COMMUNITY COLLEGE PART-TIME FACULTY UNEMPLOYMENT COMPENSATION HANDBOOK

Prepared for:

Foothill-De Anza Faculty Association

By:

Law Offices of Robert J. Bezemek
A professional Corporation
Robert J. Bezemek, Attorney

DISCLAIMER

This handbook has been published as part of an educational program. It is intended to provide information concerning the subject matter of unemployment compensation benefits for part-time temporary faculty. It is not provided to reflect legal advice or other professional services. If legal advice or other assistance is required, the reader of this handbook should contact a competent professional for assistance. This handbook is issued March 1992. Be aware that information in it may not be valid at a later date if there are changes in regulations or law.

WEBMASTER'S NOTE: This handbook is available as an HTML document by pointing your browser to http://www.cpfa.org/bezemek.html

INTRODUCTION

The rights of part-time temporary faculty to receive unemployment insurance benefits have been subject to considerable litigation over the last few years. This handbook is designed to assist individuals who may seek unemployment insurance compensation benefits so that they have some understanding of how the unemployment benefits program is administered, and how to present facts and issues relative to unemployment compensation benefits for part-time temporary faculty. This handbook was not designed to explain in great detail the legal or factual issues which may arise. Rather, it is a summary and a set of guidelines. Individuals seeking more specific information which describes decisions interpreting the Unemployment Insurance Code may wish to review California Emp1oyer-Employee Benefits Handbook by David W. O'Brien, published by the Winter Brook Publishing Co.

The information provided by this handbook is not intended to substitute for the advice of a competent professional. However, this handbook serves useful needs because few part-time temporary faculty are in a position to hire competent legal representation when the amounts in dispute are usually significantly lower than the cost of such legal representation. Hopefully with this handbook, part-time temporary faculty will be better equipped to address unemployment insurance issues pertinent to their own situation.

I. CALIFORNIA'S UNEMPLOYMENT COMPENSATION PROGRAM

California's Unemployment Compensation Program was enacted in the 1930s to provide unemployment insurance benefits for workers who lost their jobs through no fault of their own and who were seeking work. California law requires that the unemployment insurance program be "liberally construed" with the purpose of extending its benefits to unemployed persons. California Unemployment Insurance Code §100; Gibson v. California Unemployment Insurance Appeals Board (1973) 9 Cal.3d 494, 108 Cal.Rptr. 1.[1]

[1] "The provisions of the Unemployment Insurance Code must be liberally construed to further the legislative objective of reducing the hardship of unempl6yment. (Citations omitted.) To construe the code liberally to benefit the unemployed, and to dispense with the formality in administrative adjudication, does not accord with the Draconian rule that the slightest and most excusable inadvertence will deprive a worker of his right

II. ADMINISTRATION OF THE UNEMPLOYMENT PROGRAM

California's Unemployment Insurance Program is administrated principally by the Employment Development Department ("EDD") (Unemployment Insurance Code §301). Located within the EDD, but not subject to its control, is an Appeals Division consisting of the California Unemployment Insurance Appeals Board. (Unemployment Insurance Code §401)

III. ELIGIBILITY TO RECEIVE BENEFITS

In order to be 'eligible for benefits, community college employees must meet these requirements:

1. Be unemployed within the meaning of the Unemployment Insurance Code. (We will discuss this situation as it relates to part-time employees later.)

2. Have been paid wages of a set minimum amount for employment during her or his base period.

3. Be able to work in one's usual occupation or other work for which he or she is reasonably qualified.

4. Be available for work. That is, one must be ready and willing to accept suitable employment in her or his usual occupation, or an occupation for which she or he is reasonably qualified. (Unemployment Insurance Code §1253(c))[2]

5. Be registered for work and thereafter report to the EDD or such other office as one is directed, unless registration and reporting requirements are modified or waived by the EDD. (Unemployment Insurance Code §1253(b))

6. Be actively seeking suitable work in accordance with the reasonable instructions of the EDD. (Unemployment Insurance Code §1253(e))

7. Comply with any EDD regulations applicable to one's claim. (Unemployment Insurance Code §1253(a))

---

to an appeal on the merits." Gibson, supra, 9 Cal.3d at 499.

[2] If one is unavailable for work due to illness or injury, under Unemployment Insurance Code §1253.5 an individual may receive benefits for any day during a given week where the injury or illness does not make the individual unable to work.

8. Have been unemployed for a waiting period of one week. (Unemployment Insurance Code §1253(d), §1254)

9. Not be disqualified for benefits because one's most recent work ended because of the applicant's fault, unless, if disqualified, the applicant has "purged" the disqualification. To be "disqualified", one must have been fired for cause or have left work voluntarily without good cause. (Unemployment Insurance Code §1256) However, the "cause" must mean serious misconduct connected with one's most recent employment. (Unemployment Insurance Code §1256) Termination of a part-time, community college faculty member because of general dissatisfaction with his/her work, one's failure to meet a minimum class enrollment, and similar reasons doe's not constitute misconduct or cause so as to disqualify one from receiving benefits.

IV. HOW TO APPLY FOR BENEFITS

A part-time temporary community college instructor should, at the conclusion of any semester or quarter, contact the nearest office of the Employment Development Department to apply for benefits.

The EDD office will ask the applicant to complete an "initial claim form" which provides basic information such as the name and address of the most recent employer, the date last worked, and the reason terminated. For part-time, temporary community college faculty the reason terminated is "end of the assignment."

The applicant is also asked to complete a "claimant's profile form" and a "claimant's separation statement" if the most recent work terminated because of discharge or a voluntary quit. Community college faculty who reach the end of an assignment are not "discharged." Rather, their assignment has expired or terminated.

EDD also issues a "handbook for claimants" which you may obtain from the EDD at the time of your first appointment.

Ordinarily a claim cannot be back-dated except in unusual circumstances. EDD will permit back-dating of a claim for up to 65 weeks if the claim was delayed because an employer coerced a. 'claimant into not claiming benefits, or EDD employees made misleading statements which caused the claimant to fail to register for work or file a claim. Under California Administrative Code, Title 22, Section 1253-8, any claim for back-dating must be presented no later than one week

following the week in which the claimant learns of his or her potential right to benefits. Realistically, if you delay filing your claim, you run serious risks of not being permitted to back-date your claim.

V. INTERVIEW WITH THE EDD CASEWORKER

In our experience, EDD personnel are sometimes unfamiliar with the rights of part-time, temporary community college faculty to receive unemployment compensation benefits. It is therefore often necessary for the claimant to advise EDD personnel of the claimant's rights to benefits. At the back of this handbook in Appendix A is a copy of' EDD's internal directive about your rights which should promptly resolve almost all cases in favor of the claimant. After we discuss more of the procedure, we will give you some tips on how to represent yourself and protect your rights in dealing with EDD.

After your EDD interview, EDD will issue a "determination" as to whether you are eligible, ineligible or disqualified from receiving benefits. Be aware that strict time limits apply to appeals from the determination.

The department may for "good cause" reconsider any determination it has made within either five days after an appeal to an administrative law judge's decision has been filed or, if no appeal is filed, within 20 days after the mailing or personal service of the EDD notice of determination.

Our advice is to always appeal an EDD denial of benefits. In other words, if the department's notice of determination finds you ineligible or disqualified from benefits, you should appea1 to an administrative law judge. After you file the appeal you still have five days in which to ask EDD to reconsider its determination. (Important: There is no right to appeal from the department's failure, upon your request, to reconsider its prior determination. In other words, you must appeal from the initial denial, not from the denial of any request for reconsideration.)

VI. RIGHT OF APPEAL

a. Time Limit on Appeal.

Either the employee or employer may appeal a notice of determination to an administrative law judge. The notice of appeal must be filed within **20** days from the mai1ing or persona1 service of EDD's notice of determination.

In computing the time within which to file an appeal, the first day is excluded and the last day is included. If the last day is a Saturday, Sunday or holiday, such days are also excluded. (CUIAB Rules, Section 5003) Please be aware that the day is a calendar day. In other words, you have 20 calendar days to file your appeal. It is extremely unwise to file your appeal on the last date. File early.

b. Form of the Appea1.

The appeal may be filed by way of a letter or an appeal form available at the EDD or CUIAB. The appeal must be in writing. A sample appeal is included as Appendix B..

c. Where to file the Appeal.

The appeal may be filed at the office that processed the claim or at any EDD or board office. (Unemployment Insurance Code §1328) If the appeal is mailed, it must be post-marked before the end of the 20th day. Again, it is extremely unwise to wait to the end of the appeal period to file the appeal.

After the appeal has been filed, the claimant must continue to "certify for benefits" at the local EDD office while the appeal is pending. If the appeal is granted in favor of the claimant, benefits will be paid only for weeks in which the claimant is certified with the EDD and met all of their requirements for eligibility.

If the appeal if filed late, then the CUIAB does not have authority to hear the appeal unless facts showing good cause for the late filing or estoppel are established. (Unemployment Insurance Code §1328) The administrative law judge would decide the issue of good cause or estoppel. Good cause includes, but is not limited to, mistake, inadvertence, surprise or excusable neglect. (Unemployment Insurance Code §1328)

VII. HEARING BEFORE THE ADMINISTRATIVE LAW JUDGE

A hearing before the administrative law judge is usually held at the EDD office, or a local CUIAB office. Occasionally, hearings by telephone may be held.

Most hearings are allotted only one hour or less. In other words, you must be extremely well-prepared, concise and organized. If you intend to call witnesses,

please make certain that your witnesses are well-prepared for the brief testimony they will be allowed to give. If you plan to offer exhibits, have four of each (original plus three copies). One is for the administrative law judge, one of the EDD representative, one for the district representative, and one for you.

The CUIAB also has a pamphlet advising claimants of their rights of hearing. Please study the pamphlet carefully.

Whether you have been granted or denied benefits, it is important for you to testify at the hearing. Your testimony can take the form of a statement, provided you are first sworn under oath (penalty of perjury) to tell the truth. You also may present documents and argument. If you are surprised by testimony presented by the employer or by EDD, you may request a continuance to allow you an opportunity to muster evidence to meet an unexpected issue.

Claimant's EDD hearings are entitled to be represented by an attorney or another person, or they may represent themselves. If you hire an attorney or other individual to represent you, you are not entitled to reimbursement by EDD or the employer for your costs or fees. Thus, few claimants are in a position to hire someone to represent them. The attorney's fee will generally be as much as the benefits you can win, and few attorneys handle these cases anyway. Occasionally a union representative will agree to handle an appeal.

Often it is convenient for a claimant to present statements by witnesses, whether notarized and sworn under penalty of perjury or not. Please be advised that EDD will not give such statements much weight. Although the administrative law judge will probably take into evidence any affidavit properly prepared, the affidavit is hearsay, and because there has been no opportunity for cross-examination of the witness by EDD or the district, will likely give the affidavit little or no weight. A sample form affidavit is attached for those circumstances when no other method exists for obtaining the testimony. (See Appendix C)

You may actually subpoena witnesses to testify. However, a witness who will attend only by way of a subpoena is often unpredictable and uncooperative. Accordingly, you should act with great discretion in deciding whether to subpoena a witness, especially if you do not know what answers the witness will give to your questions. Frankly, almost all the information you need to present your case should be readily available without a subpoena.

We recommend that you have a checklist of facts that you wish to present to

any appeal hearing involving part-time community college faculty employment benefits. Such a checklist is attached as Appendix D. Make sure that all of the facts are introduced by testimony or exhibits, not simply by argument.

VIII. THE DECISION OF THE ALJ

The administrative law judge (ALJ) will issue a decision, usually about one week after the hearing, either affirming, reversing, modifying or setting aside the EDD determination.

The decision of the ALJ is final unless, within 20 days after mailing the decision, either party initiates an appeal to the California Unemployment Insurance Appeals Board itself.

If you have been denied benefits you are entitled to file an appeal to the CUIAB. (A party may appeal by letter or an appeal form available at the local office of the CUIAB or the EDD, or provided to you with the decision. We recommend that your initial appeal simply contain a brief statement such as the following:

> I appeal from the decision denying me benefits. The basis of my appeal is that the ALJ has misstated and misapplied the facts, and misapplied the law with respect to my claim. As a part-time, temporary community college faculty member with no reasonable assurance of employment following the termination of my assignment, I am entitled to benefits under the decision in Cervisi v. CUIAB. I request a copy of the transcript and wish to file a written argument or brief after the transcript is received.

When you file the appeal you should request a copy of the transcript of the hearing. The transcript will be made available to you at a modest fee. You also should obtain, if you do not already have them, copies of any exhibits.

After you receive the transcript you should file a more detailed "brief" or argument setting forth the basis of your appeal.

IX. RIGHTS OF PART-TIME. TEMPORARY COMMUNITY COLLEGE FACULTY TO RECEIVE BENEFITS

For many years community college part-time, temporary faculty did not receive unemployment compensation benefits during summer breaks or intersession

breaks. EDD routinely denied benefits on grounds that these employees had a "reasonable assurance" of subsequent employment. Often EDD would rely upon the employee's own history of service. Thus, because the temporary employee has worked continuously as a part-time temporary employee for many years, without any interruption in service, except for summer and intercession, it was assumed that he or she as a fall or spring assignment that was "reasonably assured." Even if there were other contingencies such as minimum enrollment, EDD personnel would often assume that the employee would meet the minimum enrollment requirement, based on past history.

These views by EDD were actually at odds with the intent of the Legislature. The critical section of the Unemployment Insurance Code is §1253.3, which provides, in pertinent part, as follows:

> * * * (b) Benefits . . . based on service performed in the employ of . . . any public entity . . . with respect to service in an instructional, research or principal administrative capacity for an educational institution are not payable to any individual with respect to any week which begins during the period between two successive academic years or terms or . . .. if the individual performed services in the first of the academic years or terms and if there is a contract or a reasonable assurance that the individual will perform services for any educational institution in the second of the academic years or terms. * * *
>
> (g) For purposes of this section "reasonable assurance" includes, but is not limited to, an offer of employment or assignment made by the educational institution, provided that the offer or assignment is not contingent on enrollment, funding, or program changes. An individual who has been notified that he or she will be replaced does not have an offer of employment or assignment to perform services for an educational institution is not considered to have reasonable assurance."

In Cervisi V. Unemp1oyment Insurance Appea1s Board, 208 Cal.App.3d 685, 256 Cal.Rptr. 142 (1989), the California Court of Appeals was called upon for the first time to interpret Education Code §1253.3 with respect to community college faculty. In order for you to understand the decision, we will first explain some of the facts:

In the fall of 1983, Giselle R. Cervisi and others worked as part-time, hourly instructors in the San Francisco Community College District. When the semester ended they applied for unemployment benefits for the period between the fall and

spring semesters, the intercession break. EDD denied some requests and appeals were filed. The administrative law judge ruled that none of the instructors was eligible for benefits saying:

> "(Although) classes might have been subject to cancellation for lack of funds and/or enrollment, the evidence indicates that the general experience was that the claimants had continued in employment for several ensuing semesters."

The EDD affirmed, on a split vote, the administrative law judge's determination. AFT Local 2121, on behalf of Cervisi and others, then filed a petition to Superior Court for a writ of mandate reversing the decision.

The San Francisco Superior Court heard the case and granted the petition for writ of mandate, reversing the decision of the CUIAB. The CUIAB then appealed to the California Court of Appeal. Here is the critical part ruling of the precedent-setting decision of the Court of Appeal:

> "Based on undisputed facts, the trial court found that the clear language of the statute compelled issuance of the writ. It distinguished prior case law and held that the notices of potential assignment were 'contingent on adequate enrollment, funding, and the approval of the district's board of governors.'
>
> The unambiguous language of §1253.3 and substantial evidence supports the trial court's findings. (Citations omitted) Under the statute, an assignment that is contingent on enrollment, funding or program changes is not a "reasonable assurance" of employment. (§1253.3, subdivision (g).) The administrative record provides sufficient evidence that the assignment given to these hourly instructors depended on their ability to attract a sufficient number of students to justify offering the classes. In fact, the standard faculty assignment form states that the "employment is contingent upon … adequate class enrollment." The record also establishes that district enrollment had dropped. Contingent assignment is not a 'reasonable assurance' of continued employment within the meaning of §1253.3; therefore, the trial court properly issued the writ requiring the respondents to be paid unemployment benefits for the period between the fall and spring semesters." 208 Cal.App.3d at 638. (Emphasis added.)

A full copy of the Cervisi decision is attached as Appendix E.

Following Cervisi, EDD issued a directive, now part of its manual for EDD offices, describing Cervisi. As already noted, the most recent version is attached as Appendix A. It supports your right to benefits.

Some part-time temporary faculty may work for more than one public school employer. If one is observing a semester or intersession break from one public school employer while continuing to work for another public school employer, benefits may or may not be available depending upon relative amounts of earnings from each of the public school employers. If this situation arises, the EDD will determine under their rules whether or not an individual is disqualified from receiving benefits because of other public school employment which is occurring while the individual in on a break from another public school employer. Only by making application for benefits can any potential benefit recipient learn whether they are entitled to benefits or not.

So, how do you present your case?

1. Introduce copies of assignment forms or other district documents (exhibits) containing the contingencies discussed above. In other words, produce documentary evidence that your assignment is contingent upon enrollment, program changes, budget or funding, or bumping. The evidence could be an assignment form (look on both front and back), a board policy, a district regulation, or similar written evidence.

2. Introduce your own testimony that your assignment was contingent upon program changes (i.e., being bumped by a permanent or probationary faculty member), or meeting minimal enrollment. You may ordinarily testify by way of a narrative statement.

3. Introduce the department directive showing how Cervisi is to be applied. (Appendix A) Introduce a copy of Cervisi. (Appendix E)

4. Introduce any other facts that would support your case. Some examples are these:

   (a) If your district is experiencing financial difficulty and the numbers of part-time faculty are being reduced or layoffs are happening, please make sure to testify about this.

(b) If you have had a personal history of having been bumped from a class either because of enrollment not meeting the minimum or because of a full-timer who needed the class to fill out a load, make sure you testify about this.

(c) If you know of others who currently or in the recent past had similar experiences, be sure to testify about those facts.

X. DISTINGUISHING RUSS AND LONG BEACH

Sometimes EDD representatives or district representatives will try to argue that you are not entitled to benefits because of the case of Russ v. CUIAB. In Russ, an unemployed teacher's aide was denied benefits on grounds she had a reasonable assurance of re-employment. The aide was laid off under a seniority system that guaranteed she would be rehired. During the period of her layoff she continued to receive health and welfare benefits. More significantly, at the time of her case, Unemployment Insurance Code §1253.3 was limited to an offer of employment not contingent on enrollment, funding or program changes. Following the decision in Russ, §1253.3 was amended to apply both to offers and assignment".. Thus, Russ is distinguishable. The Cervisi court explicitly recognized that Russ was not controlling in its decision.

The other case that might be cited by EDD or the district is Board of Education of the Long Beach Unified School District v. CUIAB, 160 Cal.App.3d 674, 206 Cal.Rptr. 788 (1984). There, a substitute teacher was held to have a reasonable assurance of reemployment because of the nature of substitute work. The court relied heavily on Russ and held that because she had not received an "offer" which was contingent upon enrollment or funding that an offer of continuing service as a substitute, with all of its intended uncertainties was a "reasonable assurance" of re-employment. Again, this case was distinguishable from Cervisi because there was no contingent assignment made. The Cervisi court explicitly recognized that the Long Beach case was not controlling.

XI. CONCLUSION

Should you have any difficulty receiving benefits either from EDD or the CUIAB, please be sure that you promptly bring the matter to the attention of your local union representatives.

APPENDIX A

E.D.D. Field Office Directive

To: Field Office Managers (No DI Action Required) No.: 89-55 UI

Issued: July 20, 1989

Expires: June 30, 1990

From: Operations Branch

Subject: Cervisi et al. v. Unemployment Insurance Appeals Board

I. SUMMARY

This Directive transmits the decision issued by the California court of Appeal, First Appellate District on March 31, 1989. The, decision requires a change in the interpretation of what constitutes reasonable assurance for nontenured, part-time instructors who are employed by an institution of higher education.

II. BACKGROUND

A. Court Case

The claimants were part-time, hourly instructors who were employed by a community college district. They completed their assignments at the end of the spring semester and applied for unemployment insurance benefits for the period between the spring and fall semesters.

The Department held that they were not eligible for unemployment insurance benefits as they had "reasonable assurance" of being employed by the school employer in the succeeding school year. The claimants appealed and the Department's decision was affirmed by an Administrative Law Judge (ALJ). The claimants appealed from the ALJ's decision and the Board affirmed the ALJ's decision.

The Claimants filed a petition for a writ of mandate. The Superior Court ruled that the claimants did not have reasonable assurance. The Board appealed from the Superior Court's decision and the Court of Appeal affirmed the decision by the lower court.

The Superior Court in its decision held that the record established in the administrative proceedings clearly demonstrated that the assignment given to the hourly instructors depended on the classes obtaining sufficient enrollment. The Court noted that the assignment form issued to the instructors stated that "employment is contingent upon adequate class enrollment." The Court also held that the record established that district enrollment had dropped. The Superior Court concluded that the offers of employment made by the school employer were "contingent on adequate enrollment, funding, and the approval of the District's Board of Governors."

The Superior Court concluded that "under the statute, an assignment that is contingent on enrollment, funding, or program changes is not a 'reasonable assurance' of "employment."

The Court of Appeal adopted the Superior Court's findings and held that a contingent assignment is not a "reasonable assurance" of continued employment within the meaning of Section 1253.3.

