

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

In The Matter Of The Accusation Against:

MARK SNYDER,

Respondent.

OAH No. L-2004030655

PROPOSED DECISION

The above captioned matter was heard on April 23, 2004 in Long Beach, California by Carolyn D. Magnuson, Administrative Law Judge of the Office of Administrative Hearings.

Spencer E. Covert, Attorney at Law, represented the Complainant.

Kate Phillips, Attorney at Law, represented 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, Victor R. Collins, filed the Accusation in the instant case while acting in his official capacity as the Executive Vice President of Human Resources for the Long Beach Community College District ("District").

2. Mark Snyder ("Respondent") is a certificated employee of the District.

3. On or before March 15, 2004, the District gave the Respondent notice that he would not be reemployed by the District for the 2004-2005 school year.

4. Respondent filed a timely request for a hearing to determine if there was cause for not reemploying him for the 2004-2005 school 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 9, 2004, the District's Board of Trustees ("Board") adopted Resolution No. 030904 to reduce or discontinue services as follows:

a. Discontinue all sections of Electronics instruction except CISCO Networking and Robotics Technology;

b. Reduce one section of Machine Tool 50A and 50B, which is the equivalent of 4.25 Teaching Units; and

c. Discontinue the services of an instructor assisting in the teaching of Machine Tool, which is the equivalent of 10.25 Teaching Units.

8. As a result of the reduction or discontinuation of services, it has become necessary for the District to reduce the number of certificated employees by one.

9. The District 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. These lotteries were organized and overseen by District personnel.

10. In February 2002, the District advertised a faculty opening for "... one full-time tenure track Electronics/Electrical Instructor for the 2000-2001 academic year" at Long Beach City College ("LBCC"). The bulletin went on to describe the duties of such an instructor, which included "... teaching a variety of courses in the field of Electronics and Electrical Technology ...."

11. Respondent, who has a bachelor of science degree in electronic engineering, applied for this position. As part of the application process, Respondent was asked to perform lecture and laboratory demonstrations. For each of these demonstrations, he was given the choice between demonstrating in the Electrical or Electronics subject area. Respondent chose in both instances to present the Electronic subject matter.

12. In May 2000, the District offered to employ Respondent "... as an Electronics/Electricity Instructor for the 2000-2001 school year." Respondent accepted the employment. His hire date is August 11, 2000.

13. At the same time, the District hired another instructor for the Electronics/Electricity department. Although the two new instructors had the same date of hire, Respondent's number in the tie-breaking lottery was lower. Thus, Respondent is senior to Dr. Shaw.

14. However, Dr. Shaw is now assigned as the interim dean of the LBCC Department of Health and Sciences. She is not teaching in the Electronics/Electrical department. Prior to March 15, 2004, Dr. Shaw was not given notice of intent not to reemploy her as an administrator; therefore, she will be employed in an administrative capacity at LBCC in the 2004-2005 school year, although she does retain retreat rights to her former position.

15. The District's Executive Vice President of Human Resources testified that each District faculty member is assigned one or more faculty service areas ("FSA")<sup>1</sup> in which s/he is certified to teach and is assigned to courses or duties falling within the ambit of her/his certification(s). 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.

16. When Respondent was hired by the District, the Human Resources personnel assigned Respondent FSAs in Electronics and Machine Tool. These are also the areas in which Respondent was assigned to teach. It was not established that Respondent was informed at the time he was hired what FSAs had been assigned to him. Dr. Shaw was given a FSA in Electricity and assigned to teach classes in that discipline.

17. As early as June 2003, Respondent was aware that the District did not consider him qualified to teach Electricity courses because he did not hold a FSA in that discipline. Respondent also knew then that he could apply to the LBCC Equivalency Committee for an Electricity FSA. However, Respondent refused to make that application because he believed he had been hired to teach in both Electronics and Electricity and was qualified to teach both. In Respondent's view, if he applied for the Electricity FSA, he would be admitting that he had not been qualified to teach in Electricity at the time he was hired.

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<sup>1</sup> 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."

18. The proposed Electronics class schedule for the fall semester 2004 contains courses in robotics and Cisco systems. These classes will be assigned to full time faculty members who are senior to Respondent. A one unit network wiring installation class is planned, and the proposed teacher is a part time instructor to whom Respondent is senior. If that class is actually offered in the fall and no more senior faculty member is assigned to teach it, Respondent should be assigned to it.

19. There are a number of classes proposed for the fall semester 2004 in Electricity which Respondent believes he is qualified to teach that, under the proposed schedule, would be taught by part time faculty. Respondent feels that, because he was hired to teach in "Electronics/Electricity," because the subject matter of Electronics and Electricity is analogous, and because he has assisted in teaching some Electricity labs, he should be retained to teach these Electricity courses instead of assigning them to part time faculty.

20. Most of the classes proposed for the fall 2004 semester in Machine Tool are being taught by full time faculty who are senior to Respondent. The two proposed classes to be taught by a part time instructor are advanced computer programming courses, and Respondent did not claim to be competent to teach those classes.

#### LEGAL CONCLUSIONS

21. Jurisdiction was established pursuant to Education Code<sup>2</sup> section 87740 and 87743 to proceed in this matter.

22. Section 87743.2 provides: "Not later than July 1, 1990, each community college district shall establish faculty service areas. The establishment of faculty service areas shall be within the scope of meeting and negotiating pursuant to Section 3543.2 of the Government Code." Section 87743.1 defines faculty service area to mean "... a service or instructional subject area or group of related services or instructional subject areas performed by faculty and established by a community college district."

