

BEFORE THE  
BOARD OF TRUSTEE  
COMPTON COMMUNITY COLLEGE DISTRICT  
STATE OF CALIFORNIA

In The Matter Of The Accusation Against:

ROBINSON SIRKEGIAN,

Respondent.

OAH No. L-2004030536

PROPOSED DECISION

The above captioned matter was heard on April 14, 2004 at Compton, California by Carolyn D. Magnuson, Administrative Law Judge, Office of Administrative Hearings.

Stephan K. Matson, Attorney at Law, represented the Complainant.

Dana S. Martinez, Attorney at Law, represented all of the Respondent.

Evidence was received, the matter argued, and the case submitted for decision on the hearing date. The Administrative Law Judge hereby makes her factual findings, legal conclusions, and orders, as follows:

FACTUAL FINDINGS

1. Complainant, Ulis C. Williams, filed the Accusation in the instant case while acting in his official capacity as Superintendent/President of Compton Community College District ("CCCD").
2. Robinson Sirkegian ("Respondent") is a certificated probationary employee of the CCCD. He is completing his fourth year of employment with CCCD.
3. Prior to March 15, 2004, CCCD gave the Respondent notice that he would not be reemployed by CCCD for the 2004-2005 school year.

4. The Respondent filed a timely request for a hearing to determine if there was cause for not reemploying him for the 2004-2005 year.

5. Thereafter, Complainant filed the Accusation in this matter and had it served on the Respondent. Respondent filed a timely notice of defense to the Accusation.

6. All pre-hearing jurisdictional requirements have been met.

7. On March 23, 2004, CCCD's Board of Trustees adopted Resolution No. 03/04-032340(a) to discontinue all offerings and instruction in diesel mechanics technology effective at the end of the 2003 – 2004 school year.

8. As a result of this discontinuation of services, CCCD reduced the number of its full time equivalent certificated employees by one.

9. CCCD compiled a list of certificated employees and their seniority dates. For those employees with the same first date of service, a lottery was held to break the tie and determine seniority.

10. The evidence established that Respondent is authorized to teach in two faculty service areas ("FSA"): diesel mechanics and auto mechanics. During his employment at CCC, Respondent has taught in both areas. Respondent is the only CCCD employee teaching, or qualified to teach, courses in diesel mechanics.

11. There are three faculty members who teach auto mechanics and/or auto body at the college who are being retained as employees. Each of these individuals is senior to Respondent.

12. Two of these instructors often teach overload classes in auto mechanics and/or auto body. An overload class is one that is taught by an instructor in addition to his standard 18 hour a week teaching obligation. An overload class is offered when the instructor indicates a willingness to teach the additional class and the college agrees that the class can be taught by the instructor. If either party is unwilling, the class will not be offered.

13. Respondent was hired by CCCD to create a diesel mechanics curriculum and to be the instructor for the program. Although Respondent spent a great deal of time and effort developing the curriculum and soliciting support from the community and businesses, the program never really was implemented because the college did not have the money to properly equip it. Respondent believes that the college should have done more to help establish the diesel mechanics program such as allowing classes with few students enrolled to continue, more aggressively recruiting students for the program, and facilitating Respondent's promotion and enrollment efforts.

## LEGAL CONCLUSIONS

14. Jurisdiction to proceed in this matter was established pursuant to Education Code section 87740 and 87743.<sup>1</sup>

15. Respondent contended that the Accusation was invalid because it identified him as being a probationary teacher when, in fact he was tenured.

16. Education Code sections 87608, 87608.5 and 87609 provide the method of acquiring tenure at a California community college. Under that process, the original contract is for one year. At the end of that year, the district has three options: not rehiring the employee, renewing the employment contract for one year or employing the contract employee as a regular employee for all subsequent academic years. If the option of a one year contract is chosen, at the end of that year, the district has three choices: not rehiring the employee, renewing the employment contract for two years or employing the contract employee as a regular employee for all subsequent academic years. If the option of a two year contract is chosen, at the end of that period, the district has two choices: employ the probationary employee as a tenured employee for all subsequent academic years or not reemploy the probationary employee. Thus, tenure necessarily accrues when a contract employee is employed for a fifth year.

17. In this case, Respondent is finishing his fourth year of teaching at the college. Therefore, all other things being equal, CCCD has two options regarding Respondent's future employment: either grant Respondent tenure or not reemploy him. If CCCD had rehired Respondent when his current contract expires, he would then be a tenured employee. However, because no such contract has been executed, Respondent is a probationary employee of CCCD and is properly characterized as such in the Accusation.

18. Diesel mechanics is a particular kind of service that can be reduced or discontinued within the meaning of Education Code section 87743.

19. CCCD chose to discontinue the diesel mechanics program because of a lack of student interest in the courses and because the college could not afford to provide the required equipment, supplies and instructional materials the program needed to be successful. Respondent contends that CCCD should be prohibited from discontinuing diesel mechanics because the college is entirely responsible for the existence of the negative factors that led to the decision to discontinue the program.

20. The law presumes that administrative actions are taken in good faith. (*Burrell v. City of Los Angeles* (1989) 209 Cal. App. 3d 568) The fact that a particular cut could be avoided, or that cogent arguments can be made for choosing a different option, does not establish that a board's decision to discontinue services and lay off instructors was fraudulent, arbitrary, or capricious. As the courts are not allowed to substitute their judgment

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<sup>1</sup> All citations are to the Education Code unless otherwise noted.

for the considered judgment of a school board (See *Gallup v. Board of Trustees* (1996) 41 Cal. App. 4th 1571, 1589), the Administrative Law Judge in the instant case is similarly limited.

21. CCCD's decision to discontinue diesel mechanics was a proper exercise of CCCD's discretion. The discontinuance of the service is related to the welfare of the CCCD and its students.

22. Finally, Respondent asserts that there is no need to lay him off because there are sufficient students interested in auto mechanics and auto body to fill classes for him to teach, as demonstrated by the overload classes in those areas regularly being taught by the retained instructors.

23. Neither the college nor the instructors is obligated to make available overload courses. Therefore, there is no certainty that such courses would be offered in any given semester. Undoubtedly there are a number of disciplines in which student interest exceeds the ability of CCCD to offer desired courses because of staffing limitations. CCCD is not obligated either to provide all the courses students would like to take or all those its certificated employees would like to teach; nor is it obligated to create such courses in order to avoid laying off Respondent.

#### ORDER

1. The Accusation is sustained.

2. CCCD may notify Respondent that his services will not be needed in the 2004-2005 school year due to the discontinuance of services by CCCD.

Dated: April 15, 2004

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CAROLYN D. MAGNUSON  
Administrative Law Judge  
Office of Administrative Hearings