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 RESPONDENT

AFTER DECISION BY THE COURT OF APPEAL
CASE NO. A142858/A143428

ON APPEAL FROM THE SUPERIOR COURT
FOR THE COUNTY OF SAN FRANCISCO
CASE NUMBER CPF 12-512437
HONORABLE THE HONORABLE RICHARD B. ULMER, JR., PRESIDING

PETITION FOR REVIEW

STEWART WEINBERG, BAR NO. 031493
WEINBERG, ROGER & ROSENFELD
A PROFESSIONAL CORPORATION
1001 Marina Village Parkway, Suite 200
Alameda, California 94501
Tel: (510) 337-1001

PLAINTIFF-APPELLANT UNITED EDUCATORS OF SAN FRANCISCO
AFT/CFT, AFL-CIO, NEA/CTA

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 RESPONDENT

AFTER DECISION BY THE COURT OF APPEAL
CASE NO. A142858/A143428

ON APPEAL FROM THE SUPERIOR COURT
FOR THE COUNTY OF SAN FRANCISCO
CASE NUMBER CPF 12-512437
HONORABLE THE HONORABLE RICHARD B. ULMER, JR., PRESIDING

PETITION FOR REVIEW

STEWART WEINBERG, BAR NO. 031493
WEINBERG, ROGER & ROSENFELD
A PROFESSIONAL CORPORATION
1001 Marina Village Parkway, Suite 200
Alameda, California 94501
Tel: (510) 337-1001

PLAINTIFF-APPELLANT UNITED EDUCATORS OF SAN FRANCISCO
AFT/CFT, AFL-CIO, NEA/CTA

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

State Cases

Federal Statutes

State Statutes

I. ISSUES PRESENTED

1. When determining eligibility for unemployment benefits, does summer school in a K-12 district constitute an "academic term?"

2. Were the School district and the Unemployment Insurance Appeals Board collaterally estopped from re-litigating the issue of what constitutes an academic term?

II. INTRODUCTION

Why Review Should be Granted.

This case, a matter of first impression in California, presents an important question of law. Does summer school, when offered in a kindergarten through twelfth grade (K-12) school district, constitute an "academic term" for purposes of California Unemployment Insurance Code § 1253.3? If so, is a temporary school district employee entitled to unemployment insurance benefits if that person fails to find employment during the summer recess?

III. BACKGROUND

The petition for a writ of mandate was filed with the Superior Court in and for the City and County of San Francisco by a union on behalf of 26 of its members, eleven of whom were substitute teachers of the San Francisco Unified School District who were employed on an on-call or as needed basis during academic year 2010-2011, and fifteen of whom were paraprofessional classified employees who were contracted and paid only during the period of time when instruction was offered in the "regular" school year. Each of those certificated and classified employees received a letter in the spring of the 2010-2011 school year giving them "reasonable assurance" of employment in the fall term of the 2011-2012 school year. Each of them was denied unemployment insurance benefits during the summer recess although they failed to work during the summer between those two school terms. The Superior Court denied the Petition, upholding the denial of

benefits. The Court of Appeal affirmed the decision of the Superior Court. Petitioner did not request a rehearing.

A. CALIFORNIA UNEMPLOYMENT INSURANCE CODE SECTION 1253.3

California Unemployment Insurance Code § 1253.3 provides as follows:

> (a) Notwithstanding any other provision of this division, unemployment compensation benefits, extended duration benefits, and federal-state extended benefits are payable on the basis of service to which Section 3309(a)(1) of the Internal Revenue Code of 1954[1] applies, in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject to this division, except as provided by this section.
>
> (b) Benefits specified by subdivision (a) based on service performed in the employ of a nonprofit organization, or of any entity as defined by Section 605, 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, when an agreement provides instead for a similar period between two regular but not successive terms, during that period, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs 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.
>
> (c) Benefits specified by subdivision (a) based on service performed in the employ of a nonprofit organization, or of any entity as defined by Section 605, with respect to service in any other capacity than specified in subdivision (b) for an educational institution shall not be payable to any individual with respect to any week which commences during a period between two successive academic years or terms if the individual performs the service in the first of the academic years or terms and there is a reasonable assurance that the individual will perform the service in the second of the academic years or terms. However, if the individual was not offered an opportunity to perform the services for an educational institution for the second of the academic years or terms, the individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied

> solely by reason of this subdivision. Retroactive benefits shall be claimed in accordance with the department's procedures which shall specify that except where the individual was entitled to benefits based on services performed for other than an educational institution, an individual who has a reasonable assurance of reemployment may satisfy the search for work requirement of subdivision (e) of Section 1253, by registering for work pursuant to subdivision (b) of Section 1253 during the period between the first and second academic terms or years. A claim for retroactive benefits may be made no later than 30 days following the commencement of the second academic year or term.[1]
> . . . .
>
> [1]26 U.S.C.A. § 3309, subd. (a), par. (1) ("1954" should probably read "1986").

This footnote appears in the Unemployment Insurance Code.

B. SUMMARY OF SIGNIFICANT FACTS

The School District offered regular session instruction to students up to May 27, 2011 for the 2010-2011 school year, and offered regular session instruction for the 2011-2012 school year beginning August 15, 2011. Between May 27 and August 15, 2011, the School District operated a summer school that began on June 9, 2011 and ended on July 7, 2011. Although some of the classified employees involved in this case received incidental employment by the District during that period of time, all of the remaining employees failed to find any work during that school recess period. A few of the involved individuals had been employed during summer school by the San Francisco Unified School District in the previous summer of 2010.

The 26 certificated and classified employees of the San Francisco Unified School District, all of whom were members of the Appellant United Educators of San Francisco, were denied unemployment benefits by the California Employment Development Department ("EDD") during the summer recess between the 2010-2011 and 2011-2012 school years. The Union filed appeals on behalf of the applicants. All of the cases were

[1] Subparagraphs (d) through (i) of Section 1253.3 have been omitted.

heard by the same administrative law judge ("ALJ"). The ALJ held in favor of the applicants and ordered that they were eligible and be paid benefits, provided that they satisfied other pre-requisites. The District appealed the decisions to the California Unemployment Insurance Appeals Board ("CUIAB"). The CUIAB upheld the District's appeals and reversed each of the ALJ's decisions, except as to those persons who had worked in the summer school during the preceding summer of 2010. The Union filed a Petition for Writ of Mandate in its representative capacity on behalf of all of the rejected applicants. The Superior Court for the City and County of San Francisco denied the Petition and concluded that summer school was not an "academic term" within the meaning of Section 1253.3 when that section referred to "academic years or terms."

In 2005, a similar case was presented to the San Francisco Superior Court. In that case, a petition for writ of mandate was filed by the San Francisco Unified School District against the CUIAB. The CUIAB had held that ten substitute teachers who were employed by the District were eligible for Unemployment Insurance Appeals Board after they had been unable to find work during a six week summer school term in calendar year 2003. The Superior Court held that the CUIAB had correctly determined that the unemployed applicants' period of unemployment did not begin "between two successive academic years or terms." The court noted that there is no gap between successive academic years since a school year runs from July 1 of the first calendar year to June 30 of the second calendar year. The court noted that although academic year was not defined in section 1253.3, that the word "year" has a common sense meaning of 365 days. He further noted that the Legislature defined a "school year" as running from July 1 to June 30 of the following calendar year. That court cited Education Code §§ 22169 and 25926 as authority that "academic year" and "school year" are synonymous in some contexts. Thus, the Superior Court held in 2005 that the CUIAB had correctly

determined that the unemployed District employees were eligible for benefits during the "summer term" which ran from June 19, 2003 through July 25, 2003.[2]

C. THE COURT OF APPEAL DECISION

The California Court of Appeal affirmed the decision of the San Francisco Superior Court. The Appellate Court held that for purposes of Unemployment Insurance Code § 1253.3 summer school was not an "academic term." As noted above, Petitioner did not seek a rehearing in the Court of Appeal.

D. LEGAL DISCUSSION

1. Summer school is an academic term.

The applicants for unemployment insurance in this case fall into two categories: (1) certificated employees who are substitute teachers who worked in that capacity for the District in the 2010-2011 school year; and (2) classified paraprofessional employees who had a contract for employment in the 2010-2011 school year. All of these employees had in common the fact that they were given a perfunctory letter of "reasonable assurance" of employment with the District in the fall term beginning in August of 2011. That letter did not give them a notice of employment during the summer school that was offered to students during the summer recess of the regular school program. California Unemployment Insurance Code § 1253.3, provides that unemployment insurance benefits are not payable to any individual with respect to any week that begins between two successive academic years or terms if the individual performs services in the first of the

---

[2] In footnote 13 of its opinion the Court of Appeal stated that "UESF, somewhat inconsistently, argues that while the CUIAB and the District are bound by Judge Warren's 2005 conclusion that 'summer session' is an 'academic term,' the Judge's ruling 'did not go far enough.'" The Court of Appeal misconstrued the Petitioner's comment that the ruling "did not go far enough." What the Petitioner was attempting to argue was that because of the facts of the 2005 case the Superior Court's decision was limited to the period of time that summer school was being held by the District. Whereas, in the instant case, the Petitioner is seeking benefits for its members for the entire period of the summer recess. Notwithstanding the difference in the claims being made in the 2005 case and the current case, collateral estoppel should apply to the Superior Court's holding that summer school constituted an "academic term."

academic years or terms, and if there is a reasonable assurance that the individual will perform services in the second of the successive academic years or terms.

It follows, therefore, that if summer school is an "academic term" then it would constitute an academic term for which the individual must be given reasonable assurance of employment, or otherwise be entitled to unemployment benefits during that academic term.[3] The District offers an educational program to students who may enroll for instruction that began on June 9, 2011 and concluded on July 14, 2011. Because instruction was offered during that period of time, it constituted an academic term that "succeeds" the Spring academic term. Students received credit toward graduation for receiving instruction in that summer school, and in some cases, credit toward college course qualification as well. Since that period of time was an academic term, it qualifies under Unemployment Insurance Code § 1253.3 as an academic term for which employees should have been given reasonable assurance of employment or unemployment benefits in lieu of employment. Since none of them received offers of employment, all of the applicants involved in this case were entitled to unemployment insurance benefits not merely for the time during which summer school was conducted (as argued by the California Unemployment Insurance Appeals Board), but for the entire period of time that those individuals were unemployed during the summer recess.[4]

The Court of Appeal cited opinions from other states. In *In Re Claim of Lintz* (N.Y. App. Div. 1982) 89 A.D. 2d. 1038, 1039, for the proposition that "the law was . . . not enacted to supplement the income of regularly employed teacher who chose to teach a few days during her regular summer vacation while awaiting the commencement of the next academic year for which she had unquestioned assurance of employment." The

---

[3] Petitioner's argument is bolstered by the public policy annunciated by the Legislature in California Unemployment Insurance Code § 100.

[4] Petitioner concedes that this is a case of first impression, and that no California case so holds. That is not surprising. Litigation, including appellate litigation, is expensive, especially for partially employed substitute and temporary school employees.

