

BEFORE THE
BOARD OF TRUSTEES
SISKIYOU JOINT COMMUNITY COLLEGE DISTRICT
COUNTY OF SISKIYOU
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

MICHAEL PADDACK,

OAH No. 2012040504

Respondent.

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings, on May 25, 2012, in Weed, California.

Margaret M. Merchat, Attorney at Law, represented the Siskiyou Joint Community College District (District).

Alan J. Frey, Regional UniServ Staff, Community College Association, appeared on behalf of Michael Paddack (respondent), who was also present.

Evidence and testimony were received, and the matter was submitted for decision on May 25, 2011.¹

FACTUAL FINDINGS

1. Randall Lawrence is the President and Superintendent of the District. On March 9, 2012, President Lawrence gave notice to the District's Board of Trustees (Governing Board) of his recommendation that notice be given to respondent that his services will not be required for the 2012-2013 academic year.

¹ Under Education Code sections 87740 and 87743, copies of the proposed decision are to be submitted to the governing board on or before May 7, and notices of termination of services to employees shall be given before May 15. The parties stipulated that the deadline for the proposed decision in this matter will be extended to June 14, 2012, and the deadline for the May 15 notices to respondents will be extended to June 22, 2012.

2. On March 6, 2012, the Governing Board adopted Resolution No. 2011-12-02, entitled “In the Matter of the Reduction or Discontinuance of Certain Particular Kinds of Services for the 2012-2013 School Year” (PKS Resolution). Pursuant to the PKS Resolution, the Governing Board determined that it was necessary and in the best interests of the District to eliminate the equivalent of a 1.0 Full Time Equivalent (FTE) 195-day Athletic Trainer, and to decrease a corresponding number of District academic employees no later than the beginning of the 2012-2013 academic year. The PKS Resolution directed the District President/Superintendent or his designee to initiate and pursue procedures necessary to not reemploy the equivalent of 1.0 FTE academic employee (195-Day Athletic Trainer) of the District in accordance with Education Code sections 87740 and 87743.² The PKS reduction and elimination is based solely upon financial reasons, and is not related to the skills, abilities or work performance of the affected faculty member.

3. On March 9, 2012, the District President/Superintendent notified respondent of the recommendation regarding reduction/discontinuance of services and that his services would no longer be required. The preliminary layoff notices informed respondent of his right to request a hearing, and enclosed a copy of the PKS Resolution, sections 87740 and 87743, and a blank request for hearing form. In response to the preliminary layoff notice, respondent filed a Request for Hearing on March 14, 2012. On April 12, 2012, the District served the Accusation, copies of relevant sections of the Education and Government Codes, and form Notice of Defense on respondent.

Respondent had earlier filed a Notice of Defense on March 14, 2012.

4. Nancy Miller is the District’s Director of Human Resources. She noted that respondent is the District’s only athletic trainer. Respondent’s District seniority date is August 14, 2002. He holds a Master’s Degree in Kinesiology, and a Bachelor’s Degree in Education. He is qualified to provide instruction in the community college teaching disciplines of physical education and health. Respondent is currently assigned to provide services for the District as an athletic trainer. His seniority and his academic qualifications do not allow him to bump into any position held by a probationary employee or other employee with less seniority and in which he is qualified and competent to provide instruction.

Ms. Miller indicated that the District is offering respondent a full-time 175-day athletic position next year. The new position will have both athletic training and instructional components. Respondent currently works solely as an athletic trainer with no instructional component.

5. Respondent suggests that the District is required to provide students with an athletic trainer certified by the Board of Certification per the California Community College Athletic Association Constitution and Bylaws. Respondent also believes that the District is

² All statutory references are to the Education Code unless otherwise indicated.

not really eliminating or reducing the services currently being provided by respondent and that there is therefore no PKS reduction.

6. Robert Aaron Frost, Ph.D., is the District's Vice President of Student Learning. Dr. Frost explained that the District's budget will be reduced by \$3 million and that this was the reason services are being reduced or eliminated. He noted that there is absolutely no requirement that community college districts have an athletic trainer on faculty. The majority of community college districts do not use faculty to staff this position. It may be provided through other means and the District intends to provide athletic trainer services differently next year. Dr. Frost characterized the District's current athletic trainer services as a "Cadillac" plan, and one that offers considerably more than that provided at other community colleges, particularly given the relatively small number of sports programs offered by the District. Dr. Frost offered as one example of a change contemplated for next year, that the athletic trainer will no longer accompany the football team during away games. Dr. Frost confirmed that the District will continue to use only certified trainers and otherwise satisfy minimum standards for this service.

7. The District is not required to provide athletic trainer services in the same fashion as it is doing this academic year. The District noted that minimum standards set forth in the California Community College Athletic Association (CCCCAA) Constitution and Bylaws recognize that community college districts should exercise discretion in meeting these standards and that "each college must use its experience and common sense to tailor these policies to its specific needs." (CCCCAA Bylaw 9, section 9.1.2. Underlining in original.)

Respondent relied upon these same Bylaws, and has not identified any other requirement that the District continue to provide athletic trainer services solely through faculty.

8. There was no evidence that the District proposes to eliminate any services that are mandated by state or federal laws or regulations.

9. No junior employee is being retained to render services that respondent is qualified and competent to perform.

10. The District's PKS reduction and discontinuance relates solely to the welfare of the District's colleges and students.

LEGAL CONCLUSIONS

1. The District complied with all notice and jurisdictional requirements set forth in sections 87740 and 87743.

2. The Athletic Trainer services identified in the PKS Resolution is a particular kind of service that may be reduced or discontinued under section 87743. The Governing Board's decision to reduce or discontinue this service was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuance of these services relates solely to the welfare of the District's colleges and its students within the meaning of section 87740.

3. Cause exists to reduce academic faculty of the District due to the reduction or discontinuance of particular kinds of services. The District properly identified the academic faculty to be laid off as directed by the Governing Board.

4. No junior academic faculty is being retained to perform services that respondent is qualified and competent to render. Cause exists to give notice to respondent that his services as a faculty athletic trainer will not be required for the 2012-2013 academic year because of the reduction or discontinuance of particular kinds of services.

RECOMMENDATION

Notice may be given to respondent Michael Paddack that his services as an Athletic Trainer will not be required for the 2012-2013 academic year.

DATED: May 29, 2012

JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings