

**BEFORE THE
GOVERNING BOARD OF THE
WEST HILLS COMMUNITY COLLEGE DISTRICT
FRESNO COUNTY, STATE OF CALIFORNIA**

In The Matter Of The Accusations Against:

OAH NO. L2004040031

TOM WINTERS and LINDA
AMAYA-GUENON,

Respondents.

PROPOSED DECISION

Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 22, 2004, in Coalinga, California.

Sue Ann Cercone, Attorney at Law, represented West Hills Community College District.

Wesley T. Green, Attorney at Law, represented Respondents.

Respondent Linda Amaya-Guenon appeared for the hearing. Respondent Tom Winters did not appear for the hearing despite receiving notice of the time and place of the hearing. All jurisdictional requirements have been met.

The Accusation against Respondent Amaya-Guenon was withdrawn pursuant to a stipulation between Respondent Amaya-Guenon and West Hills Community College District. Therefore, no findings or legal conclusions will be made concerning Respondent Amaya-Guenon.

The matter was submitted on April 22, 2003.

FACTUAL FINDINGS

1. Frank Gornick, Chancellor of the West Hills Community College District ("District"), filed the Accusation in his official capacity.

2. At all relevant times, Respondent Tom Winters ("Respondent Winters") has been employed by the District as a faculty employee.

3. On March 8, 2004, Chancellor Gornick recommended to the Board of Trustees of the District that notice be given to Respondent Winters, pursuant to Education Code Sections 87740 and 87743, that his services would not be required for the 2004/2005 school year.

4. On March 8, 2004, the Governing Board of the District adopted Resolution No. PS-15 directing Complainant to initiate procedures to eliminate two (2) Full-Time Equivalent (FTE) faculty positions in the Title V Bridge Program and to give notice to respondents that their services would not be required for the 2004/05 school year.

5. On March 9, 2004, pursuant to Education Code sections 87740 and 87743, Chancellor Gornick gave written notice to Respondent Winters of the Chancellor's recommendation to the Board, and of the Board's resolution. The written notice set forth the reasons for the recommendation and noted that the Board had passed a Resolution reducing the faculty employees by two (2) FTE positions in the Title V Bridge Program.

6. Respondent Winters timely requested in writing a hearing to determine if there is cause for not reemploying him for the ensuing school year.

7. On April 2, 2004, Chancellor Gornick made and filed the Accusation against Respondent Winters. The Accusation along with the required accompanying documents and blank Notices of Defense were timely served on Respondent Winters.

8. Respondent Winters filed a Notice of Defense.

9. The Title V Bridge Program is funded by a grant which is scheduled to expire in September 2004. Although the District is attempting to obtain funding for the program, there is no guarantee that said funding will be available for the 2004/2005 school year.

10. The District maintains a Seniority List which contains employees' seniority dates (first date of paid service), current assignments and locations, advanced degrees, credentials, and authorizations.

11. The District used the Seniority List to develop a proposed layoff and "bumping" list of employees currently assigned in various services. The District then determined whether the least senior employees held credentials in another area and were entitled to "bump" other employees.

12. Respondent Winters has exercised his "bumping rights" and has been reassigned by the District to another position for the ensuing school year.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 87740 and 87743 were met.

2. The services identified in Board Resolution PS-15 are particular kinds of services that can be reduced or discontinued under Education Code section 87740 and 87743. The Board's decision to discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District and its students within the meaning of Education Code sections 87740 and 87743.

3. Cause exists to reduce the number of certificated employees of the District due to the discontinuation of particular kinds of services. The District identified the faculty employees providing the particular kinds of services that the Board directed be discontinued.

4. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

5. A faculty employee whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. Lacy v. Richmond Unified School District (1975) 13 Cal.3d 469.

ORDER

1. Notice shall be given to Respondent Winters that his services will not be required for the Title V Bridge Program for the 2004-2005 school year because of the elimination of two (2) full-time equivalent positions in said program.

2. The West Hills Community College District shall honor any "bumping rights" that have been properly exercised by Respondent Winters and shall reassign Respondent Winters to a position wherein he is qualified serve that is currently held by an employee less senior to Respondent Winters.

Dated: _____

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings