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In the Supreme Court of the State of California

UNITED EDUCATORS OF SAN FRANCISCO AFT/CFT, AFL/CIO NEA/CTA, Plaintiffs and Appellants, **v.** **CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD,** Defendant and Appellee. **SAN FRANCISCO UNIFIED SCHOOL DISTRICT.** Real Party in Interest and Respondent.	Case No.
SAN FRANCISCO UNIFIED SCHOOL DISTRICT, Plaintiff and Respondent, **v.** **CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD,** Defendant and Appellant.	

First Appellate District, Division One, Case Nos. A142858 & A147957
San Francisco County Superior Court, Case No. CPF 12-512437
The Honorable Richard B. Ulmer, Judge

2ND PETITION FOR REVIEW

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FEDERAL

PETITION FOR REVIEW

The California Unemployment Insurance Appeals Board (Board) respectfully petitions for review of the published decision of the First Appellate District, Division One, in *United Educators of San Francisco AFT/CFT, AFL-CIO, NEA/CTA v. California Unemployment Insurance Appeals Board, et al.* (2016) 247 Cal.App.4th 1235. The published opinion is attached as Exhibit A. The Board precedent decision invalidated by the Court of Appeal, *In re Alicia K. Brady* (2013) CUIAB Case No. AO-337099, Precedent Benefit Decision No. P-B-505, is attached as Exhibit B. The Court of Appeal filed its decision June 6, 2016. No petition for rehearing was filed. This petition for review is timely. (Cal. Rules of Court, rule 8.500(e)(1).)

ISSUES PRESENTED

Whether section 1253.3, subdivision (b) of the Unemployment Insurance Code precludes on-call substitute public school teachers and other on-call school workers—who are on-call throughout the year and usually paid only for days worked—from collecting unemployment insurance benefits where they are not called during the summer months due to no fault of their own, but only because there is a lack of available work.

Whether a provision in federal law, as incorporated in section 1253.3, subdivision (b), that is designed to prevent overcompensation of salaried public school teachers during the summer and other vacation periods was intended to deny benefits to on-call substitute teachers who do not share in the financial stability or the predictable employment enjoyed by salaried teachers.

REASONS FOR GRANTING REVIEW

This case raises an important question of law: whether on-call substitute teachers and other year-round, on-call school workers may in

certain circumstances be eligible to collect unemployment insurance benefits during summer school sessions where they are available to work, but are not called due to lack of work. The Court of Appeal held that section 1253.3, subdivision (b) of the Unemployment Insurance Code—which mirrors a federal provision designed to prevent a windfall to salaried teachers who are paid for the full year—operates as a per se bar to these on-call workers ever collecting benefits during the summer semester, regardless of the circumstances.[1] In so doing, it invalidated a well-reasoned Board precedent decision, disrupted the settled practice of the agency in charge of making initial benefits decisions, and potentially called into question decades of Board precedent related to benefits for workers who serve in our public educational institutions.

Review is necessary to correct the erroneous course charted by the Court of Appeal's decision and ensure that state law remains in alignment with federal law and Congressional intent; to avoid harm to a significant number of the State's most economically vulnerable public school employees working for over 1,000 districts across California; and to prevent other unintended consequences that may flow from this significant change in unemployment insurance benefits law.

LEGAL BACKGROUND

California, through the Unemployment Insurance Code, participates in a cooperative unemployment insurance program with the federal government. (*American Federation of Labor v. Unemp. Ins. Appeals Bd.* (1996) 13 Cal.4th 1017, 1024.) Together the state and federal governments operate a system "'designed to cushion the impact of ... seasonal, cyclical and technological idleness.' [Citation]." (*Chrysler Corp. v. Cal. Employ.*

[1] All further statutory references in this brief are to the Unemployment Insurance Code unless otherwise noted.

Stabilization Com. (1953) 116 Cal.App.2d 8, 16; see also § 100 [purpose is to provide for persons "unemployed through no fault of their own, and to reduce involuntary unemployment and the suffering caused thereby to a minimum"].) As part of this joint system, California must align its unemployment insurance laws with the Federal Unemployment Tax Act (FUTA). (*American Federation of Labor, supra,* 13 Cal.4th at p. 1024.)

Originally, the system provided benefits only to private-sector employees. (See, e.g., Social Security Act, Pub. L. No. 74-271 (Aug. 14, 1935) ch. 531, Title IX, § 903, 49 Stat. 640.) Over time, the laws were amended to cover public-sector employees, including teachers and school employees. (See, e.g., Unemployment Insurance Amendments of 1976, Pub. L. No. 94-566 (Oct. 20, 1976) 90 Stat. 2667.) In general, in awarding unemployment benefits, public-sector employees must be treated in the same manner as private-sector employees. (See, e.g., 26 U.S.C. § 3304, subd. (a)(6)(A); § 1253.3, subd. (a).) Congress recognized, however, that employment terms for full-time public school teachers differ from other employment arrangements. It acknowledged such teachers typically are paid an annual salary. (See Remarks of Sen. Long, 122 Cong. Rec. 33285 (1976).) And summer vacations are included in that annual salary. (*Ibid.*) Congress decided that this specific class of public employees should not be eligible for unemployment benefits during the summer and other vacations because they are not "unemployed" during those periods; the summer break is built into these employees' salary, and benefits in this situation thus would be a windfall. (See 26 U.S.C. § 3304(a)(6)(A)(i).) At the same time, however, Congress also intended to provide protections for those school employees who had, through no fault of their own, lost employment at any time. (See Remarks of Sen. Javitts, 122 Cong. Record 33284-33285.)

California amended its laws to mirror these federal provisions. (See, e.g., § 1253.3; see generally *Russ v. Unemp. Ins. Appeals Bd.* (1981) 125

Cal.App.3d 834, 844.) Relevant to this case, the Legislature added Unemployment Insurance Code section 1253.3, subdivision (b), which provides that unemployment benefits are not payable to employees of public educational institutions

> 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.

In California, a claimant is potentially eligible to receive up to 26 weeks of state unemployment compensation. (§ 1281, subds. (a) & (b)(1).) The weekly benefit amount depends on each claimant's individual wages earned. (§ 1279, subd. (a).) An individual may receive unemployment benefits during a week of part-time work if his or her earnings are below the weekly benefit amount. (§ 1252, subd. (a)(2).) Individuals are generally disqualified for unemployment compensation benefits only if the employee left his or her most recent work voluntarily without good cause, or that he or she has been discharged for misconduct connected with his or her most recent work. (§ 1256.)

California's unemployment benefits system is administered through the work of two expert state entities. The Employment Development Department (EDD), in the Labor and Workforce Development Agency, is charged with a number of employment-related duties and responsibilities, including "[m]aking manual computations and making or denying recomputations of the amount and duration of [unemployment] benefits." (§ 301, subd. (b).) A claimant is entitled to file an appeal of an adverse EDD decision with an ALJ, and, if he or she is dissatisfied with the ALJ's

decision, a further appeal with the Board. (§§ 1328, 1332, 1336.) Board decisions are subject to judicial review pursuant to Code of Civil Procedure section 1094.5. (§ 410.) The Board reviews unemployment assessment and benefit decisions. (§ 401, et seq.) In addition, the Board has the power to designate certain of its decisions as precedent. (§ 409; *Pacific Legal Foundation v. Unemp. Ins. Appeals Bd.* (1981) 29 Cal.3d 101, 106.)

EDD, the Board, and the courts must construe the Unemployment Insurance Code "liberally ... to further the legislative objective of reducing the hardship of unemployment." (*Sanchez v. Unemp. Ins. Appeals Bd.* (1984) 36 Cal.3d 575, 584.)

STATEMENT OF THE CASE

During the 2010-2011 school year, the San Francisco Unified School District employed 26 employees, some of whom were substitute teachers hired on an on-call or as-needed basis. (Slip. opn. at p. 2.)[2] At the end of the 2010-2011 year, each of these 26 employees received a letter informing them that they had a "reasonable assurance" of employment during the following school year. (*Ibid.*)

The District's regular academic year 2010-2011 ended on May 27, 2011. (Slip opn. at p. 2.) The District operated a summer session during which instruction was given from June 9, 2011 through July 7, 2011 for elementary school students, and from June 9, 2011 through July 14, 2011 for middle and high school students. (*Ibid.*) No instruction was offered by the District between May 27, 2011 and June 9, 2011, or between July 14,

[2] These facts are taken from the Court of Appeal's opinion, which were based on the facts stipulated to by the parties during the superior court proceedings.