23. Article XVI of the Agreement between the Long Beach Community College District and Community College Association – Long Beach City College ("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

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<sup>2</sup> All citations are to the Education Code unless otherwise noted.

... 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 to teach in a discipline in which the Board 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 baccalaureate or higher degree 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.

5. [sic] 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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#### B. Assignment

1. Faculty members hired after June 30, 1990, shall be assigned only to those disciplines for which they meet the minimum qualifications as adopted by the Board of Governors or the equivalency standards as established through joint agreement between the Academic Senate and representatives of the Board, and approved by the Board.

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#### C. Layoffs and Reductions in Force

1. No tenured or probationary unit member shall be deprived of his/her position for causes other than those specified in the Education Code.

2. The service 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.”

24. The collective bargaining agreement establishes standards and procedures that are substantially different from the procedures described by the Executive Vice President of Human Resources. Initially, the contract states that there is only one FSA for all faculty members, which is the LBCC Faculty Service Area. Therefore, based on the FSA designation alone, any faculty member is eligible to teach in any discipline and any course offered by LBCC.

25. However, Article XVI.A.3 of the contract also requires a faculty member to qualify as competent to teach in a particular discipline by meeting one of the six standards set forth in Article XVI.A.3.b. Article XVI.A.3.a provides that “[e]quivalency 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.”

26. Further, according to the bargaining agreement, the authority of the Course Equivalency Committee is limited to determining competency under the provisions of Article XVI.A.3.b.(3). The contract is silent on the procedure by which post-hire

competency based on the other Article XVI.A.3.b categories is to be determined. In fact, the District uses the Course Equivalency Committee to determine all post employment competency issues. However, contractually, the approval of the committee is only required when the claim of competency falls within the ambit of section XVI.A.3.b.(3).

27. Applying the law and the contract provisions to Respondent's case requires some analysis. First, when respondent was initially hired, per the contract, he was assigned the standard FSA of LBCC Faculty Service and granted two competency approvals: electronics and machine tool. The bargaining agreement does not require the District to personally inform a new employee of the FSA and competency determinations that have been made based on his perceived qualifications.

28. Education Code section 87743.3 provides that each community college faculty member shall be assigned at least one faculty service area at the time of hiring for which the new instructor meets both minimum qualifications under section 87356 and district established competency qualifications; that an instructor may apply to the employing district to add FSAs for which the faculty member qualifies; and that any such application must have been made by February 15<sup>th</sup> to be considered in any proceeding under section 87743.

29. Both the statutes and the 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 Respondent does not possess an electricity FSA, he is ipso facto not competent to teach electricity – at least for the purposes of a reduction in force proceeding.

30. It is beyond the purview of this proceeding to determine whether, at the time he was hired, Respondent should have been determined to also be qualified under the provisions of Article XIV.A.3.b as competent to teach electricity. Even if such a determination would otherwise be within the province of this hearing, no such determination could be made because the District's criteria for competency to teach electricity were not in evidence.

31. While it is true that Respondent does have some past experience in teaching in the field of electricity and it is equally true that there is substantial subject matter overlap between electronics and electricity, those facts are only relevant if they are the basis of a timely application by Respondent to the District for an additional FSA.

31. 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.<sup>3</sup> In this case, Respondent chose not to proceed with the administrative process for obtaining the FSA to which he claims entitlement; and he is, therefore, not entitled to relief in this proceeding from the consequences of that failure.

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<sup>3</sup> 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.

32. Respondent also believes that his contract with the District is to teach in both disciplines because the position was designated as being an instructor for Electronics/Electricity.

33. However, the term "Electronics/Electricity" simply identified the department in which Respondent would teach; it did not establish that he was qualified/competent to teach every class offered within the Electronics/Electricity Department. In fact, Respondent acknowledged that there were courses offered within the department that he was not competent to teach.

34. Respondent did not establish that he was competent to teach courses in electricity. Therefore, he is not entitled to bump part time instructors or junior faculty members who are being retained to teach courses in electricity.

35. While it was established that there is one course that is on the proposed course list for electronics that Respondent could teach, it is not at all certain that the final class schedule will offer that course or, if offered, that the assigned instructor will be a part time faculty member or one who is junior to Respondent. Thus, the evidence is insufficient to determine that a teaching assignment exists at this time which Respondent is qualified to teach for which a more junior employee is being retained.

36. It was not established that Dr. Shaw would be returning to her teaching position in Electricity. Moreover, under the holding in *Moreland Teachers' Association v. Kurze* (1980) 109 Cal.App.3d 648, an administrator may be retained over a more senior colleague when the administrator has a special credential or needed skill not shared by the more senior employee. Respondent did not establish that he was qualified to replace Dr. Shaw either as an interim dean or as a teacher in any electricity class that could be assigned to Dr. Shaw if she should return to the department.

37. It was not established that the District was being arbitrary or inequitable in relying on existing FSAs in making layoff determinations. Nor was it established that the District has retained employees junior in seniority to render services which Respondent is qualified and competent to perform

38. The discontinued courses are particular kinds of services that can be reduced or discontinued within the meaning of Education Code section 87743.

39. The District's decision to discontinue or reduce services was a proper exercise of the District's discretion. The reduction or discontinuance of services is related to the welfare of the District and its students.

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ORDER

The Accusation is sustained, and the District may notify the Respondent that his services will not be needed in the 2003-2004 school year due to the reduction or discontinuance of services by the District.

Dated: May 6, 2004

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CAROLYN D. MAGNUSON  
Administrative Law Judge  
Office of Administrative Hearings