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ABSTRACT

This document contains the results of California court decisions in litigation involving the status, or status and pay of part-time faculty in California community colleges. The information in the report was obtained by asking each California community college president and district superintendent to report whether their college or district was, or had been, involved in such litigation. A 100% response revealed sixteen cases involving part-time faculty. One case had been decided by the state Supreme Court, six by Courts of Appeal, four by Superior Courts, and five were pending in Superior Courts. The facts and circumstances of each case, and the significance of the Courts' decisions are presented, with the case reports organized by judicial level. It is not advisable to draw general conclusions from the legal decisions that are described since each case is a unique set of facts and circumstances. It is, however, valuable to recognize which cases have established precedents. It is also clear that Education Code 13337.5 has become the central focus of the preponderant number of cases covered in this report. Attorney general opinions and current case statuses are appended. (JDS)

TEMPORARY, CONTRACT, OR REGULAR?

A Report about Court Cases Involving the Issues of the Status and Pay of Part-Time Faculty in California Community Colleges

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Dr. Grenville H. Gibbs, on leave in 1975-76 from his position as Political Science Instructor at Shasta College and serving an internship with CCJCA, researched several complex cases in the initial stage of the project.

Mr. James M. Butterworth, formerly Coordinator of Evening and Saturday programs at Sierra College and now Dean of Instruction at West Hills Community College, analyzed and prepared written descriptions of the five most recent cases which had not been decided at the Superior Court level as of June 30, 1976.

Dr. Lloyd E. Messersmith, Executive Director of CCJCA, and Dr. David H. Mertes, President of the College of San Mateo and Chairman of the CCJCA Committee on Continuing Education, provided knowledgeable guidance and support during all stages of the project.

Finally, to the many attorneys for both sides and to the staff members in the colleges and district offices who so willingly provided the information necessary to see this project through to completion, the authors wish to convey a most sincere "thank you."

PREFACE

Early in the spring semester of 1976, the Committee on Continuing Education of the California Community and Junior College Association met in Los Angeles to discuss, among other things, the subject of part-time instruction in California community colleges. The Association had recently published and distributed the results of a statewide survey of the colleges which endeavored to collect, analyze, and disseminate timely and reliable data about part-time instructors in the community colleges of California. This report, titled Part-Time Faculty in California Community Colleges (March, 1976) focused in general on the extent to which part-time faculty in the colleges are utilized and the conditions under which they are employed. Surprisingly, there was little hard data available until this particular survey and report to provide answers to several basic questions relative to the part-time teaching faculty in the colleges. Recent sessions of the California Legislature have considered a number of bills on the subject of the pay and status of part-time faculty, but reliable data of a substantive nature was not available until the CCJCA survey was conducted and the results distributed.

As Committee members at the Los Angeles meeting discussed different aspects of part-time instruction and the findings of the statewide report, it became evident that the field of action had shifted somewhat, away from the legislative arena in Sacramento and into the courts. The ambiguous and conflicting state of statutory law in this area had led to a situation where an increasing number of part-time teachers were going to court, pleading that their status was not "temporary" but rather "contract" (probationary) or "regular" (permanent or tenured) and that their remuneration was insufficient. They were arguing in the courts that their pay should be based on some equitable method of comparability between full-time teachers' pay and part-time teachers' pay, a method that would accomplish that for which the teachers were going to court, namely, "equal pay for equal work." In short, there were a number of court cases--no one knew how many--wherein teachers were suing community college districts over the two basic issues of status and pay.

Again, as was the case when the earlier survey was undertaken, there was a paucity of basic information about the court cases, a vacuum of reliable data. Practitioners in the colleges and districts, and policymakers at the state and local levels, were at a great disadvantage unless they could be aware of what was happening in the courts relative to the status and pay of part-time community college instructors.

At the Committee meeting referred to above, the authors volunteered to conduct a statewide survey of court cases--those pending and those already decided--relating to part-time community college faculty and to write a final report on the subject which would objectively describe in a reportorial manner pertinent and factual information about each case. Soon after the Los Angeles meeting, the following paragraph was included in a project description submitted to members of the Committee on Continuing Education:

> The word "reportorial" is significant. The issue of part-time faculty in California community colleges has become immersed in controversy, and there is a need in such a project for objective treatment of the material. It is the intention of those responsible for the project to approach the research, analysis, and final writing of the report in the best tradition of legal scholarship and objective reporting.

This, then, is the manner in which the project was approached. The authors are confident that they have done their best to be objective, but a final judgment as to whether or not they have been must rest with the reader.

The purpose of the project is easy to describe: to inform. The Committee on Continuing Education was and remains convinced that faculty, administrative, student, and trustee leaders in the community colleges and state-level legislative and administrative policymakers need to know, in specific terms, what the courts are deciding and what the litigants are arguing in this emerging field of court law. It is our hope, therefore, that this report will be distributed widely throughout the state's community colleges among those most interested in the subject matter.

One concluding comment is necessary. Neither of the authors are attorneys; we are, instead, educators. Throughout the entire duration of this project, and especially when it came time to write a description of each case, the authors attempted to describe the content, issues, reasoning, and legal procedures of each case in as nontechnical a fashion as possible. For two important reasons, we avoided, whenever possible, a description which entailed a "legal" explanation or "legal" language. First, as nonlawyers we felt unqualified to enter brashly into the domain of the legal profession and pretend that we knew and understood things we did not. Second, and more important, this document was written primarily to be read by those in the field of education, and it was our feeling that a maximum of understanding would result from a minimum of legalistic language. The report may be helpful, of course, to those in the legal profession who are concerned with the subject matter, but readers who wish more specificity are referred to the original documents in each case. The audience for whom this report is written, nevertheless, is found on the campuses of our community colleges, not in the courts or law offices of the state.

On that point, we should mention that any errors, omissions, or distortions in meaning of the language or intent of court decisions or pleadings by petitioners or respondents are, of course, unintended. The authors assume sole responsibility for any such mistakes.

May the information contained in this report serve to ameliorate conflict rather than to exacerbate it. In this area of community college education, there is a great need today to find local and state-level solutions to complex problems of immense magnitude. It is our hope that this report will help transform some of the problems into solutions.

The Authors

METHODOLOGY

On April 26, 1976, a memorandum was mailed to every California community college president and district superintendent requesting assistance on this project (see Appendix E for a copy of the memorandum). A return postcard was included with the memorandum upon which they were to mark either a "yes" or a "no" box to indicate if their district or college was at that time, or had been at any time in the past, involved in one or more court cases over the issue of status (or status and pay) of part-time faculty.

By early July, 1976, all but four of the postcards had been returned, and follow-up letters were sent to the four. Telephone calls or written responses from the four revealed that there were no more cases to report.

This procedure produced a 100 percent response from the districts and colleges and revealed that there were 16 cases involving the status, or status and pay, of part-time faculty in California's community colleges as of June 30, 1976.

It is recommended that the reader proceed through this report following the order of presentation. An eclectic approach, randomly choosing individual selections, will deprive the reader of historical perspective and an understanding of important interrelationships.

The report opens with a description of the only case to have yet been decided by the Supreme Court in California (Level A). This section is followed, in order, by those cases decided by the Courts of Appeal (Level B); those decided by Superior Courts, that is, trial courts (Level C); and those which are still pending in Superior Courts (Level D). Each of these four "levels" of the report are immediately preceded by a brief introduction which is intended to help orient the reader to the cases that follow.

One cautionary note should be added. In Part 2 of Level D (the fourth and final section), the reader may find that it is "heavy sledding" to get through the material. Yet, in a sense this is one of the most important parts of the report because it reveals how the controversy is presently being argued at the very first level, prior to any decisions by Superior Courts.

LEVEL A

Supreme Court Decision

Case # 1 The Balen Case June 28, 1974

Only one of the cases involving the status of part-time instructors in California's community colleges had reached the Supreme Court of the State of California as of the date of this report. This case, brought by a part-time instructor at Laney College in the Peralta Community College District in Alameda County (then the Peralta Junior College District), has become the landmark case in this particular genre of litigation.

The teacher lost at the Superior Court level, then appealed. He lost again at the Court of Appeal level, and appealed once more. Finally, he won when the Supreme Court of the State of California reversed the decision of the lower court and ruled in favor of Balen.

It is important to keep in mind that decisions of the Supreme Court of California, as a practical matter, have the effect of law. The state courts generally follow the direction of the Supreme Court, and under certain circumstances, when the issues are the same and the fact situations are comparable, the courts will often cite as precedent earlier rulings of the state's highest judicial body. That is why the Balen case is cited and quoted so extensively in the court cases which have followed on its heels.

The Balen case has had the practical effect of establishing precedent in an area of state law (the status of part-time teachers in California's community colleges) where statutory provisions have been either contradictory or ambiguous.

CASE #1

The Balen Case

June 28, 1974

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

H. PAT BALEN, Plaintiff and Appellant, vs. PERALTA JUNIOR COLLEGE DISTRICT, Defendant and Respondent.	S. F 23096 (Super. Ct. 406086)

THE BALEN CASE

In the Balen case, decided by the California Supreme Court on appeal, the state's highest Court ruled that the teacher should be classified as probationary (contract) rather than as temporary, as claimed by the District. "Because this appeal arises from a summary judgment," commented the Supreme Court, "we must accept as true the following facts generally alleged" by Balen in his affidavits.

The teacher was hired in 1965 on an hourly basis to teach speech in the evenings at Laney College and was continuously rehired in the same position for a total of four and one-half years. "As an active Republican campaigner," said the Court, "Balen attempted to organize the other part-time instructors purportedly to protect their interests." The head of the speech department at Laney told Balen that, as a result of his political activity, "she was afraid to recommend [him] for a full-time position because of [his] politics even though she thought [he] was an eminently qualified teacher," and that "she feared she would not get tenure if she recommended [him]."

In October, 1969, Balen made a formal complaint before the District Board of Trustees; the complaint was accepted and the Board advised Balen that an investigation would be conducted. However, in December, 1969 (before any investigation was initiated), Balen received oral notification that his contract would not be renewed the following semester.

According to the Supreme Court decision, Balen next "made several unsuccessful attempts to ascertain the actual reasons for his discharge. Although the original justification given was that his speech classes were being phased out, several other instructors suggested it was because his politics did not comport with the liberal image of the college."

The next month, in January, 1970, Balen met with the College president and the District superintendent to express his grievance and was told again that he was, in the words of the Court ruling, "in fact dismissed, although without cause or hearing because he was only a temporary employee." Five months later, Balen finally received written confirmation of his dismissal which led to his subsequent filing of charges against the District in Superior Court seeking reinstatement, lost salary, and damages.

The trial court in Alameda County upheld the District and ruled that Balen was a temporary employee, dischargeable at will in accordance with Education Code Section 13446. Balen appealed this decision, and the First District Court of Appeal, Division Two, upheld the lower court's judgment against Balen. The teacher then appealed to the Supreme Court of California.

Balen's petition to the Supreme Court argued that he qualified as a permanent or probationary employee and could, therefore, not be discharged without notice and hearing. Even if he was temporary (rather than permanent or probationary), argued Balen, he is entitled to relief because Education Code Section 13446 is unconstitutional. That section provides, among other things, that a school board may dismiss temporary employees at the pleasure of the board. Finally, Balen asserted that his discharge was politically motivated in violation of the First and Fourteenth Amendments to the United States Constitution.

Taking up that issue, the Supreme Court said "that Balen is properly classified as a probationary instructor and entitled by statute to pretermination notice and hearing," and it is, therefore, "unnecessary to reach his constitutional claims."

In a footnote, the Supreme Court took note of the fact that Balen filed a joint petition at the trial court level in which he sought "special and general damages arising from personal injuries allegedly suffered when his employment was terminated because of his political beliefs and participation in the activities of the Republican Party." The Supreme Court declined to rule on the questions raised in the joint petition, citing the following reasoning: "Because we granted a hearing only on the propriety of the summary judgment and subsequent dismissal, his allegations not considered in this opinion are left for resolution to further proceedings in the trial court."

Following an explanatory section in which the rationale for the Legislature's system of classifying teachers (permanent, probationary, temporary, or substitute), several pertinent cases, and Balen's qualifications, all were described, the Supreme Court concluded that "plaintiff's continuity of service would seem to create the necessary expectation of employment which the Legislature has sought to protect from arbitrary dismissal by its classification scheme."

Moving on, the Court ruled that the statutes in effect when Balen was hired (1965) support his claim of probationary status (citing Education Code Sections 13334, 13337, and 13446). The District had argued that these three sections should not be applied to part-time instructors and, in any event, Balen's status was changed later (in 1967) when the Legislature added Education Code Section 13337.5. Calling attention to the fourth and final paragraph of that crucial Code section, the District contended that Balen's workload never exceeded 40 percent of a full-time teacher's assignment, and he, therefore, should be properly placed in the category of a temporary employee during the entire course of his employment. Yet, said the Supreme Court, "[w]e doubt the Legislature intended that section 13337.5 operate to divest plaintiff of his previously acquired status."

It is a general rule, commented the Court, that statutes are not to be given retroactive effect unless the intent of the Legislature cannot be otherwise satisfied, and there is nothing in Section 13337.5 "to indicate it was intended to be applicable to employment rendered prior to its enactment." Further, an analysis of the 1967 legislative history of the enactment of Section 13337.5 provides an additional indication, said the Court, that the statute not be applied retroactively.

The District contended, as noted above, that Sections 13334, 13337, and 13446 are not applicable to part-time instructors, and the Supreme Court ruled that there is no merit to that contention. "The probationary plan envisions a two-fold purpose: it allows the new teacher sufficient time to gain additional professional expertise, and provides the district with ample opportunity to evaluate the instructor's ability before recommending a tenured position." A part-time instructor, unlike the day-to-day substitute, continued the Court, "generally serves under conditions comparable to those of his full-time counterpart; thus, there is no reason for differentiating between their statuses for the purpose of attaining probationary classification, nor has the Legislature directed us to do so." Furthermore, noted the Court's decision, the law is "well settled that tenure in a junior or community college may be attained by teaching in other than regular daytime classes." Here, the Court cited Curtis ("credit may be achieved by teaching in evening classes"); Beseman (prison classes); Vittal (hourly employment); and Education Code Section 13309 (adult classes).

Turning next to the District's position that regardless of Balen's initial status he should be classified a temporary employee from 1967 onward (when Education Code Section 13337.5 was adopted), the Court described as "unpersuasive"

the rationale put forth by the District. The Court cited an earlier Supreme Court decision (Sitzman v. City Board of Education (1964) 61 Cal. 2d 88, 90) and said in Balen: "Here we have the converse of Sitzman: the right to a hearing is alleged to have been taken away during the course of employment and plaintiff's status downgraded accordingly." Concluded the Court in Balen, "it would manifestly be unjust to interpret the new section in a manner that would strip petitioner of his previously acquired status," in the absence of specific legislative provision for retroactivity or other indication of legislative intent.

A somewhat enigmatic footnote appears at this point in the text of the Supreme Court's ruling in Balen, to wit: "Because we have decided the Legislature did not intend that section 13337.5 apply to Balen, we need not reach the question whether procedural due process, once given, is a vested right."

