, so respondents' contention is without merit. Some programs may be suspended, but in others the college will offer some courses next year (but not a full-time load). Adjunct faculty will not be hired to teach these courses before the courses are offered to laid-off faculty members.

17. Superintendent/President Garrison testified that determining the areas for PKS reductions was a difficult process that involved consultation with senior officers of the college and consideration of many factors. To the extent possible, the district wants to preserve general education transfer courses and courses in career and technical education. Enrollment trends, awards of certificates, and job placement were among the factors considered. Ultimately, hard choices had to be made; as Garrison testified, "no courses have no merit."

The PKS reductions include general education transfer courses, career and technical education courses, and popular courses with stable or increasing enrollment. The reductions include International Students Program Services, the FSA in which respondent Nancy Predham is the sole faculty member. Predham's program brings international students to the college, generating revenue from the out-of-state tuition they pay.

Garrison hopes that the worst-case financial scenario will not happen and the district will be able to avoid the PKS reductions and reinstate faculty members subject to layoff.

18. Respondents contend that the district has not established that the layoffs are "related to the welfare of the colleges and the students thereof" as required by section 87740, but this contention is without merit. In determining how to allocate its resources, a community college district is given discretion to reduce or eliminate particular kinds of services. While any reduction or elimination of services is arguably detrimental to at least some students (not to mention college employees), in the absence of a showing that the district's decision is arbitrary or capricious, its action is related to the overall welfare of the college and its students. In this case, the decision to reduce or discontinue the services set forth in Finding 6 is neither arbitrary nor capricious but rather a proper exercise of the district's broad discretion.

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

20. No employee with less seniority than any respondent is being retained by the district to perform services in a faculty service area for which any respondent has met the minimum qualifications and competency criteria.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 87740 and 87743.

2. Cause exists because of the reduction or elimination of particular kinds of services pursuant to Education Code section 87743 to give notice to respondents that their services will not be required for the 2011-2012 academic year. The cause relates solely to the welfare of the college and the students thereof within the meaning of Education Code section 87740.

ORDER

Notice may be given to respondents that their services will not be required for the 2011-2012 academic year because of the reduction or elimination of particular kinds of services.

DATED: May 3, 2011

NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings