Case No. S235903

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

UNITED EDUCATORS OF SAN FRANCISCO, AFT/CFT, AFL-CIO, NEA/CTA,
Plaintiff and Appellant,

v.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD,
Defendant, Cross-Defendant and Appellant.

SAN FRANCISCO UNIFIED SCHOOL DISTRICT,
Real Party In Interest and Respondent.

SAN FRANCISCO UNIFIED SCHOOL DISTRICT,
Plaintiff and Respondent.

v.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD,
Defendant and Appellant.

Court of Appeal of the State of California, 1st District, Division 1
No. A142858/A143428
Superior Court of the State of California, County of San Francisco
The Honorable Richard B. Ulmer, Jr., Judge
Civil Case No. CPF 12-512437

SAN FRANCISCO UNIFIED SCHOOL DISTRICT'S RESPONSE TO AMICUS CURIAE BRIEF OF THE AMERICAN FEDERATION OF TEACHERS, AFL-CIO ("AFT")

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Respondent SAN FRANCISCO UNIFIED SCHOOL DISTRICT ("DISTRICT") provides the following response to the *Amicus Curiae* brief of the AMERICAN FEDERATION OF TEACHERS, AFL-CIO ("AFT") submitted in support of Petitioner UNITED EDUCATORS OF SAN FRANCISCO's ("UESF's") Petition for Review.

I.

INTRODUCTION

The District responds to two specific arguments made by AFT in its amicus brief:

1. "This case raises the issue of the impact of the existence of the summer school session and whether that session qualifies it as part of the 'academic year' ... Petitioner has made a compelling case in its briefs for why the summer session should be part of the academic year, which would therefore result in the Claimants being eligible for [Unemployment Compensation."] (AFT Amicus Brief, p. 9.)

2. "Should this Court rule in favor of Petitioner in this case, it is likely that the UESF and all other school districts in California that employ substitute educators could address the situation through bargaining in order to define the educators who are year-round employees paid on a salary, for whom there is no entitlement to [Unemployment Compensation] in the summer term, provided that they are given reasonable assurances at the conclusion of the spring term that they will be employed for the fall term. [Footnote omitted.]" (AFT Amicus Brief, p. 18.)

II.

LEGAL ARGUMENT

A. The Architecture of the School Calendar is Clear: An "Academic Year," Containing Fall and Spring "Academic Terms" within it, with Ineligibility during the "Period Between Two Successive Academic Years or Terms."

Unemployment Insurance Code (hereafter "U.I. Code") §1253.3(c) provides that "benefits ... are not payable to any individual with respect to any week which begins during the period between two successive academic years or terms."

The California unemployment insurance statute, and the federal counterpart on which it was based, is premised upon the traditional academic year, starting in the fall, ending in the spring, with a summer break in between. This intervening period is what U.I. Code § 1253.3 calls "the period between successive academic years."

Education Code § 37620 defines the "academic year" as the 175-day (or greater) regular school year. The entire structure of the school calendar is premised upon the 175-day (or greater) academic year. For example, Education Code § 41420(a) provides that "[n]o school district, other than one newly formed, shall, except as otherwise provided in this article, receive any apportionment based upon average daily attendance from the State School Fund unless it has maintained the regular day schools of the district for at least 175 days during the next preceding fiscal year." Education Code § 48200's requirement of "compulsory full-time education" is premised upon the 175 day academic year, as is the Education Code §44913 restriction that service during summer school shall not count towards a certificated employee's progress towards tenure.

B. UESF Fails to Define an "Academic Year" in its Urged Interpretation of U.I. Code §1253.3(c); Such an Omission is Fatal to its Interpretation.

UESF's Petition proposes an extreme interpretation of the reasonable assurance rule, under which "claimants are entitled to unemployment benefits from their last day worked until the fall term by operation of law." (UESF Opening brief, p. 33.) In so doing, UESF claims that the DISTRICT's summer school session constitutes an "Academic Term" for the purposes of U.I. Code §1253.3(c).

However, UESF claims that the summer school session is an Academic Term in a vacuum, without ever explicitly committing to what it believes to constitute the "Academic Year."[1] UESF never specifies whether its conception of an Academic Year starts with the summer school session, fall Academic Term, or spring Academic Term. Likewise, UESF never specifies whether its Academic Year ends with the summer school session, fall Academic Term, or spring Academic Term.[2]

UESF's Petition for review criticizes the DISTRICT's citation to Education Code § 37620's definition of the "academic year" by alleging that the statute cited does not clearly establish the 175-day period as the Academic Year. (UESF Petition, pp. 23-24.) UESF argues that "[t]he '175 days' does not refer to the academic year, but rather a period of instructional time during an academic year." (UESF Petition, pp. 24.) Yet,

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[1] Education Code § 37200's definition of a "school year" as commencing on July 1 and ending June 30 could not constitute an "Academic Year," since it is a seamless period which would preclude the existence of a "period between academic years."

[2] UESF comes closest, perhaps inadvertently, in stating that "[t]his case explores the effect of a summer school session that is offered between the spring semester of an academic year and the fall semester of the *next* academic year." (UESF Petition, p. 2 (Emphasis provided).) However, UESF does not discuss, in any developed manner, what it considers the parameters (i.e., beginning and end points) of the "Academic Year."

UESF never explicitly states what it believes to be the DISTRICT's Academic Year, but only contends that the summer school session is an Academic Term within that Academic Year, whatever it may be.

However, since the statute in question explicitly uses the term "Academic Year," and calls for ineligibility in the period between Academic Years, UESF's failure to commit to a definitive demarcation of the DISTRICT's Academic Year is fatal to its argument. "It is a maxim of statutory interpretation that courts should give meaning to every word of a statute and should avoid constructions that would render any word or provision surplusage," and that "'[a]n interpretation that renders statutory language a nullity is obviously to be avoided.'" (*Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1038–1039.) UESF essentially asks this Court to declare that the summer session constitutes an Academic Term, therefore making it a period of eligibility despite falling between two Academic Years, and to cast out the statute's use of the term "Academic Year." In short, UESF urges an interpretation that would essentially read that term out of the statute. (*See, e.g., San Jose Unified School District v. Santa Clara County Office of Education* (2017) 7 Cal.App.5th 967, 981 ("[s]uch an interpretation would effectively read out of the Education Code a number of provisions ... We decline to adopt a statutory interpretation that would render those enactments mere surplusage.").) Or, as the court of appeal in this case noted, "[t]reating an intervening summer session as an 'academic term' also renders the reasonable assurance language in section 1253.3 meaningless and inoperable" (*United Educators of San Francisco v. California Unemployment Insurance Appeals Board et al.*, Case Nos.

A142858/A143428, Slip Opinion, p. 15 (hereafter "*UESF*, p. 15")) and UESF's position "turns statutory construction and the enforcement of laws on their head" (*UESF*, p. 19).

The DISTRICT therefore disagrees with AFT's contention that "[t]his case raises the issue of the impact of the existence of the summer school session and whether that session qualifies it as part of the 'academic year'" and that "Petitioner has made a compelling case in its briefs for why the summer session should be part of the academic year, which would therefore result in the Claimants being eligible for [Unemployment Compensation.]." (AFT Amicus Brief, p. 9.) Since UESF has failed to specify what it believes to be the beginning and end dates of the Academic Year, it in fact has not "made a compelling case in its briefs for why the summer session should be part of the academic year." In fact, UESF has failed to even identify the Academic Year for the purposes of the interpretation that it is urging, or offer a viable alternative to that proffered by the DISTRICT. Since UESF's proposed interpretation would require this Court to ignore the phrase "Academic Year" in the statute, this omission is fatal to UESF's argument. (*See, e.g., Anderson Union High School District v. Shasta Secondary Home School* (2016) 4 Cal.App.5th 262, 276 ("[w]e will not interpret a statute to eliminate a necessary provision where the Legislature has not done so expressly.").)

C. The Conditions for Eligibility under U.I. Code § 1253.3 Are Not Subject to the Duty to Bargain under California's Collective Bargaining Law.

AFT next contends that "[s]hould this Court rule in favor of Petitioner in this case, it is likely that the UESF and all other school districts in California that employ substitute educators could address the situation through bargaining in order to define the educators

who are year-round employees paid on a salary, for whom there is no entitlement to [Unemployment Compensation] in the summer term, provided that they are given reasonable assurances at the conclusion of the spring term that they will be employed for the fall term. [Footnote omitted.]" (AFT Amicus Brief, p. 18.)

However, eligibility under U.I. Code § 1253.3 is not as malleable and subject to the State's collective bargaining process as AFT suggests. Government Code §3540 ("the Rodda Act"), the State's statute governing collective bargaining for California school employees, provides that:

> This chapter shall not supersede other provisions of the Education Code and the rules and regulations of public school employers which establish and regulate tenure or a merit or civil service system or which provide for other methods of administering employer-employee relations, so long as the rules and regulations or other methods of the public school employer do not conflict with lawful collective agreements.

This provision is known as the non-supersession clause, and provides that "[w]here statutes are mandatory ... a contract proposal which would alter the statutory scheme would be nonnegotiable under PERB's application of section 3540 because the proposal would 'replace or set aside' the section of the Education Code." (*San Mateo City School Dist. v. Public Employment Relations Bd.* (1983) 33 Cal.3d 850 (superseded by statute on other grounds as stated in *California School Employees Assn. v. Bonita United School Dist.* (2008) 163 Cal.App.4th 387); *See also, Board of Education of the Round Valley*

Unified School District v. Round Valley Teachers Association (1996) 13 Cal.4th 269, 284; *Sunnyvale Unified School Dist. v. Jacobs* (2009) 171 Cal.App.4th 168, 180.)