Lintz case could have just as easily been cited and relied upon by the Petitioners in this case because it makes precisely the argument that Petitioners have made above. Petitioners are not "regularly employed" teachers who choose to teach a few days during their regular summer vacation. They are not individuals who are enjoying a summer vacation and choose to pick up a few dollars. They are unemployed because their contracts of employment ended, and notwithstanding the perfunctory "reasonable assurance" letter they are at the mercy of enrollment figures and the financial wherewithal of a school district to employ them during the next "regular" school year. It is not inconsistent with the purpose of the law to treat these individuals as unemployed for the purpose of receiving benefits. Although the statute has something of a safety clause in that if they do not obtain employment in the 2011-2012 school year they are entitled to retroactive benefits, that is little comfort when one has had no source of income since school ended in the month of May. It is noteworthy that the Court of Appeal acknowledged in footnote 19 of its opinion that the decisions in other jurisdictions are split.

2. Collateral Estoppel

In 2005, the Superior Court in and for the City and County of San Francisco awarded unemployment benefits to a handful of certificated employees who failed to find employment during the summer recess in 2003. The litigants in that case were the San Francisco Unified School District and the California Unemployment Insurance Appeals Board. The lower court in the instant case declined to apply the principle of collateral estoppel. The Court of Appeal upheld that denial arguing that the 2005 opinion made no reference to relevant federal law, and that the issue in this case "is purely a question of law" and "injustice would result," or the "public interest requires re-litigation of the issue." (*Arcadia Unified School Dist. v. State Dept. of Education* (1992) 2 Cal.4th 251, 257.) In the instant case, the Court of Appeal asserted that the issue to be re-litigated involves public funding and "an inaccurate interpretation of section 1253.3 might award

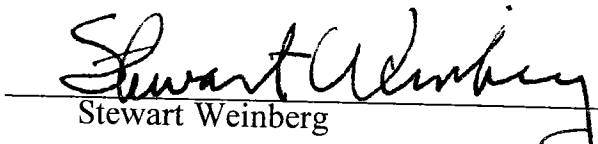
unemployment benefits to employees who actually fall within the state's exclusion. The potential impact of an erroneous statutory interpretation extends beyond San Francisco. All school districts in the state offering summer school programs are potentially affected." That argument is valid only if the court's interpretation of section 1253.3 is correct. As demonstrated above, the court's interpretation is not correct and thus the court is not justified in ignoring the principle of collateral estoppel.

IV. CONCLUSION

It is respectfully submitted that the Honorable Supreme Court should grant review of the decision of the Court of Appeal.

Dated: June 29, 2016

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: 
Stewart Weinberg

PLAINTIFF-APPELLANT UNITED EDUCATORS OF SAN FRANCISCO AFT/CFT, AFL-CIO, NEA/CTA

137056\869673

CERTIFICATE OF WORD COUNT
Cal. Rules of Court, Rule 8.204(c)(1).)

Pursuant to Rule 8.204(c)(1) of the California Rules of Court, I certify that the attached Appellant United Educators of San Francisco, AFT/CFT, AFL-CIO, NEA/CTA's Petition for Review, was prepared with a proportionately spaced font, with a typeface of 13 points or more, and contains 2,564 words. Counsel relies on the word count of the computer program used to prepare the brief.

Dated: June 29, 2016

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

STEWART WEINBERG

Attorneys for Plaintiff/Appellant
United Educators of San Francisco,
AFT/CFT, AFL-CIO, NEA/CTA

ATTACHMENT TO

PETITION FOR REVIEW

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Filed 6/6/16

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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.	A142858 (San Francisco City & County Super. Ct. No. CPF 12-512437)
SAN FRANCISCO UNIFIED SCHOOL DISTRICT, Plaintiff and Respondent, v. CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD, Defendant and Appellant.	A143428 (San Francisco City & County Super. Ct. No. CPF 12-512437)

Plaintiff United Educators of San Francisco AFT/CFT, AFL-CIO, NEA/CTA (UESF) petitioned the superior court for a writ of administrative mandate on behalf of certain of its members who were employed by the San Francisco Unified School District (District). UESF contended that these members—all of whom had been provided reasonable assurance of continued employment in the fall of 2011—were improperly

denied unemployment benefits during the summer of 2011. The petition was successfully opposed below by the District. In a companion appeal, the California Unemployment Insurance Appeals Board (CUIAB) challenges a separate ruling in favor of the District invalidating a precedent benefit decision that would have permitted public school employees to receive unemployment benefits during summer months provided certain conditions are met. We affirm the lower court as to both rulings.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

