



NEW APPELLATE CASE LIMITS DISCRETION OF SCHOOLS DISTRICTS TO CLASSIFY AND RELEASE EMPLOYEES HIRED INTO CATEGORICAL PROGRAMS AS TEMPORARY EMPLOYEES.

The California Third District Court of Appeal issued a decision in *Stockton Teachers Association CTA/NEA v. Stockton Unified School District* (March 1, 2012) ___ Cal.App.4th ___ (2012 WL 663158) that could have a wide-ranging impact on how districts classify and terminate employees hired to serve in categorically funded programs. While we think the case was incorrectly decided and hope that the California Supreme Court will grant review of the case, as it stands now, the case could have implications for certificated layoff and temporary employee release processes in the current school year.

I. Factual Background

Like many school districts in the state, Stockton Unified School District (“District”) had a practice of classifying certificated employees hired to work in categorical programs under Education Code 44909 as temporary employees. These categorical employees signed an agreement with the District which acknowledged their status as temporary employees. For the 2008-09 school year, the agreement stated that these employees would be terminated by a specified date or on “the date on which the funding for the categorical program is no longer available, whichever occurs earlier.” Under the agreement, the District reserved its right to dismiss the employees as temporary “at any time during the period in this paragraph based on the determination of the governing board.”

On March 4, 2009, the District’s governing board adopted a resolution reducing or eliminating particular kinds of certificated services for the 2009-10 school year. The District sent “precautionary” notices to each of the temporary employees serving in categorically funded positions. In response to the precautionary notices, nine categorical employees who were classified as temporary requested layoff hearings. During the layoff hearing, these nine employees argued that they had been inappropriately classified as temporary employees.

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II. Layoff Decision

Prior to the layoff hearings, Stockton Teachers Association (STA) objected to the inclusion of temporary employees in the layoff proceeding and filed a motion arguing that the Administrative Law Judge (ALJ) lacked jurisdiction to expand the proceedings to include temporary employees. The ALJ dismissed the motion and ruled that although section 44955 expressly authorizes layoff proceedings for probationary and permanent employees, the ALJ had jurisdiction to determine the classification of an employee, including a temporary employee, once the employee has requested a hearing under section 44949. The ALJ further held that the District was not prohibited from entering into temporary agreements with employees working in categorically funded programs under section 44909. The governing board of the District adopted the ALJ's decision.

III. Trial Court Decision

STA appealed the ALJ's decision to the trial court, arguing that the proper classification of teachers assigned to categorically funded programs under section 44909 is probationary rather than temporary. STA argued that the temporary teachers were improperly included in the layoff proceeding and that the ALJ's findings were not supported by the evidence. The trial court held that the categorical employees were properly classified as temporary employees and could be released as such. STA appealed the trial court decision to the court of appeal.

IV. Court of Appeal Decision

On appeal, STA argued that the Legislature's intent in creating section 44909 was for categorical employees to be classified as probationary, not temporary, employees. The court focused on two issues: the classification of employees serving in categorical positions and the release of such employees. After analyzing the language of section 44909 with respect to other classification provisions in the Education Code, the court of appeal held that the classification of employees working in categorically funded positions depends upon the *duration* of their employment. The court concluded that a district may classify categorical employees as temporary *only* if they are: (1) hired for the term of a categorically funded project and (2) terminated at the expiration of the categorically funded project for which they were hired. Otherwise, the court concluded that the categorical employees must be treated as probationary, with the same seniority and layoff rights afforded such employees.

In reaching its conclusion, the court noted that the Education Code authorizes the classification of employees as temporary only in "certain narrowly defined situations" and that probationary status is the "default classification" for employees. (*California Teachers Assoc. v. Vallejo City Unified School Dist.* (2007) 149 Cal.App.4th 135.) According to the court, the purpose of the state's classification scheme is "to limit rather

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than enlarge the power of school districts to classify teachers as temporary employees.” (Bakersfield Elementary Teachers Assoc. vs. Bakersfield City School Dist. (2006) 146 Cal.App.4th 1260.)

With respect to the termination of employees serving in categorical positions, the court determined that pursuant to the specific language of section 44909, categorical employees may be terminated without regard to the requirements for permanent and probationary employees only when they are terminated “at the expiration of the contract or specially funded project....”

In this case, the District argued that the term “contract” referred to the contracts between the temporary employees and the district, and that the termination date listed in their agreements triggered the “expiration of the contract” under section 44909. The court disagreed, however, and determined that the term “contract” refers to the contract between the agency providing the categorical funds and the District.

According to the court, a categorical employee may be terminated as a temporary employee “at the termination of the categorically funded program or at the end of the contract with the public or private agency.” The court stated, “What a district may not do is hire a person for more or less than the term of the contract or project, and treat such a person as a temporary employee.” If the employee is terminated before the expiration of the agency contract or the categorical funds, then the employee must be treated as a probationary employee and presumably terminated through either a mid-year termination process or a probationary nonreelection process. The court noted that “this interpretation allows school districts the flexibility to operate special programs without having a surplus of probationary or permanent teachers when the special program is terminated.”

Once the court established the test for determining the classification and termination of categorical employees, the court reviewed the evidence presented by the District in its layoff hearing. The court concluded that, in order to justify the classification of the categorical employees as temporary, the District was required to: (1) show that the employees were hired to perform a categorically funded services; (2) identify the particular contract or project for which services were performed; (3) show that the particular contract or project had expired; and (4) show that the employee was hired for the term of that contract or project. Because the District failed to provide sufficient evidence of these facts, the court ruled that all nine of the employees were probationary, not temporary, employees.

V. Impact of Stockton on Current Layoff Proceedings

We disagree with the court’s analysis of section 44909 and understand that the District

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may appeal the decision to the California Supreme Court. However, as a published decision, it potentially has immediate and long term impacts on certificated temporary employee releases and layoffs.

In light of Stockton, districts should consider taking the following steps to determine how, if at all, the decision impacts district practices and pending actions such as layoffs and temporary employee releases:

1. Examine your current list of temporary employees to determine whether the list includes categorical employees.
2. For any certificated employees serving in categorical programs who are classified as temporary, identify the specific categorical program or contract under which the employee serves.
3. Determine the status of any categorical funds or contract to determine when each categorical program began and will expire due to the end of the agency contract or when funding will be eliminated.
4. Determine whether, in light of the information gathered in paragraphs 1-3 above, the district needs to take any further action relative to the categorical temporary employees, such as potential status changes and nonreelections for categorical employees converted to probationary, with the understanding that nonreelection decisions cannot be used in lieu of a layoff.
5. Determine if reductions in additional particular kinds of services may be necessary as a result of your evaluation of the status of certificated employees serving in categorical programs.
6. Going forward, districts should review and evaluate the language of their temporary employee contracts to determine if any changes are necessary in light of Stockton.

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The Stockton decision leaves many questions unanswered, such as whether a categorical employee under a multi-year contract or an employee who is hired after the start of a categorical program's contract may be classified as temporary. With March 15th just around the corner, it is very important that you work with legal counsel as soon as possible to assess what impact, if any, this decision will have on your practices relative to categorical employees, and the implications of those practices on your current certificated layoffs and temporary employee releases.

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