Therefore, contrary to AFT's suggestion, certain statutory terms used by, or germane to the interpretation of, U.I. Code § 1253.3, are immutable with respect to the collective bargaining process under the nonsupersession clause. Therefore, the Education Code's definition of "Academic Year" under Education Code § 37620 is immune to the collective bargaining process, as is Education Code § 41420(a)'s requirement of an Academic Year of "at least 175 days," Education Code § 48200's requirement of "compulsory full-time education," and Education Code § 44913's restriction that service during summer school shall not count towards a certificated employee's progress towards tenure.

However, more pertinent to the interpretation of the phrase "between two successive academic years or terms" in U.I. Code § 1253.3 is AFT's recognition that, for "educators who are year-round employees paid on a salary ... there is no entitlement to [Unemployment Compensation] in the summer term, provided that they are given reasonable assurances at the conclusion of the spring term that they will be employed for the fall term. [Footnote omitted.]" (AFT Amicus Brief, p. 18.)

This reference by AFT concedes that U.I. Code § 1253.3 serves to render the period between Academic Years one of ineligibility for benefits for all school-term employees, "provided that they are given reasonable assurances at the conclusion of the spring term that they will be employed for the fall term." However, upon further examination, AFT's formulation also reveals that it in fact renders ineligible for benefits

all of the claimants at issue herein: they are "year-round employees," whose school-term employment is conterminous with the Academic Year (generally, August through June); and they are provided "reasonable assurances at the conclusion of the spring term that they will be employed for the fall term," as acknowledged by AFT.

While AFT (echoing the CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD's ("CUAIB's") argument) would likely contend that the rule of ineligibility between Academic Years only applies to "employees paid on a salary," neither the express terms of the statute, nor the legislative history, evidence any intent to make application of the rule variable upon the manner of pay. The original legislation was intended to cover employees rendering "service in an instructional, research, or principal administrative capacity for an institution of higher education ..." (*See, e.g.,* Public Law No. 91-737 (August 10, 1970), attached to CUIAB Request for Judicial Notice ("RJN,") Exh. A, p. 2.) When the statute was amended six years later, it extended the reasonable assurance rule to any educational institution, and to include other employees rendering "services in any other capacity for an educational institution (other than an institution of higher education) ..." (See, Public Law No. 94-566 (October 20, 1976), attached to CUIAB RJN, Exh. D, pp. 57, 77.) Neither the plain language of the statute, nor its legislative history, evidence any intent to limit the application of the reasonable assurance rule based upon the means or manner of pay. In fact, the statute contains no limiting language whatsoever as to its scope of application.

III

CONCLUSION

U.I. Code §1253.3(c) provides that "benefits ... are not payable to any individual with respect to any week which begins during the period between two successive academic years or terms." Education Code § 37620 defines the "Academic Year" as the 175-day (or greater) regular school year. Other sections of the Education Code are in accord. (*See, e.g.*, Education Code § 41420(a), requiring school districts to maintain "the regular day schools of the district for at least 175 days" during the fiscal year; Education Code § 48200, requiring "compulsory full-time education" during the Academic Year; and Education Code §44913, providing that service during summer school shall not count towards a certificated employee's progress towards tenure.)

AFT contends that UESF has offered "a compelling case in its briefs for why the summer session should be part of the academic year." (AFT Amicus Brief, p. 9.) The DISTRICT disagrees, since UESF's contention that the summer school session should be a period of eligibility requires that this Court ignore the fact that it constitutes "a period between two successive academic years" under U.I. Code §1253.3(c). Neither UESF nor AFT offers any compelling reason why this Court should cast out the statute's prohibition of benefits during the "period between two successive academic years," in direct contravention of its plain language. Furthermore, while UESF takes issue with the DISTRICT's citation to Education Code § 37620's definition of the "Academic Year," it offers no viable alternative definition, and, in fact, essentially ignores the role and function this term plays in U.I. Code §1253.3(c).

Courts "will not interpret a statute to eliminate a necessary provision where the Legislature has not done so expressly." (*Anderson Union High School District, supra,* 4 Cal.App.5th 262, 276.) UESF's interpretation of U.I. Code §1253.3(c) asks this Court to violate this maxim of statutory construction, and should accordingly be rejected.

DATED: June 29, 2017

Respectfully submitted,

BURKE, WILLIAMS & SORENSEN

By:_____
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CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) or 8.360(b)(1) of the California Rules of Court, the Petition for Writ of Mandate is produced using 13-point Times New Roman type including footnotes and contains no more than 2,354 words, which is fewer than the total words permitted by the Rules of Court. Counsel relies on the word count of the computer program used to prepare this brief.

DATED: June 29, 2017

Respectfully submitted,

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PROOF OF SERVICE BY MAIL

I am a citizen of the United States and employed in Santa Clara County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1503 Grant Road, Suite 200, Mountain View, California 94040-3270. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On June 29, 2017, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

SAN FRANCISCO UNIFIED SCHOOL DISTRICT'S RESPONSE TO AMICUS CURIAE BRIEF OF THE AMERICAN FEDERATION OF TEACHERS, AFL-CIO ("AFT")

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Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 29, 2016, at Mountain View, California.

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