2011 and August 15, 2011, the first date of instruction for the 2011-2012 school year. (*Id.* at pp. 2-3.)[3]

After the end of the 2010-2011 school year, each of the 26 employees applied for unemployment benefits for the entire period between May 27, 2011 and August 15, 2011. (Slip opn. at p. 3.) EDD denied each claim. (*Ibid.*) Each employee appealed the EDD's decision, and, after holding an administrative hearing, an Administrative Law Judge (ALJ) reversed the EDD's determinations and held that each employee was entitled to benefits for the period of time during Summer 2011 when that claimant did not work. (*Ibid.*)

On appeal, the Board reversed the ALJ's decisions as to each of the claimants, either in whole or in part. (Slip opn. at p. 3.) The Board concluded that substitute teachers and other employees may collect unemployment benefits for the period during which summer school was in session if they had worked during the prior summer session. (*Id.* at pp. 3-4.)

On September 6, 2012, United Educators of San Francisco, AFL-CIO, NEA/CTA (UESF), which is the exclusive representative of all 26 employees in this case, filed a first amended petition for writ of administrative mandate against the Board as respondent and the District as the real party in interest. (Slip opn. at p. 4.) In UESF's view, the 26 claimants were entitled to unemployment benefits for the entire period between the end of the Spring 2011 semester and the start of Fall 2011 semester. (*Ibid.*) On October 26, 2012, the District filed a cross-complaint seeking declaratory relief against both the Board and UESF. (*Ibid.*)

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[3] Each district has discretion to make its own decisions concerning budgetary planning, hiring, and organizational activities for summer sessions.

While the trial court proceedings were ongoing, the Board adopted its precedent benefit decision *In re Alicia K. Brady* (2013) CUIAB Case No. AO-337099, Precedent Benefit Decision No. P-B-505. (Exhibit B.) Consistent with its earlier decision, the Board in *Brady* held that on-call substitute teachers who are "qualified and eligible to work" during a summer school session are eligible for unemployment benefits. (*Brady, supra,* P-B-505 at pp. 10-11.) The Board reasoned that this conclusion was consistent with Congress's intent in enacting FUTA's denial provision, which was meant only to ensure that traditional, "nine-month" teachers who were paid annually—and therefore did not need unemployment benefits during the summer vacation period—were not overcompensated. (*Id.* at pp. 6-7.) The Board also held that this conclusion was consistent with cases that had construed statutory denials of unemployment benefits narrowly. (*Id.* at pp. 7-8.)

The District then filed an amended cross-complaint in the trial court, alleging that *Brady* was wrongly decided and asked the court to declare the decision invalid under Code of Civil Procedure section 409.2. (Slip opn. at p. 5.)

On July 15, 2014 the trial court issued its decision, concluding that the teachers and classified employees in the 26 San Francisco cases before the court were not entitled to unemployment benefits for any time between the end of Spring 2011 semester and the start of the Fall 2011 semester. (Slip opn. at p. 5.) In addition, the court declared *Brady* invalid. (*Ibid.)*

Both the Board and UESF appealed. The Court of Appeal consolidated both the Union and the Board's appeals. On June 6, 2016, the Court of Appeal affirmed the superior court's ruling in a published decision. (Slip opn. at pp. 1-2.) Relying on various provisions of the Education Code and the California Department of Education's Year-Round Education Program Guide, the Court of Appeal held that the term

"academic year" in section 1253.3, subdivision (b) meant the traditional nine-month period during which school is "regularly in session for all students." (*Id.* at pp. 14-15; see also *id.* p. 14, fn. 16.) The Court also reasoned that treating the summer session as an "academic term" would render another provision of section 1253.3 "meaningless and inoperable," and that the majority of jurisdictions to consider similar statutory provisions had reached the same conclusion. (*Id.* at pp. 15-18.)

DISCUSSION

The potential of the Court of Appeal's decision to harm thousands of essential, but economically vulnerable, substitute teachers and other year-round, on-call public school workers is self evident. Others reasons to grant review warrant additional discussion.