B. Reasonable Assurance Prior to Cervisi

Prior to Cervisi, when determining whether a nontenured, hourly instructor had "reasonable assurance," we applied the principles established in Russ. In that case the Court held that an individual who worked in a nonprofessional capacity had "reasonable assurance" even though the school district for which she worked had not received federal funding at the end of the school year. The Court held that there was a history of individuals in that classification working under the same conditions and therefore there was "reasonable assurance" since the statute did not require there be a guarantee of employment.

The Department applied the principles established in Russ to employees who worked in a professional capacity as well as to those who worked in a nonprofessional capacity. These individuals who are employed by the schools have generally attained permanent civil service status and are assured of employment if they have not been given appropriate notice of termination.

C. Effect of Cervisi

The provisions of Cervisi are applicable only to non-tenured, hourly instructors employed by an institution of higher education. Such individuals are not subject to disqualification under the provisions of Section 1253.3 if the offer of employment (whether made orally or in writing) contains the proviso that the employment is contingent on class enrollment or funding.

D. Substitute Teachers

The provisions of Cervisi do not apply to substitute teachers. We will continue to apply the principles in Long Beach. The Court of Appeal in Cervisi made reference to the trial court distinguishing Cervisi from Long Beach. See Section III. A.3 of the School Employee Claims Handbook for a discussion of the Long Beach case.

Substitutes would have "reasonable assurance" if the school employer offers them work as substitutes in the next school year or term and they are expected to work under substantially the same economic terms and conditions as they did in the prior school year or term.

III. REFERENCE

School Employee Claims Handbook, Sections III., IV. A. and IV. B.

IV. ACTION REQUIRED

A. Completion

Follow existing procedures as contained in the School Employee Claims Handbook, Section IV. B, for scheduling the claim appropriately. There are no changes in these instructions. If the claimant states that he or she has an offer of work with a school employer, schedule the claimant for a determination interview.

B. Determinations

Effective immediately, apply the principles established by the Court of Appeal to determine whether an individual who is a nontenured, hourly instructor has "reasonable assurance."

If it is established that the offer (whether made verbally or in writing) is contingent on funding or enrollment, the claimant is not subject to disqualification under the provisions of Section 1253.3.
Token Offer of Employment

If the school employer reports that the school will guarantee the individual employment of one or two weeks while determining whether the class obtains sufficient enrollment, this does not constitute "reasonable assurance." This would be considered to be token offer of employment and not a bona fide offer. Therefore, the individual who receives such an offer, would not be subject to disqualification under Section 1253.3.

Offer of Employment With Other School Employer

If an individual, who is a nontenured, hourly instructor employed by an institution of higher education, also works for a lower education school employer (grades K through 12) and has an offer of work with this employer and the economic terms and conditions are substantially the same, the individual would be subject to disqualification under the provisions of Section 1253.3. Under the provisions of Section 1253.3, all school wages are subject to denial if there is a finding that an individual has "reasonable assurance" of employment with a school employer in the post-recess period (refer to Section VII. E. of the School Employee Claims Handbook).

V. INQUIRIES

Any questions regarding the procedures in this Directive should be addressed to Loren Weatherly at

(916) 323-7931 or ATSS 473-7931.

/s/ MARK SANDERS
Deputy Director

APPENDIX B

SAMPLE APPEAL

I hereby appeal from the decision denying me benefits. The basis of my appeal is that the decision and its rationale misstates and misapplies the facts[1] and misstates and misapplies the law. I believe I am entitled to benefits because I am a part-time, temporary community college faculty member. At the conclusion of any given academic term I have no reassurance of continued employment because any future assignments are contingent upon enrollment, funding, being bumped by a full-time or permanent or probationary employee, or because I can be terminated due to lack of funds or because of program changes. As such, I have no legal reassurance of re-employment in accordance with the decision Cervisi V. Unemployment Insurance Appea1s Board, 208 Cal.App.3d 685, 256 Cal.Rptr. 142 (1989).

APPENDIX C

I, _____, hereby declare as follows:

1. (In this paragraph, explain who the individual is.) am chair of the department of Social Sciences at West Mann Community College District.

2. Joan Blue was hired to teach social sciences for the spring of 1992. At the conclusion of the spring of 1992, her assignment ended. Although she was given a notice of assignment for the fall of 1992, that assignment was contingent upon her meeting minimal class enrollment during the first class session, on being bumped by a full-time employee who needed her units to fill out her load, or to being let go because of lack 6f funds. The notice of assignment which Ms. Blue received from our campus did not provide her with any reasonable assurance of employment for the fall, given the above contingencies.

I certify under penalty of perjury that the foregoing is true and correct.

Dated and signed this 5th day of October, 1992 at West Mann, California.

_____

Janice Chair

(The CUIAB will provide, upon request, free affidavit forms that may be used to set forth facts by any declarant.)

APPENDIX D

CHECKLIST

1. Have I introduced copies of any assignment forms or other district documents which explain the contingencies under which my assignment has been made? In other words, have I produced documentary evidence that my assignment is contingent upon enrollment, program changes, budget or funding, or bumping by another employee?

2. Have I testified that my assignment was contingent upon enrollment?

3. Have I explained that I must have a minimum enrollment in my class of X?

4. Have I explained that if I do not obtain minimum enrollment that my class will be cancelled?

5. Have I explained that I can be bumped out of my position by a permanent or probationary faculty member who needs the units to fill out their load because they do not have sufficient classes to meet the contractual load?

6. Have I explained that my assignment is contingent upon budget, funding or other program changes?

7. Have I introduced copies of the Cervisi decision and the EDD directive interpreting it?

8. Have I testified of prior instances in which I have been bumped out of classes or lost classes because of any of the contingencies described above? Have I given the dates and times of these events?

9. Have I introduced any other testimony of personal history of having been bumped from a class, or of the personal history of others who this semester or in recent semesters have been bumped out of a class?

10. Have I introduced testimony of district funding problems which is leading to a reduction of hours for part-time, temporary employees?

APPENDIX E

Cervisi v. Unemployment Ins. Appeals Bd. (1989) 208 Cal.App.3d 635 , 256 Cal.Rptr. 142
[Nos. A038877. Court of Appeals of California, First Appellate District, Division Four. February 1, 1989.]

GISELE R. CERVISI et al., Plaintiffs and Respondents, v. UNEMPLOYMENT INSURANCE APPEALS BOARD, Defendant and Appellant; SAN FRANCISCO COMMUNITY COLLEGE DISTRICT, Real Party in Interest.

[Nos. A038955. Court of Appeals of California, First Appellate District, Division Four. February 1, 1989.]

MURIEL BARTHOLOMEW et al., Plaintiffs and Respondents, v. UNEMPLOYMENT INSURANCE APPEALS BOARD, Defendant and Appellant; SAN FRANCISCO COMMUNITY COLLEGE DISTRICT, Real Party in Interest

[Opinion certified for partial publication.]

(Opinion by Channell, J., with Anderson, P. J., and Poché, J., concurring.) [208 Cal.App.3d 636]

COUNSEL

John K. Van de Kamp, Attorney General, John Davidson and Winifred Y. Smith, Deputy Attorneys General, for Defendant and Appellant.

Robert J. Bezemek and Katherine Riggs for Plaintiffs and Respondents.

No appearance for Real Party in Interest. [208 Cal.App.3d 637]

OPINION

CHANNELL, J.

Respondents Gisele R. Cervisi, Muriel Bartholomew, and other part-time, hourly employees of real party in interest San Francisco Community College District sought unemployment benefits for the period between fall and spring semesters when none of the respondents were working. Appellant Unemployment Insurance Appeals Board determined that the applicants were ineligible for benefits. In separate actions, Cervisi and Bartholomew obtained writs of administrative mandate to compel the board to set aside its decisions. The board appeals, contending that the respondents had reasonable assurances of employment precluding eligibility for unemployment benefits. We affirm the judgments.

I. Facts

In the fall of 1983, respondents Gisele R. Cervisi and others fn. 1 were employed as part-time, hourly instructors by real party San Francisco Community College District. At the end of the semester, they applied for unemployment benefits for the period between fall and spring semesters. The Employment Development Department approved some requests for benefits and denied others. Those whose requests were denied appealed the decision to appellant Unemployment Insurance Appeals Board. Hearings were conducted before an administrative law judge, who ruled that none of the instructors were eligible for benefits. The judge held that although "classes might have been subject to cancellation for lack of funds and/or enrollment, the evidence indicates that the general experience was that the claimants had continued in employment for several ensuing semesters." This was found to constitute a "reasonable assurance" of continued employment precluding eligibility for benefits. The board affirmed the administrative law judge's decision. Cervisi petitioned the superior court for a writ of mandate. (Code Civ. Proc., § 1094.5.) An alternative writ was issued.

In the fall of 1984, respondent Muriel Bartholomew and other part-time, hourly instructors in the district applied for similar unemployment benefits. fn. 2 They were found ineligible to receive benefits. As Cervisi had done, Bartholomew petitioned the superior court for a writ of mandate. Again, an alternative writ was issued. [208 Cal.App.3d 638]

The trial court considered the two petitions together. After hearing, the petitions were granted. The trial court issued a statement of decision and the requested writs. The separate appeals were consolidated by this court.