Another District argument, one which deserved "little consideration" in the opinion of the Court, was that Balen "was previously dismissed, then rehired in a new category effective as of 1967." District policy, according to the Court's reading of the record, was to dismiss part-time teachers annually prior to May 15, "regardless of performance, and subsequently to rehire them." Commented the Court in Balen: "Such an administrative practice of routine blanket dismissals to circumvent proper classification carries with it concomitant liability; i.e., the form letter dismissal with virtually automatic rehiring creates an expectancy of reemployment." The Court continued, "[n]or can the provisions of the Education Code lawfully be avoided by employing a teacher under consecutive part-time contracts." Furthermore, even if the District intended to dismiss Balen in 1967, which the Court said appears unlikely according to the record, "the discharge did not comply with the requisite notice and hearing requirements for terminating the employment of a probationary instructor" as per Education Code Section 13443.

An ironic aspect of the Balen case is that he was elected to the Peralta District Board of Trustees between the time of his termination of employment and his filing of a court case against the District. Balen conceded that he could not serve in both positions simultaneously, but he did petition for a choice of employment, monetary relief, or, at a minimum, elimination of any taint on his professional record. Said the Supreme Court: "His subsequent election to the school board does not preclude him from the statutory right to a pretermination hearing in this instance."

From all of the foregoing, the Supreme Court was led, in its words, "ineluctably to the conclusion that Balen was a probationary employee when hired, and retained that status over the course of his employment."

Balen, however, argued further in his petition that he qualified for a permanent position by operation of law. Section 13304 is the controlling statute, said the Supreme Court, and the Court underscored a part of the section which provides that after "three complete consecutive school years" of employment, every certificated employee who is reelected becomes a permanent employee. Focusing on the definition of a complete school year, the Court cited Education Code Section 13328, which says in part that it is one in which the employee served at least "75 percent of the number of days the regular schools of the district . . . are maintained," or, as per Section 13328.5 and the Vittal case, one in which the employee served at least "75 percent of the number of hours considered as a full-time assignment for permanent employees having similar duties." (Our emphasis.)

Based on these definitions, the Court ruled that "[f]rom the meager evidence presented by affidavit we are unable to ascertain that Balen carried the

workload required by these sections, and therefore cannot as a matter of law credit the years of partial work toward the prerequisites for permanent employment. We hold only," continued the Court, "that even if he is a probationary teacher he can be dismissed only for cause, after notice and hearing." Since the Board provided no hearing, said the Court, "summary judgment for defendant and dismissal of the action were improper."

In conclusion, the Supreme Court had this to say:

> It has been suggested that the judicial process is particularly unsuited for intervention in the teacher classification system, in that it tends to unduly restrict a school district's necessary flexibility in assignment practices. By requiring the district to properly classify a teacher, however, courts do not purport to inhibit the administrative assignment of teachers as directed by the Education Code. We recognize that the school administration must be afforded wide discretion and latitude in controlling the routine operations and daily affairs of the school in order to meet the innumerable local problems which may occur. Administrative decisions which invariably affect personnel must be made as the needs of the school change.
>
> This accepted concept, however, cannot be adapted as a shield for arbitrary dismissal practices. The vice inherent in such practices emerges in this case. Although the district informed Balen he was not being rehired because his class was phased out, the record reveals that two teachers of similar qualifications were hired after his release to teach the identical classes. A pretermination hearing might have served to ferret out the actual reasons for dismissal; if the motivation was truly a reduction in classes (see section 13447), Balen could have investigated the surrounding circumstances and, in any event, sought exoneration or mitigation of any damaging professional overtones which could impede future employment. In the absence of such procedural safeguards antecedent to the effective date of termination, the substantive protection provided by the classification system would be rendered ineffective.

Accordingly, ruled the Supreme Court in Balen, the judgment of the lower court is reversed.

LEVEL B

Courts of Appeal Decisions

Case # 2	The Curtis Case	October 17, 1972
Case # 3	The Ferner Case	February 18, 1975
Case # 4	The Kirk Case	June 20, 1976
Case # 5	The Nybakken Case	January 30, 1976
Case # 6	The Proctor Case	January 21, 1975
Case # 7	The Vittal Case	May 26, 1970

LEVEL B

These six decisions by Courts of Appeal in California grew out of rulings of lower, Superior Courts. They all reached the Court of Appeal level when either the teachers or the districts (or in one case both) appealed a ruling of a Superior Court.

Each Court of Appeal in California's court system has the power to decide whether or not a given case decided by that particular Court of Appeal should be published officially in publications such as the California Reporter. When a Court of Appeal decides to "publish" its decision in a particular case, the import of the decision to publish is that precedent has been set within that Appellate District and the legal profession, including all of the courts in the Appellate District, should look to the findings in the published decision for legal precedents. A rule of thumb is that such "published" cases have general application.

On the other hand, each Court of Appeal also has the power to decide not to publish a particular case. One reason a Court of Appeal would decide against publication would be that the issues or fact situations involved in a case are not of general application.

Of the six cases described herein, three were published and three were not. Curtis, Ferner, and Vittal were all certified for publication and, like Balen, are cited from time to time (where applicable) in the litigation under review in this report.

Kirk, Nybakken, and Proctor, on the other hand, were not certified for publication by the Court of Appeal. It is interesting to note that the Court of Appeal, First Appellate District, Division One, was the appellate court that ruled in each of these three cases, namely, Kirk, Nybakken, and Proctor. It follows, therefore, that other courts in California and members of the bar in their formal pleadings before courts may not cite precedent from these latter three decisions which have not been certified for publication.

CASE # 2

The Curtis Case

October 17, 1972

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

ROBERT MARION CURTIS, Plaintiff and Appellant, vs. SAN MATEO JUNIOR COLLEGE DISTRICT OF SAN MATEO COUNTY, a State agency, Defendant and Respondent.	1 Civil 30357 (Sup. Ct. No. 157517)

CERTIFIED FOR PUBLICATION

THE CURTIS CASE

In this case, Robert M. Curtis sought on appeal to reverse the Superior Court decision against him which had denied his request for classification as a permanent certificated employee on the ground that he had not taught for three complete, consecutive school years in the day college prior to his being employed for the fourth year.

Curtis was first employed as a probationary teacher for the 1967-68 school year, continuing in that capacity for three consecutive school years. Every semester taught was in the day college, except for the second half of his first year when he taught in the evening college of the district.

The Court of Appeal decision noted that Education Code Section 13304 is the "basic tenure law" in this case. It went on to point out that although Section 13304 on its face makes no distinction between the classification of certificated personnel for day school teaching and for evening or adult classes, the trial court agreed with the district "that sections 13309-13311 appear to manifest a legislative intent to make this distinction." Proceeding to knock down this argument, the appellate court reviewed and analyzed in some detail the Code sections in question and two court cases which apparently prompted the enactment of the sections. Said the court, the "manifest purpose of these sections (13309-13311) is to prevent double tenure." As for the two court cases that led to the enactment of Sections 13309-13311, the appeal court concluded that neither of the cases "involved a situation where service in the night and day school were combined to acquire tenure and the section passed in response does not refer to such a situation."

Next, the Court of Appeal pointed out there is no longer any question "that tenure in a junior college district may be obtained by teaching in other than the regular daytime classes on campus" (citing Besseman v. Remy, 160 Cal. App. 2d 437 and Holbrook v. Board of Education, 37 Cal. 2d 316).

Harkening back to its earlier point that Section 13304 is controlling, the appellate decision reiterated that tenure is obtained by teaching for three consecutive years in a position or positions requiring certification qualifications. The Court of Appeal concluded that there "is no requirement that these three years be served in the same classification. The only restriction imposed by the Code on those serving in the separate classifications of day and evening classes is that they do not become entitled to double tenure. To extend this restriction to preclude tenure for three years' continuous service in a combination of day and evening classes would produce a result inconsistent with the purpose of the tenure law, which is to give security of employment to teachers while protecting the community from ineffective teachers."

Therefore, said the Court of Appeal in the Curtis case, the lower court's decision was reversed.

Editor's Note:

Subsequent to this decision, the California Legislature in 1973 adopted Chapter 687 of the Statutes of 1973 (Assembly Bill 1016, Arnett) which added a second paragraph to Education Code Section 13311, to wit:

"Notwithstanding any other provision to the contrary, service in the evening school shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee in the day school, except service in the evening school rendered by a person rendering services in the day school who is directed or specifically requested by the school district to render services in the evening school either in addition to, or instead of, rendering service in the day school. Service in the day school shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee in the evening school, except service in the day school rendered by a person rendering services in the evening school who is directed or specifically requested by the school district to render service in the day school either in addition to, or instead of, rendering service in the evening school."

CASE # 3

The Ferner Case

February 18, 1975

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

EDWARD FERNER,	)	
Plaintiff and Respondent,	)	
vs.	)	Civ. 33491
HOWARD HARRIS, et al,	)	
Defendants and Appellants.	)	

CERTIFIED FOR PUBLICATION

THE FERNER CASE

Two central issues were addressed by the Court of Appeal in the Ferner case and resolved in favor of the teacher: (1) did the teacher have tenure?; and (2) did the teacher have a preferred status in order to qualify for a right to reemployment as a full-time, rather than as a part-time, teacher? As described in the California Reporter*, the essence of the Court of Appeal's unanimous decision ". . . held that teacher who had been employed for three years as a full-time certificated employee and for a fourth year on a 13/45th basis became a tenured or permanent employee of the college, and teacher's entitlement to preference under statute providing that no employee with less seniority shall be employed to render a service which a terminated permanent employee is certificated to render did not apply only to future part-time vacancies."

Ferner, an instructor in the aeronautics program at Gavilan College, taught full time during the academic years 1967-68, 1968-69, and 1969-70. During the spring semester of 1970, the teacher was notified by the College that the portion of the aeronautical program to which he was assigned would be discontinued and that his services would, therefore, no longer be needed. A hearing was held at the request of the teacher, and the hearing officer found against the District saying that he should be reemployed on a 13/45ths basis. The District then hired Ferner for the 1970-71 year on the 13/45ths basis, and according to the ruling by the Court of Appeal, Ferner, ". . . as a result of his reemployment for a fourth school year, became a tenured or permanent employee of the College."

The following spring, that is in 1971, the College notified the teacher that he would not be reemployed for the 1971-72 academic year because the College was reducing its services. Pursuant to Education Code Sections 13443 and 13447, the College terminated Ferner at the end of the 1970-71 year.

Over a year later, during the summer of 1972, a full-time teaching position in the aeronautics program at Gavilan College became available when one of the two remaining certificated employees resigned.

Noting that Ferner was "competent and certificated" to fill this vacancy, the Court of Appeal called attention to Education Code Section 13448, saying that the section "guarantees a preferred right of employment for a period of 39 months to any permanent employee who has been terminated because of a reduction in service and specifies that no probationary or other employee with less seniority shall be employed to render services that the certificated employee is competent to render."

Though the District did advise Ferner of the vacancy, it, nevertheless, refused to give him a full-time assignment and instead offered him only a 13/45ths position. Ferner accepted the 13/45ths assignment under protest, objected to the part-time assignment, and sought the full-time position. He next requested a hearing. A hearing date was set but then canceled due to the illness of both counsel. Thereafter, Ferner was notified by the attorney for the District that, in the words of the appellate court decision, "no hearing was necessary and that the College had refused to reclassify the teacher as full time."

Turning its attention to the question of the teacher's status, the Court of Appeal took note of the District's position, namely that Ferner "did not become a tenured employee, but remained a temporary one subject to dismissal at its

*Ferner v. Harris (1975) 45 Cal. App. 3d 363.

pleasure" (the District cited Section 13446 for authority). Also, noted the appellate court, the District "argues in the alternative that, at most, the teacher was entitled to tenure only to the extent of his part-time position."

The applicable statutory provisions, said the appellate court in Ferner, are Education Code Sections 13304 (qualification for permanent status) and 13448 (preferred right of reappointment).

Was Ferner entitled to permanent status? The appellate court commented that "case law has long sanctioned the creation of tenure limited to part-time teaching" though Section 13304 is silent on the question. The court then cited the pertinent passage in Vittal and noted that both Crawford and Holbrook are in accord. Based on these decisions, the appeal court in Ferner agreed with the District that "it is true that he [Ferner] is tenured only as to 13/45ths of a full-time teaching position," but it parted company with the District's contention that, therefore, Ferner is "only entitled to a preference under Education Code section 13448 to such a part-time position." Restating the District's position, the appellate court said, "The college . . . seeks to carry the part-time v. full-time tenure distinction over to section 13448's preference provision, thereby limiting the preference of a terminated employee with tenure vis-a-vis part-time employment to future part-time vacancies." (Emphasis by Court of Appeal.)

The court disagreed with this contention. First, it pointed out that tenure "is basically a relation between the teacher and the school district guaranteeing job security to the teacher," whereas seniority "is basically a relation between teachers inter se, guaranteeing many privileges, including but not limited to job security, to the 'elder statesmen'." Sections 13447 and 13448 both deal primarily with the teacher-district relationship and only secondarily with the teacher-teacher relationship, said the court, and "their provisions insure that termination and reemployment will be in conformance with seniority rights." Noting that the District in Ferner "attempts to confuse the issue by presenting a hypothetical problem dealing with seniority," the appeal court observed that Ferner is tenured, falls, therefore, under the provisions of 13448, and that "there is no need of the secondary inquiry" because no "other terminated tenured teacher appears to be competing for the vacancy."

Second, reasoned the court, "equity requires that the teacher be given the first opportunity at the existing vacancy." It must be assumed he is competent, said the court, "although the College hints at a subsurface dissatisfaction on other grounds." The District could have declined to reelect the teacher to a fourth year, continued the court (if it had been long concerned about the teacher's competence), thus preventing tenure, but it did not do so. What the undisputed facts indicate, said the court, is that "the reduction to part time and subsequent termination were due only to economic necessity."

Finally, the Court of Appeal took up the District's contention (using Education Code Section 13337.5) that Ferner was not entitled to tenure. This Code section, printed in its entirety in the Ferner decision, is the crucial four paragraph section which has become the central focus of concern and interpretation in many of the cases involving part-time teachers in California's community colleges.

The Court of Appeal in Ferner noted that the District claimed the teacher was a temporary employee pursuant to the often cited, and much disputed, fourth paragraph of 13337.5. Said the Court, "a reading of the entire section readily indicates that this provision does not apply to the teacher as he was not hired

under the conditions set forth in the first paragraph," (higher enrollment, vacancy created by leave, vacancy created by long-term illness). Moreover, said the court, the third paragraph of Section 13337.5 "contains a built-in limitation to prevent a school district from employing and reemploying indefinitely a teacher as a temporary employee."

In conclusion, ruled the Court of Appeal in Ferner, the teacher was properly classified as, and became, a tenured employee, and he cannot be deprived of his rights pursuant to Section 13448. The judgment of the Superior Court was upheld and affirmed.

CASE # 4

The Kirk Case

June 20, 1976

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

JOHN KIRK, Plaintiff and Appellant, vs. SAN MATEO COMMUNITY COLLEGE DISTRICT; GOVERNING BOARD OF THE SAN MATEO COMMUNITY COLLEGE DISTRICT, Defendants and Respondents.	1 Civil 37062 (Sup. Ct. No. 184865)

NOT CERTIFIED FOR PUBLICATION

THE KIRK CASE

John Kirk, an instructor of economics at the College of San Mateo, appealed an unfavorable trial court ruling and petitioned the Court of Appeal to require the college district to grant him regular status in the evening division and restore him to eligibility for summer school employment.

Kirk first taught economics in the 1969-70 school year for a combined day and evening total of 18 units each semester. The 1970-71 school year saw him teaching under a contract that designated him a probationary employee. He was notified on March 15, 1971, that, with the return of a tenured teacher from a leave, Kirk's services were no longer needed. However, Kirk did not claim any rights accrued prior to the fall of 1971.