I. Background and Administrative Rulings

The parties have stipulated to the following facts. UESF is a union that is the exclusive representative of the District's certificated employees and classified paraprofessional employees. In the academic year 2010-2011, the District employed UESF member Aryeh B. Bernabei and 10 others as substitute teachers who worked on an on-call or as-needed basis.[1] The District also employed UESF member Celina R. Calvillo and 14 others as paraprofessional classified employees.[2] Paraprofessional classified employees are not paid during summer months unless they are retained for a summer session or perform special tasks, such as custodial services. Each of the 26 employees received a letter during the spring of the 2010-2011 school year advising that they had a reasonable assurance of employment for the following 2011-2012 school year.

The last date District schools operated during the regular session of the 2010-2011 school year was May 27, 2011. The first day of instruction for the 2011-2012 school year was August 15, 2011. The District operated a summer school session that began on June 9, 2011 and ended on July 7, 2011 for elementary school students and ended on July 14, 2011 for middle and high school students. The District did not offer any

---

[1] The other named substitute teacher employees are Arthur A. Calandrelli, Mark J. Fiore, Doug Jones, Stephen S. Kaslikowski, Tyree Leslie, Luis A. Novoa, Jose M. Rios, Linda Weil, Gladys L. Wong, and Natalia Yuzbasheva.

[2] Other named paraprofessional classified employees are Kevin A. Batiste, Stephanie R. Brooks, Jose S. Ferrer, Remigio Flood, Emily I. Frances, Jose D. Hernandez, Shan L. Lei, Martha C. Letona, Jonathan B. Matthews, Paul L. Michaels, Joseph R. Moreland, David J. Picariello, Frances F. Smith, and Lester L. Rubin.

instruction between May 27, 2011 and June 9, 2011, or between July 14, 2011 and August 15, 2011.

The UESF members described above filed claims for unemployment benefits for the period of time between May 27, 2011 and August 15, 2011. The Employment Development Department (EDD) denied benefits to each named claimant. The claimants appealed to a CUIAB administrative law judge (ALJ) who reversed the EDD and held that each claimant was entitled to benefits covering all the weeks for which they had applied.

The CUIAB reversed the ALJ's decisions as to each of the claimants, either in whole or in part.[3] The CUIAB held that the entire summer session was a "recess period" as defined in Unemployment Insurance Code[4] section 1253.3, subdivision (b), a provision that restricts public school employees' eligibility for unemployment benefits if they have been given reasonable assurance of continued employment.[5] It also held, however, that if

---

[3] "In California, the unemployment insurance (UI) program consists of three phases: (1) UI claims are submitted to and initially processed by the [EDD] [citation]; (2) any appeal from EDD's benefit determination is heard by an [ALJ] employed and assigned by the [CUIAB] (referred to as the 'first-level appeal'); and (3) any appeal of the ALJ's determination is submitted to and decided by the appellate division of the CUIAB based upon the record, including the transcript of the hearing before the ALJ (referred to as the 'second-level appeal')." (*Acosta v. Brown* (2013) 213 Cal.App.4th 234, 238.)

[4] All further statutory citations are to the Unemployment Insurance Code except where indicated otherwise.

