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OPINION	:	No. CV 78-86
of	:	January 26, 1979
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SUBJECT: COMMUNITY COLLEGE DISTRICT'S EMPLOYEE CLASSIFICATION—A community college district may classify as a temporary employee a certificated person employed to replace another certificated employee who has been granted a leave of absence.

The Honorable Daniel V. Blackstock, County Counsel for the County of Butte, has requested an opinion on the following question:

May a community college district, operating on the quarter system, classify as a "temporary employee" a certificated person employed for a complete school year of three quarters to replace a certificated employee who has been granted a one-year leave of absence?

The conclusion is:

Although open to considerable question, a community college district, operating on the quarter system, may reasonably classify as a "temporary employee" a certificated

person employed for a complete school year of three quarters to replace a certificated employee who has been granted a one-year leave of absence.

ANALYSIS

We are informed that the Butte Community College District (hereinafter "District") operates its facilities on the quarter system with a "school year" consisting of the fall, winter, and spring quarters. The District has granted sabbatical leaves of absence to two instructors for the three quarters of the 1978–1979 school year.

The question presented for analysis is whether the District may classify as temporary employees" the two persons hired for the year to replace the instructors on leave. The issue arises because Education Code section 87482[1] mandates that no person shall be employed as a temporary employee "by any one district for more than two semesters or quarters within any period of three consecutive years." Notwithstanding this apparent two-quarter statutory limitation, we conclude from an examination of the various related code provisions that the District may hire the replacements for three consecutive quarters and classify them as "temporary employees."

The employment classification system for public educational institutions may be described as complex, obscure, and governed by inconsistent provisions. (See *Santa Barbara Federation of Teachers v. Santa Barbara High Sch. Dist*. (1977) 76 Cal. App. 3d 223, 228.) Basically, the Legislature has provided for four distinct categories of instructors: regular (formerly "permanent"), contract (formerly "probationary"), temporary, and substitute. The regular and contract employees primarily have positions of a settled and continuing nature, while the temporary and substitute employees fill the short-range needs of a school district. (See §§ 87476–87481, 87601, 87602, 87609*; Balen v. Peralta Junior College Dist.* (1974) 11 Cal. 3d 821, 826.)

Because temporary and substitute employees do not have certain important benefits shared by regular and contract employees, the Legislature traditionally has limited their classifications and the courts have strictly interpreted the statutes authorizing their employment. (*Balen v. Peralta Junior College Dist*., *supra*, 11 Cal. 3d 821, 826; *Santa Barbara Federation of Teachers v. Santa Barbara High Sch. Dist.*, *supra*, 76 Cal. App. 3d 223, 228, 240.) If the statues plainly do not compel reclassification to a higher status, however, the terms of the contracts of employment are controlling. (*Santa Barbara Federation of Teachers v. Santa Barbara High Sch. Dist.*, *supra*, 76 Cal. App. 3d 223, 240; *Paulus v. Board of Trustees* (1976) 64 Cal. App. 3d 59, 64.)

[1] All unidentified section references hereinafter refer to the Education Code as reorganized and operative April 30, 1977 (see Stats. 1976, chs. 1010, 1011).

The beneficial purposes of employing temporary and substitute employees include (1) flexibility in teacher assignments, (2) permitting tenured instructors to obtain leaves of absence for such circumstances as sickness and sabbaticals, and (3) the prevention of overstaffing due to the right of tenured instructors to return to their positions after leaves of absence. (See *Santa Barbara Federation of Teachers v. Santa Barbara High Sch. Dist., supra*, 76 Cal. App. 3d 223, 230–231; *Centinela Valley Secondary Teachers Assn. v. Centinela Valley Union High Sch. Dist.* (1974) 37 Cal. App. 3d 35, 41.) The longer a temporary employee is allowed to fill a position, the greater can be the stability and continuity in the instruction of the students. (*Santa Barbara Federation of Teachers v. Santa Barbara High Sch. Dist.*, *supra*, 76 Cal. App. 3d 223, 232–234; *Centinela Valley Secondary Teachers Assn. v. Centinela Valley Union High Sch. Dist., supra*, 37 Cal. App. 3d 35, 42.) The recent trend of legislation in this area, therefore, has been to expand the use of temporary employees in certain circumstances. At one time, community college instructors could be classified as temporary employees only if hired for less than a three-month period. (*Balen v. Peralta Junior College Dist., supra*, 11 Cal. 3d 821, 829 fn. 8.) The period was expanded to "less than a complete school year" by the addition of section 87482 (then codified as § 13337.5) in 1967 (Stats. 1967, ch. 705) and again expanded in 1970 to a "complete school year" by amendment to the same statute (Stats. 1970, ch. 579).

The ability of a district to employ a temporary instructor under the expanded provisions of section 87482 is limited, however, to filling specified needs, including that "a certificated employee has been granted leave for a semester, quarter, or year. Here, the District comes within the provisions of the statute since it wishes to replace two instructors who have been granted leaves of absence for one-year sabbaticals.

Although section 87482 thus allows the District to employ the temporary replacements "for a complete school year," the statute appears to prohibit the replacements from being employed "for more than two . . . quarters . . . ." However, since a complete school year under the quarter system is comprised of three quarters, these provisions are contradictory. To resolve the apparent conflict, we must apply a number of well-established principles of statutory interpretation.[2]

[2] Section 87482 states in part: "No person shall be so employed by any one district for more than two semesters or quarters within any period of three consecutive years." By itself, this prohibition appears clear and unambiguous. When language of a statute appears clear, its plain meaning is to be followed (*Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal. 3d 152, 155), without an addition to or alteration of the words. (*Santa Clara County Dist. Attorney Investigators Assn. v. County of Santa Clara* (1975) 51 Cal. App. 3d 255, 259.) Here, however, the prohibitory language is in conflict with the remainder of the statute, thus requiring a construction in which the literal meaning of the words may be disregarded. (See *Select Base Materials v. Board of Equal*. (1959) 51 Cal. 2d 640, 645; *Marrujo v. Hunt* (1977) 71 Cal. App. 3d 972, 977.)

The cardinal rule of statutory construction is to ascertain the intent of the legislature so as to effectuate the purpose of the law. (*Cossack v. City of Los Angeles* (1974) 11 Cal. 3d 726, 732; *Select Base Materials v. Board of Equal., supra*, 51 Cal. 2d 640, 645.) Here, the legislative history of section 87482 manifests a specific intent to expand by amendment the period of temporary employment to a "complete school year" if certain conditions are met. It must be presumed, therefore, that the limitation contained in the third paragraph of the original statute would have been amended to read "two semesters or three quarters" if its significance had been realized by the Legislature. (See People v. Perkins (1951)37 Cal. 2d 62, 64; *Van Nuis v. Los Angeles Soap Co.* (1973) 36 Cal. App. 3d 222, 228.) Indeed, it would be absurd to believe that the Legislature intended that districts operating on the semester and quarter systems should be treated unequally in their respective ability to hire temporary employees. (See *Nightingale v. State Personnel Board* (1972) 7 Cal. 3d 507, 513; *Rosenthal v. Hansen* (1973) 34 Cal. App. 3d 754, 760.) The amendment to the statute concerning a "complete school year," being later in time, thus controls over the ambiguous language implying a two-quarter limitation contained in the original enactment. (See *Santa Barbara Federation of Teachers v. Santa Barbara High Sch. Dist*., *supra*, 76 Cal. App. 3d 223, 236; *Adams v. Superior Court* (1970) 8 Cal. App. 3d 569, 572.)

Giving controlling weight to the "complete school year" provision of section 87482 is also consistent with other provisions of the statutory scheme. Section 87478, for example, requires that a temporary employee be classified as a contract employee "if reemployed for the following school year in a position requiring certification qualifications." (See *Covino v. Governing Board* (1977) 76 Cal. App. 3d 314, 319–320; *Coffey v. Governing Board* (1977) 66 Cal. App. 3d 279, 293.) Additionally, the "two semesters or quarters prohibition was intended primarily to prevent the indefinite reemployment of temporary instructors. (See *Covino v. Governing Board, supra*, 76 Cal. App. 3d 314, 3 18–320; *Coffey v. Governing Board, supra*, 66 Cal. App. 3d 279, 291; *Perner v. Harris* (1975) 45 Cal. App. 3d 363, 372.)

We believe, therefore, that under section 87482, the district may employ the replacement instructors as temporary employees for a "complete school year" notwithstanding the statute's language suggesting a possible two-quarter limitation. Since two opposing principles of statutory construction can be found on almost every point (see *Consumers Union of U.S., Inc. v. California Milk Producers Advisory Bd.* (1978) 82 Cal. App. 3d 433, 445, fn. 7), the District should consider carefully the consequences of a contrary conclusion being reached by a court should the question be presented for judicial review.

We also point out the possible application of section 87481 to the specific issue presented. When section 87481 was originally codified as section 13337.3, it referred to

school districts in general rather than community college districts in particular. It was thus "controlled" by the more specific language of section 87482 (then codified as section 13337.5) and the applicable time limitation of the latter statute. (*Covino v. Governing Board*, *supra*, 76 Cal. App. 3d 314, 321.)

Since section 87481 now refers specifically to community college districts, it constitutes a substantial change in the law with regard to the hiring of temporary employees by community college districts. (*Covino v. Governing Board*, *supra*, 76 Cal. App. 3d 314, 322.) The statute allows the yearly hiring of temporary employees "for a complete school year" to replace certificated employees on leave.

Whether the various provisions of sections 87481 and 87482 can be harmonized is open to serious question. The explicit time restriction of the latter statute reflects a longstanding legislative policy (see *Covino v. Governing Board, supra*, 76 Cal. App. 3d 314, 318–320) that the legislature may not have intended to modify by the recent reorganization of the code and changes made in what is now section 87481. On the other hand, the *Covino* decision appears to indicate that because of the specific change in the language of the statute, section 87481 cannot be construed so as to allow a continuation of the section 87482 time limitation. (*Id*., at p. 322.) Indeed, the Legislature may well have intended to change its policy with regard to community colleges in order to treat them equally with other school districts that are now able to yearly reemploy temporary instructors under certain conditions. (See *Santa Barbara Federation of Teachers v. Santa Barbara High Sch. Dist., supra*, 76 Cal. App. 3d 223, 235–240.)

In any event, we need not decide the possible application of section 87481, inasmuch as we believe that section 87482 may be reasonably construed to allow temporary employment "for a complete school year" of three consecutive quarters under the circumstances given.

Finally, it should be mentioned that the District need not employ the two replacements to perform the same duties as were performed by the instructors on leave. All that is necessary is for the District to limit the number of temporary employees hired to the number of instructors on leave; it may freely assign the temporary employees to whichever teaching duties are in the best interests of the educational process. (See § 87481; *Campbell Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal. App. 3d 796, 816; *Santa Barbara Federation of Teachers v. Santa Barbara High Sch. Dist*., *supra*, 76 Cal. App. 3d 223, 233–234; *Paulus v. Board of Trustees, supra*, 64 Cal. App. 3d 59, 63.)

The conclusion to the question presented, therefore, is that although open to considerable question, a community college district, operating on the quarter system, may reasonably classify as a "temporary employee" a certificated person employed for a

complete school year of three quarters to replace a certificated employee who has been granted a one-year leave of absence.

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