Thereafter, his employment record was as follows:

	Units Taught		
Semester	Day	Evening	Total
Fall, 1971	3	6	9
Spring, 1972		9	9
Fall, 1972		6	6
Spring, 1973		9	9
Fall, 1973		6	6
Spring, 1974		6	6

The Court of Appeal decision reported that Kirk contended that "having been employed for more than two semesters or quarters within three consecutive school years he must be classified as a probationary employee." The College argued "that a teacher who does not teach more than 60 percent of the hours per week, considered a full-time assignment for permanent employees must be classified as a temporary employee." Education Code Section 13337.5 thus becomes a focal point in the case.

Citing the Balen and Ferner cases, the Court of Appeal in Kirk found that since the teacher was not employed under the conditions described in the first paragraph of Section 13337.5, and was employed consistent with the third paragraph (more than two semesters or quarters within three consecutive years), he was "precluded from employment as a temporary employee under the third paragraph . . . ." Thus, the Court saw Kirk's status properly determined consistent with Sections 13337 and 13446. These sections direct that a temporary employee who is not dismissed during the first three school months, and who has not been classified as permanent, is deemed to have been classified as a probationary employee from the time that he started as a temporary employee. The Court of Appeal, therefore, found Kirk to be a probationary employee.

Next, Kirk argued that having been a probationary (contract) teacher for two consecutive years, he should be classified as permanent (regular). The Court of Appeal differed. It found that, consistent with Section 13346.20 or Section 13346.25, it is within the discretion of the board "whether it chooses to elect to employ a person as a regular employee." Elaborating on the point, the Court of Appeal said that there is nothing in the record to indicate that the district elected to treat Kirk as a regular employee. "To the contrary," said the Court, "the board elected to treat him as a temporary employee. Although this determination

was erroneous because of a misinterpretation of section 13337.5, it may not be construed as an election by the board to employee [sic] plaintiff as a regular employee in the absence of any affirmative action to so classify him."

The Court further found that Kirk's claim that he "acquired tenure by the 'de facto system' of the district not to employ permanent employees for evening classes," or his claim that he acquired tenure because his union activities brought about discrimination against him by the board, were unsubstantiated.

In conclusion, the Court of Appeal in the Kirk case ordered the college district to reclassify the teacher as "a probationary employee and to reemploy him as a probationary teacher."

Editor's Note:

The attorney for the petitioner and the attorney for the respondent both filed petitions with the Supreme Court for a hearing on this case. As this report went to print, we learned unofficially that the Supreme Court had denied the petitions for a hearing before the state's highest judicial body.

CASE # 5

The Nybakken Case

January 30, 1976

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

DR. BETTE H. NYBAKKEN, Plaintiff and Appellant, vs. GOVERNING BOARD OF HARTNELL COMMUNITY COLLEGE DISTRICT, Defendant and Respondent.	1 Civil 35534 (Sup. Ct. No. 70732)

NOT CERTIFIED FOR PUBLICATION

THE NYBAKKEN CASE

The teacher, in this case, was hired in the fall of 1969 to teach biology at Hartnell College and was rehired annually until the end of the spring semester of the 1972-73 school year. Nybakken contended in her petition to the court that she had attained tenure status and was thus entitled to notice and right to a hearing before her employment could be terminated. Although she had never been classified as "temporary," the trial court denied her contention stating that at all times she was a temporary employee under the statutes governing her employment, this classification denying her the rights to notice and a hearing.

Of interest here is that the trial court's decision was reached prior to the Supreme Court's findings in the Balen case, and that this trial court was basing its decision on the law as it then appeared to be established in the Balen Court of Appeal decision (later reversed by the Supreme Court).

Nybakken's record of employment from fall, 1969, through spring, 1973, revealed that she was issued a separate contract for the duration of each semester only. She worked more than 60 percent of a full-time load only two semesters out of the eight. Her initial employment in 1969 was for the purpose of replacing an instructor on sick leave, and she was hired the following spring to replace an instructor on professional leave. She continued to serve in that latter capacity for the 1970-71 year, serving thereafter to anticipate load increases.

Although Nybakken never had been officially classified as a "temporary" employee, the trial court ruled (based on the Balen Court of Appeal decision, later overturned) that by law her proper classification during the entire employment period was that of a temporary employee. Mention should be made here that although the College, during that period of time, had classified Nybakken as "probationary" and as "part time regular but not permanent," it was concluded by the District that these designations were erroneous and improper.

Nybakken contended that during the first two years she was "temporary" under the first three paragraphs of Education Code Section 13337.5, and that during the final two years she was "temporary" consistent with the fourth paragraph of that section. The Supreme Court decision in the Balen case ruled it was incorrect to read paragraphs of that section in isolation of each other, and that if a person serves for more than "two semesters or quarters within any period of three consecutive years" (paragraph three), then the fourth paragraph is of no consequence. The Balen Supreme Court decision was followed by the Ferner case, decided at the Court of Appeal level, which reaffirmed the Balen judgment.

In that the first paragraph of Section 13337.5 uses the term "may" concerning classification of an employee as "temporary," Hartnell was not "improper" in classifying Nybakken as "probationary" when first employed, said the Court of Appeal decision.

Thus, the appeal court found that at the time of her discharge Nybakken could not be considered "temporary," not after eight consecutive semesters of teaching. Paragraph three of Section 13337.5 precludes this possibility.

The Court of Appeal next focused upon the classification of Nybakken at the time her employment was terminated. Commented the Court in Nybakken: "The answer to this question would have been less complicated had it not been for several errors on the part of the respondent [District], inadvertent though they may have

been." The final determination by the Court of Appeal was that in her first semester Nybakken was "probationary," in her second semester she was "temporary," in her third through sixth semesters she was "probationary," and in her seventh and eighth semesters she was "part-time regular."

It is of more than passing interest that Nybakken's sixth contract read that she was "temporary," but this designation later was changed by the District to one of "part time regular but not permanent." Since this classification does not exist anywhere in the Code, the Court of Appeal concluded that she properly was "probationary." Also of interest is the fact that since Nybakken was "probationary" at the time Section 25490.20 became effective in September, 1972, the District was required to reclassify her. Not until December 18, 1972, did the District reclassify the teacher, doing so as "part time regular but not permanent." The appeal court read this "as an intendment to confer 'part-time regular' status as referred to in code section 13348.05."

The Court of Appeal next concluded that part-time regular status is a "recognized employment classification under both the Education Code and case law involving part time teachers." That tenure in the community college may be attained by other than in regular daytime classes was supported in the Curtis case, the Vittal case, and others.

Finally, the Court of Appeal held that since Nybakken "was a part-time regular teacher at the time of her dismissal without notice and opportunity for hearing, it follows that her dismissal was improper." She was to be reinstated by the District as a regular (permanent) part-time employee.

CASE # 6

The Proctor Case

January 21, 1976

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

JOHN LEO PROCTOR, et al, Plaintiffs and Appellants, vs. GOVERNING BOARD OF THE SONOMA COUNTY COMMUNITY COLLEGE DISTRICT, etc., et al, Defendants and Respondents.	1 Civil 35345 (Sup. Ct. No. 74032)

NOT CERTIFIED FOR PUBLICATION

THE PROCTOR CASE

In this case, John L. Proctor, on appeal, sought to have a Superior Court decision reversed, one which denied his contention that he was unlawfully discharged without a hearing, since at that time he was not properly classified as a permanent employee. Proctor had sought retroactive reinstatement with tenure and back pay. The trial court ruled that Proctor had "failed to request findings of fact and conclusions of law within the time period prescribed by rule 232, subdivision (b) of the California Rules of Court," and that this failure "constitutes waiver." He was joined in his petition by the Sonoma County Federation of Teachers, Local 1946, American Federation of Teachers, AFL-CIO, of which he was a member.

Proctor was hired in June, 1970, to teach two units in the summer term. Next, rehired for the 1970-71 academic year, he taught a total of 12 units. Neither the 1970 summer employment nor the 1970-71 employment bear materially on the issues before the appellate court, since it was stipulated at the trial court level that neither qualified him for consideration as a probationary teacher. The 1971-72 academic year, however, saw Proctor employed not only for nine units in the fall and spring semedters, but an additional eight units during the spring in the evening. Noteworthy also is that his contract of employment classified him as "probationary pursuant to Education Code Section 13334 and that he would be a full-time instructor."

In the spring of 1972, Proctor was offered a written contract providing for a 60 percent load in 1972-73, that contract classifying him as "temporary pursuant to code section 13337." However, he also taught eight additional units in the evening during the fall semester.

The College advised Proctor on March 12, 1973, that he would not be reemployed for the 1973-74 school year. On March 15, 1973, he requested a hearing pursuant to Section 13443, and on April 3, 1973, his request was denied.

Proctor's contention was that on April 3, 1973, he was, in fact, a probationary employee and was entitled to a hearing.

In its decision, the Court of Appeal first noted that the Legislature, "recognizing that different standards should govern college level educators," enacted a separate classification scheme and dismissal process for community college instructors (13345-13346.30 and 13480-13484, respectively).

The status of Proctor on that date, said the appellate court, becomes most important, since if he was probationary the new sections would see him reclassified as either "regular" or "contract." Proctor's contract for 1971-72 classified him as "probationary," but the District contended that this was due to a clerical error, and that the assigned 60 percent load would "carry a temporary certificated employee classification as of July 1, 1971 . . ." The basis for this position was Education Code Section 13337.5. However, he had also taught eight units in the evening during that year, units which, if added to those taught in the day, brought his load to 86 percent of a full-time load. Citing the Curtis case, the appellate court ruled in Proctor that evening and day services can be combined for "computing hours for purposes of code section 13337.5."

The Court of Appeal proceeded to uphold Proctor's contention that those who serve in excess of 60 percent of a full-time load are to be classified as probationary, and that thus on September 1, 1972, he was, in fact, a probationary employee of the District.

Citing the Balen and Ferner decisions, the appellate court in the Proctor case next noted that the courts in both of those rulings focused attention on the fourth paragraph of Section 13337.5. In each case, the court concluded that although the fourth paragraph begins with the words "Notwithstanding any other provision to the contrary, . . .", the paragraph is not to be read in isolation from the three prior paragraphs in the Code section. The appellate court in Proctor, on this basis, further found that the instructor was a probationary employee on September 1, 1972.

With his status now determined to be that of a second-year probationary employee, the appellate court next turned to the question of whether or not Proctor could be dismissed by the District without the right to a hearing. Because he did not teach 75 percent of the days during 1971-72, the trial court concluded that he was not a contract employee for 1972-73. The trial court based this conclusion on Section 13328, which says in part that a probationary employee is "one who served at least seventy-five percent of the number of days the regular schools of the district in which he is employed are maintained . . .", and that such an employee "shall be deemed to have served a complete school year." (Emphasis added.) Proctor, however, had served 75 percent of the number of hours (not days).

Noting that the trial court apparently was unaware of the Vittal decision, the Court of Appeal in Proctor overruled the lower court and called attention to the language of the Vittal decision, to wit, ". . . there is nothing in the statute which indicates an intent that permanent status should be denied where an equivalent percentage of hours has been served." The appellate court, therefore, found Proctor to be entitled to permanent status.

Thus, ruled the appellate court, Proctor was entitled to a hearing as required by Section 13346.32, and the matter was remanded to the trial court to determine the amount of damages, if any, Proctor should receive for lost compensation, and to issue the writ of mandate reinstating Proctor.

CASE # 7

The Vittal Case

May 26, 1970

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ZELDA X. VITTAL, Petitioner, Appellant and Respondent, vs. LONG BEACH UNIFIED SCHOOL DISTRICT, Defendant, Respondent and Appellant.	Civ. 34770

CERTIFIED FOR PUBLICATION

THE VITTAL CASE

The trial court in the Vittal case had ordered the Long Beach Unified School District to classify the teacher as a permanent employee but had, at the same time, denied her claim for salary owed for past years because of an incorrect classification. Both sides appealed this decision, Vittal claiming back pay for full-time permanent employment status from the 1959-60 year onward, and the District arguing against both the pay and the permanent status.

The teacher was employed from 1956 forward to teach English for the foreign born on hourly rate contracts at Long Beach City College. Each year from 1956 through 1968, she served a minimum of three days per week for a total of 17.5 hours per week. From 1968 on she was reduced to 12 hours per week. She also contended that she performed other duties beyond her classroom teaching assignment.

The trial court found that consistent with Education Code Sections 13304 and 13328 she was entitled to permanent status, that more than 75 percent of the days of the school year were served, and that the intent of the Legislature was not to deny the status if 75 percent of the hours were not served. In addition, Section 13328.5, added in 1967, directed that more than 75 percent of the hours considered a full-time assignment for permanent employees constitutes a complete school year.

On the issue of back pay, the trial court cited the statute of limitations. It found that although the teacher's permanent status was earned as of September, 1959 (with action not begun until December, 1967), the three-year statute barred her from receiving permanent status until September, 1964. Vittal sought recovery of the additional pay from 1959 forward claiming that Sections 13502, 13502.5, 13503, and 13506 all require that permanent teachers must be paid according to a uniform salary schedule. The trial court ruled, however, that by contracting for employment on an hourly basis, Vittal waived those benefits.

The Court of Appeal in the Vittal case found that, where the trial court did not make a distinction between full-time or part-time permanency, Vittal should have been classified as full-time permanent commencing in September, 1967; however, on the issue of remuneration, it upheld the trial court's finding that she was not entitled to any back pay prior to the 1967-68 academic year.

LEVEL C

Superior Court Decisions

Case # 8	The Coffey Case	September 29, 1975
Case # 9	The Dalkey/Deglow Case	March 17, 1975
Case # 10	The PFT/PPTTA/Walker Case	July 28, 1975
Case # 11	The Warner Case	June 2, 1976

LEVEL C

The four cases described in this section are those which have been ruled upon at the Superior Court (trial court) level.

As of June 30, 1976, three of the four were at various stages of appeal moving toward decisions at the Court of Appeal level. In the Coffey case, the teacher lost at the trial court level and has appealed. In the Dalkey/Deglow case, the District lost in respect to Deglow's status and is now appealing. In the PFT/PPTTA/Walker case, there was a split decision in that the trial court ruled in favor of the teachers on the issue of status, but against them on the issue of pay. Therefore, the teachers are appealing the pay portion of the Superior Court ruling, while the District is appealing the status portion of the decision. In the Warner case, the teacher lost in trial court, and no appeal had been filed as of June 30, 1976 (the case was decided on June 2, 1976). However, it is understood that the attorney for Warner has filed an appeal (at the time of the writing of this report) from the judgment of the Superior Court.

CASE # 8

The Coffey Case

September 29, 1975

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

CAROLIE COFFEY; SAN FRANCISCO COMMUNITY COLLEGE FEDERATION OF TEACHERS, LOCAL 2121, AFT, AFL-CIO, Petitioners, vs. GOVERNING BOARD OF THE SAN FRANCISCO COMMUNITY COLLEGE DISTRICT; SAN FRANCISCO COMMUNITY COLLEGE DISTRICT, Respondents.	No. 687-216

THE COFFEY CASE

On September 29, 1975, a San Francisco Superior Court ruled in favor of the college district and against Carolie Coffey, a sociology instructor who went to court seeking employment status as a regular, permanent teacher and back pay for the 1974-75 school year.