[5] We note the statute does not contain the term "recess period." Section 1253.3, subdivision (b) provides, in relevant part: "Benefits . . . based on service performed in the employ of a nonprofit organization, or of any entity as defined by Section 605, 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* . . . if the individual performs 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 . . . in the second of the academic years or terms.*" (Italics added.) Section 1253, subdivision (c), is similarly worded and applies to persons employed "in any other capacity than specified in subdivision (b) for an educational institution."

an individual claimant had been employed during the 2010 summer session, he or she had a "reasonable expectation" of employment during the 2011 summer session. Based on this reasoning, the CUIAB held that unemployment benefits could be paid to such employees for days not worked during the 2011 summer school session, but not for the days when school was not actually in session.[6]

II. Trial Court Proceedings

On September 6, 2012, UESF filed a first amended petition for writ of administrative mandamus against the CUIAB as respondent and the District as real party in interest. UESF asserted the 2011 summer school session was an "academic term" under section 1253.3, contending all 26 claimants were eligible for benefits between May 27, 2011 and August 15, 2011, because the District had not provided reasonable assurance of employment for the 2011 summer session, instead providing such assurance for the 2011-2012 academic year that started August 15, 2011.

On October 26, 2012, the District filed a cross-complaint seeking declaratory relief against both the CUIAB and UESF. The District asserted the CUIAB erroneously determined that employees who receive notices of reasonable assurance of employment for the next academic year or term are nonetheless eligible for summer unemployment benefits by virtue of either having worked during the prior summer school session, or having an availability or expectation of procuring work during the current summer session.

On December 10, 2013, the CUIAB adopted its decision in *Alicia K. Brady v. Ontario Montclair School District* (2013) CUIAB Precedent Benefit Decision No. P-B-505 (*Brady*) as a precedent benefit decision.[7] In *Brady,* the CUIAB held that

---

[6] The CUIAB also held that employees who were called to work for a portion of the summer session could receive benefits for any days during the session that they did work. As the trial court noted in its statement of decision, each of the 26 cases has factual distinctions; however, the differences are immaterial in light of our resolution of this matter.

[7] Precedent benefit decisions may be issued when the CUIAB's ruling involves an important issue of law. (§ 409; Gov. Code, § 11425.60.)

substitute teachers who are "qualified and eligible for work" during a school district's summer school session are not on recess for purposes of section 1253.3 and are eligible for unemployment benefits.

On January 31, 2014, the District filed a first amended cross-complaint in response to the *Brady* decision. In addition to maintaining its challenge to the UESF members' claims by seeking declaratory relief, the District alleged that *Brady* was wrongly decided and requested the trial court declare the decision invalid under section 409.2.[8]

On August 15, 2014, the trial court filed its judgment denying UESF's petition. The court incorporated its statement of decision into the judgment and made an express finding as follows: "This Court finds that . . . [section] 1253.3 means that unemployment benefits, so long as an employee has the contract or reasonable assurance required by [section] 1253.3, are 'not payable to any individual with respect to any week between' the end of one academic year and the beginning of the next (1) whether that week (or those weeks) is called 'summer recess,' 'summer vacation,' 'summer vacation period,' 'summer school,' 'summer session,' or anything else, (2) whether that individual is any type of employee of any educational institution . . . , be she or he any permanent teacher, any substitute teacher, any non-teacher employee, or any other job classification covered by [section] 1253.3, and (3) whether or not any employee in any job classification covered by [section] 1253.3 is 'eligible' or 'qualified' for work, is 'on a list,' has a 'reasonable expectation of work' during the summer, is 'available' for work during the summer, or worked during the prior summer.' " After so finding, the court reversed the CUIAB's decisions and remanded them with instructions to find the claimants not eligible for the unemployment benefits requested. The court also invalidated *Brady* to the extent it is inconsistent with the court's decision. That ruling is the subject of the CUIAB's appeal, which has been consolidated with UESF's appeal.

---

[8] Section 409.2 provides: "Any interested person or organization may bring an action for declaratory relief in the superior court in accordance with the provisions of the Code of Civil Procedure to obtain a judicial declaration as to the validity of any precedent decision of the appeals board issued under Section 409 or 409.1."