II. Standard of Review

[1] The trial court used the independent judgment test to determine whether the board's decision was proper. (See Code Civ. Proc., § 1094.5, subd. (c).) As such, we review the trial court's findings, rather than the agency's decision, to determine whether those factual findings are supported by substantial evidence. (Bixby v. Pierno (1971) 4 Cal.3d 130, 143, fn. 10 [93 Cal.Rptr. 234, 481 P.2d 242]; Moran v. Board of Medical Examiners (1948) 32 Cal.2d 301 , 308 [196 P.2d 20]; see Cal. Administrative Mandamus (Cont.Ed.Bar 1966) §§ 15.24-15.26.) As with ordinary civil appeals, this court must construe all conflicting evidence and make all inferences in favor of the trial court decision. (Moran v. Board of Medical Examiners, supra, at p. 308.)

III. Late Appeal * * *

IV. Reasonable Assurance

[2] Addressing the merits of the appeal, the board argues that all respondents received a "reasonable assurance" of employment within the meaning of Unemployment Insurance Code section 1253.3 fn. 4 and applicable case law. It contends that the trial court erred by its contrary findings. Finally, the board contends that the trial court considered incompetent and irrelevant evidence when reaching its conclusions. [208 Cal.App.3d 639]

Based on undisputed facts, the trial court found that the clear language of the statute compelled

issuance of the writ. It distinguished prior case law and held that the notices of potential assignment were "contingent on adequate enrollment, funding, and the approval of the District's Board of Governors."

The unambiguous language of section 1253.3 and substantial evidence supports the trial court's findings. (See Board of Education v. Unemployment Ins. Appeals Bd. (1984) 160 Cal.App.3d 674, 682 [206 Cal.Rptr. 788]; Russ v. Unemployment Ins. Appeals Bd. (1981) 125 Cal.App.3d 834 , 847 [178 Cal.Rptr. 421].) Under the statute, an assignment that is contingent on enrollment, funding, or program changes is not a "reasonable assurance" of employment. (§ 1253.3, subd. (g).) The administrative record provides sufficient evidence that the assignments given to these hourly instructors depended on their ability to attract a sufficient number of students to justify offering the classes. In fact, the standard faculty assignment form states that "employment is contingent upon ... adequate class enrollment." The record also establishes that district enrollment had dropped. A contingent assignment is not a "reasonable assurance" of continued employment within the meaning of section 1253.3; therefore, the trial court properly issued the writ requiring the respondents to be paid unemployment benefits for the period between the fall and spring semesters.

The judgments are affirmed. The board shall pay all costs.

Anderson, P. J., and Poche, J., concurred.

-FN 1. Katherine C. Chung, Stephen W. Goldston, Sophia Lenetaki, Roland S. Meyerzove, Leo Seidlitz, Perry M. Tom, David R. Wakefield, and Norman Yee are the other petitioners in Cervisi's action. For convenience, this set of respondents will be referred to as "Cervisi."

-FN 2. Daniel Brown, Judy E. Cornell, Terrence M. Doyle, Laraine C. Koffman, Sophia Lenetaki, Rafael A. Linares, Roland S. Meyerzove, Joseph Morlan, Leo Seidlitz, Chris J. Shaeffer, and Perry M. Tom are the other petitioners in Bartholomew's action. For convenience, this set of respondents will be referred to collectively as "Bartholomew."

-FN 4. All statutory references are to the Unemployment Insurance Code.

At all time relevant to this appeal, section 1253.3 provided that unemployment compensation benefits are not "payable to any individual with respect to any week which begins during the period between two successive academic years or terms .... if the individual performs services in the first of the academic years or terms and if there is .... a reasonable assurance that the individual will perform services for any educational institution in the second of the academic years or terms." (§ 1253.3, subd. (b); see Stats. 1983, ch. 60, § 2, pp. 139-140.) The statute defined "reasonable assurance" to include "an offer of employment or assignment made by the educational institution, provided that the offer or assignment is not contingent on enrollment, funding, or program changes." (§ 1253.3, subd. (g); see Stats. 1983, ch. 60, § 2, p. 140 [former subd. (e)].) This statute applies to persons employed by community college districts such as real party San Francisco Community College District. (See §§ 605, subd. (b), 1253.3, subd. (b).)