I. REVIEW IS NECESSARY TO ENSURE THAT STATE LAW REMAINS ALIGNED WITH CONGRESSIONAL INTENT, WHICH WAS LIMITED TO PREVENTING A WINDFALL TO SALARIED TEACHERS

The touchstone for the Board's interpretation of section 1253.3 has been and is Congress's intent in enacting the federal counterpart, 26 U.S.C. § 3304(a)(6)(A)(i). Since at least 2005, the Board has interpreted section 1253.3, subdivision (b) as allowing substitute teachers to collect unemployment benefits during the weeks in which summer school is in session in certain circumstances. (See slip opn. at pp. 8-11, citing *San Francisco Unified School District v. Cal. Unemp. Ins. Appeals Bd.* (Super. Ct. S.F. City and County 2005), No. CPF 05-504939.)[4] In 2013, the Board

[4] This decision was a non-precedent benefit decision, and therefore is not entitled to the same weight as precedent benefit decisions. (See § 409.) In 2005, the District filed a writ of mandate, challenging the Board's 2003 decision. (Slip opn. at p. 8.) The San Francisco Superior Court denied the District's request for a writ, agreeing with the Board's conclusion that section 1253.3, subdivision (b), did not preclude substitute

(continued...)

formalized this interpretation in its precedent benefit decision in *Brady*. (*Brady, supra*, P-B-505.) In reaching this conclusion, the Board relied on familiar principles of statutory interpretation. First, the Board acknowledged that neither Congress nor the California Legislature had defined the phrase "between two successive academic years or terms." (*Id.* at p. 4.) The Board then conducted a thorough analysis of Congress' intent in passing FUTA, concluding that, while Congress intended to prohibit the payment of unemployment benefits during "summer and other vacation periods," it did not expressly preclude substitute teachers and other nonprofessional employees who were not paid an annual salary from collecting unemployment benefits during these times. (*Id.* at pp. 6-7.)

The Board also explained that courts and federal and state agencies alike had consistently construed "denial" exceptions like section 1253.3, subdivision (b) narrowly. (*Brady, supra,* P-B-505 at p. 7.) In light of Congress' intent in passing FUTA and the requirement that statutory denials of benefits must be construed narrowly, the Board concluded that the period during which summer school is in session, an on-call substitute teacher is not on "recess"—in other words, that this period of time is not a "period between two successive academic years or terms" for purposes of section 1253.3, subdivision (b). (*Id.* at p. 9.) The Board also concluded, however, that the weeks between the end of the spring semester and the start of summer school, as well as the end of summer school and the start of the fall semester, are "period[s] between two successive academic years,"

(...continued)
teachers from collecting unemployment benefits during summer school sessions. (*Id.* at pp. 8-9.) Both the Board and UESF argued that the 2005 decision collaterally estopped the District from pursuing a writ in this case. (*Ibid.*) The Court of Appeal rejected this argument. (*Ibid.*) The Board is not seeking review of the Court of Appeal's decision not to give res judicata effect to the 2005 decision.

and that substitute teachers are not eligible for benefits during these periods. (*Id.* at pp. 9, 11.)

This conclusion is consistent with the U.S. Department of Labor's view that an "academic term" is a period "within an academic year when classes are held," which may include "nontraditional periods of time when classes are held, such as summer sessions." (U.S. Dept. of Labor, Employment & Training Admin., *Benefit Standards of Conformity Requirements for State UC Laws, Between/Within Terms Denial.*)[5] And it is also in accord with the Department's suggestion that an "academic year" "usually"—but not always—"means a fall and spring semester." (*Ibid.*) The Department of Labor's perspective confirms the Board's conclusion that there is no per se bar to awarding unemployment benefits to on-call substitutes during the summer term.[6]

The Board's decision in *Brady* is also consistent with the EDD's standard practice of granting benefits to on-call employees who are not called in to work. EDD—which makes all initial unemployment benefit eligibility determinations—has provided the same interpretation as the Board for many years. As EDD explained in its 2007 directive on school employee coverage in 2007:

> [i]f the claimant is scheduled to work "on-call" during the summer recess period, but does not get called to work, the claimant is not on a

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[5] (<http://workforcesecurity.doleta.gov/unemploy/conformity-benefits.asp> [as of July 14, 2016].) The Department of Labor is charged with assuring that States conform to Congressional intent in administering the program. (See U.S. Dept. of Labor, Employment & Training Admin., *Conformity Requirements for State UC Laws*, <http://workforcesecurity.doleta.gov/unemploy/conformity.asp> [(as of July 14, 2016].)

[6] (See also *Evans v. Employment Security Dept.* (Wn.Ct.App. 1994) 866 P.2d 687, 689 [community college teacher may collect unemployment benefits during the summer term].)

> recess period. The reason the claimant did not work is not due to the recess period, but due to lack of work during the summer school session.

(Economic Development Dept., Miscellaneous MI 65 School Employee Claims.)[7]

This Court should grant review to ensure that section 1253, subdivision (b) is interpreted in a way that is consistent with Congressional intent and in accord with the rule that the law should be interpreted in favor of extending benefits, and afford EDD's and the Board's well-reasoned, expert views appropriate weight. (See *Pacific Legal Foundation, supra,* 29 Cal.3d at p. 111 [because of the Board's "expertise, its view of a statute or regulation it enforces is entitled to great weight unless clearly erroneous or unauthorized"]; see also *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12.)

II. REVIEW IS NECESSARY TO AVOID THE POTENTIAL FOR UNINTENDED, ADVERSE EFFECTS ON OTHER AREAS OF UNEMPLOYMENT INSURANCE BENEFITS LAW

The effect of the Court of Appeal's error extends well beyond the individuals who filed for benefits in this case. It may preclude every substitute teacher and on-call school worker in the State from collecting unemployment benefits during the summer months, no matter the facts and circumstances of an individual case, unless and until other Courts of Appeal reach different conclusions. Likewise, it may prevent other on-call school workers from collecting unemployment benefits if they are laid off for the summer months. Review is necessary to correct this far-reaching error.

In overruling *Brady*, the Court of Appeal decision may also be read as calling into question more than 30 years of Board precedent. Two

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[7] (<http://www.edd.ca.gov/uibdg/Miscellaneous_MI_65.htm> [as of July 14, 2016].)

examples are illustrative. In 1981, the Board held that a clerical school district employee whose year-round work-schedule had been reduced to ten months was eligible for unemployment benefits, even though the off months were during the summer session. (*In re Dorothy C. Rowe* (1981) CUIAB Case No. 79-6736, Precedent Benefit Decision No. P-B-417.)[8] Benefits were appropriate in that case, the Board concluded, because the worker had "in effect [been] laid off" from her normal year-round work. (*Id.* at pp. 1, 4.) And, the Board held, section 1253.3, subdivision (b) did not preclude the worker from receiving benefits, because her unemployment was not caused by a "normal summer recess or vacation period, but was instead "a loss of customary summer work." (*Id.* at p. 4.)

Similarly, in 1980, the Board held that a community college professor whose schedule was reduced from 11.5 months to 10 months was eligible for unemployment benefits, even though the professor's new contract provided that he would be out of work during the summer months. (*In re Vincent J. Furriel* (1980) CUIAB Case No. 79-6640, Precedent Benefit Decision No. P-B-412.)[9] The Board concluded that section 1253.3, subdivision (b) did not preclude "year-round employees or those regularly scheduled for summer work who, due to the cancellation of normal or scheduled summer work, became unemployed" from collecting benefits. (*Id.* at pp. 3-4.)

The Court of Appeal's decision may cast doubt on these precedents. By effectively holding that any time between the end of the spring semester and the start of the fall semester is a "period between two successive academic years or terms," the Court of Appeal may preclude clerical

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[8] (<http://www.cuiab.ca.gov/Board/precedentDecisions/docs/pb417.pdf> [as of July 14, 2016].)

[9] (<http://www.cuiab.ca.gov/Board/precedentDecisions/docs/pb412.pdf> [as of July 14, 2016].)

workers, community college professors, and many other individuals employed by educational institutions on a year-round basis from collecting unemployment benefits if they are temporarily laid off for the summer months. Review is necessary to prevent this result, which neither Congress nor the state Legislature intended.

CONCLUSION

For the reasons mentioned above, the Board respectfully requests that the petition for review be granted.

Dated: July 15, 2016

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD'S PETITION FOR REVIEW uses a 13 point Times New Roman font and contains 3559 words.

Dated: July 15, 2016

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Exhibit A

Court of Appeal Opinion in *United Educators of San Francisco AFT/CFT, AFL-CIO, NEA/CTA v. California Unemployment Insurance Appeals Board*, filed 6/6/16

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

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[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

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[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."