DISCUSSION

I. Standard of Review

" 'Interpretation and applicability of a statute or ordinance is clearly a question of law.' [Citation.] It is the duty of an appellate court to make the final determination from the undisputed facts and the applicable principles of law." (*Sutco Construction Co. v. Modesto High School Dist.* (1989) 208 Cal.App.3d 1220, 1228.) Here, the facts are undisputed and the issues on appeal center on the interpretation of section 1253.3. We therefore apply the de novo standard.

II. The Unemployment Insurance Program

"California's unemployment insurance program, as promulgated by the Unemployment Insurance Code, is part of a national system of reserves designed to provide insurance for workers 'unemployed through no fault of their own, and to reduce involuntary unemployment and the suffering caused thereby to a minimum.' [Citation.] Under the Unemployment Insurance Code, the state participates in a cooperative unemployment insurance program with the federal government, codified as the Federal Unemployment Tax Act." (*American Federation of Labor v. Unemployment Ins. Appeals Bd.* (1996) 13 Cal.4th 1017, 1024.)

As currently codified, the Federal Unemployment Tax Act (26 U.S.C. §§ 3301–3311) (FUTA) requires that a state's unemployment law must contain a provision similar to 26 United States Code section 3304(a)(6)(A)(i),[9] which prohibits employees of

---

[9] 26 United States Code section 3304(a)(6)(A)(i) provides, in relevant part: "The Secretary of Labor shall approve any State law submitted to him, . . . which he finds provides that— [¶] . . . [¶]. . . compensation is payable on the basis of service . . . in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service . . .; except that— [¶] . . . with respect to services in an instructional, research, or principal administrative capacity for an educational institution . . . compensation shall not be payable based on such services for any week commencing during the period between two successive academic years or terms . . . to any individual if such individual performs such services in the first of such academic years (or terms) and if there is a contract or reasonable assurance that such individual will perform services . . . for any educational institution in the second of such academic years or terms." Subparagraph (ii)(I) of this subsection extends similar conditions to

educational institutions from collecting unemployment benefits between and within academic terms: "The [FUTA] was substantially amended by Public Law No. 94-566, which was enacted by the Congress in 1976. [Citation.] Public Law No. 94-566 amended section 3309(a)(1) of the [FUTA] to extend eligibility for unemployment compensation benefits to certain employees of state and local governments within the several states. [Citation.] It also amended section 3304(a) of the [FUTA] to include the corresponding provisions of state law to be exacted of conforming states upon review by the Secretary of Labor. Subsection (6)(A) of section 3304(a) was thus amended to provide in effect that public school employees might be eligible for benefits 'except' in certain instances involving their unemployment during periods of summer recess at the employing schools. Subparagraph (i) of the amended subsection requires in effect that a conforming state *must deny eligibility for summertime benefits to a professional school employee* (such as a teacher), at any grade level, if there is 'a contract' providing for his or her reemployment in the fall or 'reasonable assurance' of such reemployment. Subparagraph (ii) of the amended subsection provides in effect that a conforming state *may deny eligibility for summertime benefits to a nonprofessional school employee* at a subcollegiate grade level . . . if there is 'reasonable assurance' (only) of his or her reemployment in the fall." (*Russ v. Unemployment Ins. Appeals Bd.* (1981) 125 Cal.App.3d 834, 843, italics added (*Russ*).)

The California Legislature responded to the 1976 amendment to the FUTA by amending section 1253.3: "In the 1978 enactment which amended section 1253.3 . . . , the California Legislature expressly declared that it was 'necessary to implement Public Law 94-566' [citation]; i.e., that it was 'necessary' to keep the unemployment compensation program of this state in conformity with the [FUTA] as amended in 1976. Consistent with this purpose, the Legislature amended subdivisions (a) and (b) of the statute to incorporate the successively mandatory provisions of the first paragraph of

---

nonprofessional school employees if there is "reasonable assurance" of reemployment in the second academic year or term.