The teacher's employment record was as follows:

Semester	Units
Fall, 1971	6
Spring, 1972	3
Fall, 1972	15
Spring, 1973	9
Fall, 1973	9
Spring, 1974	9

Both sides stipulated that Coffey served as a substitute teacher in the fall, 1971, and spring, 1972, semesters. However, in the fall, 1972, semester, the teacher was hired full time to teach classes normally taught by Mr. Willie Thompson. Introduced as evidence in the trial court record was a copy of an official document issued by the District and signed and dated by the teacher (Coffey) which designated her as a "temporary, long term substitute" for the "fall semester, 1972 only."

The Superior Court decision called attention to Coffey's contention that "this service, filling in for Willie Thompson, coupled with subsequent service . . ., qualified her for permanent employee status," but the Court ruled that both "the evidence and the cited statutes compel resolution of the matter against petitioners."

A pivotal issue in this case was consideration of the conditions surrounding Thompson's "absence" from his classroom teaching assignment. The Court said on this point that Thompson "was on Leave from his instructional duties to complete an internship program in administration as part of the curricular requirements of the School of Education at the University of California, Berkeley, and was assigned to work in this District by the University as part of the internship program."

Coffey's attorneys argued that "Willie Thompson was given released time" for the 1972-73 school year "to engage in an administrative internship" at the District office; at no time did he leave the District; "nor was he on leave of absence, on long-term illness or sabbatical."

The Court decided that Thompson was not "reassigned to other tasks" in the District, but instead "was on leave for the sole purpose of continuing his studies." The Court went on to say that during this period Thompson was a student at the University "and subject to the University's control." In the opinion of the Court, "[a]doption of petitioner's position would work effectively to eliminate the mutually beneficial situation of enabling college districts to have personnel on sabbatical leaves and performing their sabbatical tasks within their own district [sic]."

Returning to the question of Coffey's status, the teacher's petition argued that "Carolie Coffey began to accrue status toward permanency . . . in the Fall of the 1972-73 school year." And, her petition admitted that although she was "theoretically a substitute employee, the law is clear that an individual is a substitute only if that individual is replacing an individual who is 'absent from service,'" (citing Education Code Section 13336). Further, noted Coffey's petition, one "may not be a substitute or temporary employee more than two semesters or quarters within any period of three consecutive years," and Coffey "began to serve as a substitute or temporary employee in 1971 and served six consecutive semesters in three years in that capacity." Continuing, the plaintiff cited Education Code Section 13334 to the effect that an individual who is neither substitute, temporary, nor permanent, is a probationary employee. (Since 1972, state law for the purposes of community colleges designates "probationary" employees as "contract" employees and "permanent" or "tenured" employees as "regular" employees.)

Coffey's trial court pleadings went on to say that Education Code Section 13337.5 "provides that employees may not be deemed to be contract employees . . . unless they teach more than 60 percent of the hours per week considered a full-time assignment for permanent employees having comparable duties." Coffey taught 80 percent in 1972-73 (averaging the fall load of 15 units with the spring load of 9 units for a total of 24 units or 80 percent of a full-time load of 30 units for both semesters), and her attorneys argued that she "was entitled that year to be returned for a second year unless she received notice on or before March 15th of that year of her contract status and the fact that she was not to be returned the following year," (citing Section 13346.20). She received no such notice, pointed out Coffey, "and, instead, returned the following year, but this time at exactly 60 percent."

Calling attention to the Balen decision, Coffey's petition claimed that the District "could not derogate Carolie Coffey's rights and give her less right than she had earned during her Contract I year." Thus, continued the teacher's petition, Coffey "should have been a Contract II employee in the 1973-74 school year and would have been but for the improper reclassification" by the District. Concluded the petition for the teacher: "By operation of law, Carolie Coffey is now a tenured or regular employee . . . at 70 percent of a full-time rate."

Turning its attention to this reasoning, the trial court said that there "is no dispute that the contract entered into by the respective parties called for Ms. Coffey to serve as a substitute teacher only." Rephrasing the argument presented in the petition on behalf of the teacher, the trial court said that "[p]etitioners contend that, regardless of contractual intent, Ms. Coffey by virtue of Willie Thompson's 'reassignment' and the work she actually performed, is entitled to a statutory override of the contractual wording and obvious intent.", But, said the Court, "the case law cited by petitioners as supportive of their position directs itself to situations where Boards controlling school districts were using their positions of dominance to prevent employees from achieving legitimately earned permanent or promotional status." In this case, concluded the Court, no evidence of such a condition was presented.

Therefore, ruled the Superior Court, the teacher's petition for Writ of Mandate against the District was denied.

This decision is presently being appealed by the teacher and the union.

CASE # 9

The Dalkey/Deglow Case

March 17, 1975

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

FREDERIC D. DALKEY, ANNETTE M. DEGLOW, KATHRYN M. CROWE, Plaintiffs and Petitioners, vs. BOARD OF TRUSTEES, LOS RIOS COMMUNITY COLLEGE DISTRICT; GEORGE A. RICE, JR., Superintendent; BERNARD R. FLANAGAN, Director of Personnel; CHARLES NADLER, Dean of Instruction; HERBERT H. BLOSSOM, Associate Dean, Evening College and Summer Session and HERBERT H. BLOSSOM, individually, Defendants and Respondents.	NO. 237883

THE DALKEY/DEGLOW CASE

In the spring of 1975, a Superior Court in Sacramento decided a case involving three Los Rios Community College District instructors: one had petitioned the Court for regular, full-time status; two had petitioned the Court for regular, part-time status; and all three had asked for "such other and further relief as the Court deems proper."

The case is of particular interest in that the District stipulated, and the Court agreed pursuant to the stipulation, that two of the teachers (Dalkey and Crowe) were indeed entitled to classifications other than as "temporary." In the case of the third teacher (Deglow), the District contested the claims made by the teacher in her petitions; the Court, however, found in Deglow's favor, and the District has appealed the decision to the Court of Appeal.

In its answer to the complaint filed by the teachers, the District stipulated that "Plaintiff DALKEY is entitled to be classified as a part-time 'regular' employee with an assignment of 62.2% of a full-time load," and that "Plaintiff CROWE is entitled to be classified as a part-time 'regular' employee with an assignment of 92.2% of a full-time load." (Though Crowe had argued for "regular full time" status in her complaint, she apparently agreed to the stipulation providing for status as "part-time regular.") Therefore, ruled the Superior Court, the action by these two petitioners was thereby dismissed. The two teachers are presently teaching in the District on the above basis.

Turning to a consideration of the status of the third teacher in the case, Deglow taught mathematics in the evenings at Sacramento City College from the fall of 1967 through the spring of 1973. During this period of six consecutive years (12 consecutive semesters), she taught five hours per week each semester, with the exception of the first and last semesters in question, when she taught six and two hours per week, respectively. The petition on behalf of the teachers argued that Deglow "had completed more than three consecutive years as a certificated employee" of the District on the operative date (September 1, 1972) of Article 3.5 of the Education Code, yet the District "has failed and refused to classify" her as either a contract (probationary) or regular (permanent) part-time teacher despite her six continuous years with the District. Further, the petition asserted that the "number of hours which constitute a full teaching load for a person with comparable duties" as those of the plaintiff--teaching night classes--is from ten to twelve hours. Therefore, the petition to the Court expressed a "desire" for a judicial determination of the teachers' rights and duties, "and a declaration as to whether they (all three teachers) may ever acquire probationary or permanent status as a result of their years of service in teaching night and day or solely night classes and the percent, if parttime, of such status."

The District, in its response to the petition, pointed out to the Court that Los Rios hires two distinct categories of teachers. The first type are those employed to "provide instruction in the educational program as a whole" who typically have no other "primary occupation" and are employed full time. These may acquire "contract" or "regular" status. The second type are those who are employed to "provide instruction in classes offered during the evening" and whose employment with Los Rios is "typically their secondary occupation." At no time since its formation, commented the respondents' brief, has Los Rios granted this latter type of instructor "probationary," "permanent," "contract," or "regular" status. Instead, they have been employed "on a semester to semester basis under contracts providing for employment for a term of one semester." Explaining why this has happened, the

response by the attorney for the District said it "has been caused by the extreme complexities and vagueness of the teachers' tenure law," and the District's representatives "incorrectly concluded that such law was not applicable to such employees." Continuing, the District's response admits that employees in the second category "are entitled to acquire rights in accordance with the tenure law," and it is the intent of the District "to grant those types of employee rights." Nevertheless, alleged the District, it is "in disagreement with the allegations . . . with respect to the rights to which certain of the Petitioners and Plaintiffs are entitled."

Specifically as the above pertains to Deglow, the response on behalf of the District asserted that she falls within the second category of teachers, that she has instructed lecture classes only throughout the duration of her employment, and that the number of class hours of lecture instruction per week cited by the petitioner is as presented in her claim. However, said the response for the District, Deglow "has not during any of the semesters of her employment been employed to serve or served on more than two days per week, and has during each of the years of her employment been employed and served less than seventy-five (75%) percent of the days the colleges of the District were maintained."

Addressing the question of comparability of service, the District's brief mentions that at all times in the Los Rios District, a full-time assignment for permanent employees having comparable duties to those of Deglow (namely, mathematics instructors) "has been fifteen (15) formula hours per week of instruction." Explaining further, the brief said this: "A formula hour is a unit of service against which instructional time is measured. One (1) hour of lecture instruction equals one (1) formula hour. One (1) hour of laboratory instruction equals two-thirds (2/3rds) of one (1) formula hour." In Deglow's case, said the District, she "has not during any semester or year of her employment taught community college classes for more than sixty (60%) percent of the hours per week considered a full-time assignment for permanent employees having comparable duties, within the meaning of Section 13337.5 of the Education Code." Therefore, concluded the District's brief, she must be classified as a "temporary" employee.

Directing its attention to the status of Deglow, the Superior Court ruled against the District and found that she was entitled to classification as "a one-third part-time regular employee, such status to be accorded for the academic year 1972-73 and thereafter and to pay her the difference in salary and grant her the difference in benefits to which she would have been entitled for teaching in such classification as a one-third teaching arrangement for the academic years 1972-73 to date."

As stated earlier, pursuant to stipulation of both parties, the Superior Court additionally dismissed the actions brought by Dalkey and Crowe.

The Los Rios Community College District is appealing the Superior Court ruling in the Deglow case.

CASE # 10

The PFT/PPTTA/Walker Case

July 28, 1975

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

PERALTA FEDERATION OF TEACHERS, LOCAL 1603, AMERICAN FEDERATION OF TEACHERS, AFL-CIO; PERALTA PART-TIME TEACHERS ASSOCIATION; EDWARD A. WALKER, JEFF KERWIN, and MARLO LONERO, individually and for and on behalf of all persons similarly situated, Petitioners, vs. PERALTA COMMUNITY COLLEGE DISTRICT; GOVERNING BOARD OF THE PERALTA COMMUNITY COLLEGE DISTRICT, Respondents.	NO. 449204-3

We would like to express our gratitude to the Institute of Industrial Relations, University of California, Berkeley, for permission to reprint the following account of the trial court decision in the PFT/PPTTA/Walker Case, which originally appeared in the periodical California Public Employee Relations, December, 1975, No. 27, pp. 62-63, under the title "Peralta Tenure, Pro Rata Pay Suit."

The Authors

THE PFT/PPTTA/WALKER CASE

A decision on the issues of pro rata pay and tenure for temporary teaching employees of a community college district was handed down in July, 1975, by Judge Zook Sutton, Alameda County Superior Court. The suit was brought by Local 1603 of the American Federation of Teachers and by the Peralta Part-Time Teachers Association against the Peralta Community College District and its Governing Board.

The Court issued a writ of mandate ordering the District to give tenured status to seven instructors and probationary status or discharge hearings to five other instructors who testified at the hearing. But in a memorandum of intended decision, Judge Sutton held that temporary employees of the District are not entitled to pro rata pay.

The two teacher organizations argued on behalf of their memberships that it is a denial of equal protection for the District to pay temporary instructors substantially less than instructors with either probationary or permanent status. In addition, the organizations argued that the Education Code requires the District to grant tenured status to all instructors it rehires after two continuous years of employment, either on a full-time or part-time basis. The District argued that its salary policies are not a denial of equal protection, since a rational basis exists for the difference in pay, and it offered a different interpretation of the relevant Education Code sections on tenure.

The teacher organizations' primary arguments on the issue of pro rata pay were:

1. Equal pay for equal work is required by the Fourteenth Amendment to the U.S. Constitution. Temporary instructors perform the same functions as permanent instructors, they have the same credentials, they teach the same classes, and they have the same duties. The District argues that temporary instructors have only two duties: to prepare classes and to teach, whereas permanent instructors are required to perform those functions, and three more: to hold office hours, to do committee work, and to engage in other professional activities. However, no regulation requires the last two functions of any teacher. And moreover, a temporary instructor's time in the classroom is not worth less because he or she does not engage in certain professional activities.

2. The District's claimed poverty is irrelevant in the face of the constitutional mandate for equal protection. Similarly, the

statutory authority for setting salary rates on which the District relies is of no moment, since a statute the effect of which is contrary to the U.S. Constitution must not be given effect.

3. The members of the petitioning organizations, before they initiated action, exhausted the administrative remedies then available to them. A new District procedure for handling grievances went into effect in April, 1973, but it would be unfair to order petitioners to repeat the procedure.

The District's arguments on the issue were:

1. A rational basis exists for paying temporary instructors less than full pro rata pay. Temporary instructors have less teaching experience, may hold limited credentials, and perform fewer functions than permanent instructors. The latter must perform five functions: preparation, teaching, office hours, committee work, and other professional activities, whereas the former only must perform the first two functions.

2. The District's financial status is a rational basis for the different rates of pay. The District needs temporary instructors in order to be able to respond quickly to changing demands in the community. But if the District were required to pay temporary instructors full pro rata pay, it would have to abandon many classes for lack of funds, and thus it would lose state funding based on student attendance.

3. The District's salary policies are not in conflict with the mandate of the Fourteenth Amendment, and they are also specifically authorized by the California Education Code Section 13503.1. Since the members of the petitioning organizations have agreed to the terms of their employment, and have not resorted to the administrative remedies available to them, their claims should be barred. Not only this, but their claims should be barred by the three-year statute of limitations for claims brought upon statutes, since according to their own arguments the most recently hired of them should have become tenured in 1970. This action was brought in 1974.

On the issue of tenure, the teachers organizations argued that the right to tenure is not based on the terms of the individual's employment agreement, but on statute. The intent of the California Legislature, as expressed in Section 13346.40 of the Education Code, is that community college districts should have stopped using temporary instructors by September 1, 1974. Education Code Section 13337.5 provides that full-time temporary and part-time temporary instructors, including those employed for less than 60 percent of full time, shall become probationary employees after having been employed for more than two semesters in a three-year period. And Section 13335, et seq., provides that probationary employees shall become tenured after two years of continuous employment as probationary employees. The District has failed to comply with these provisions.

The District's argument on the tenure issue was that the Legislature did not intend to prevent community college districts from employing temporary instructors. Section 13337.5 of the Education Code provides that community college districts may hire and rehire instructors without giving them tenure, as long as

they are not employed full time or for more than 60 percent of full time for more than two semesters within a three-year period. The District has complied with this provision.

The Court ruled, without explanation, in its memorandum of decision in favor of the District's arguments that a rational basis exists for paying temporary instructors less than full pro rata pay. Also without being explicit, the Court apparently accepted the petitioners' construction of the Education Code sections concerning tenure.

Relief was limited to 12 instructors who testified at the hearing. Seven of these were currently employed by the District, and the other five had been terminated as temporary employees. The Court ordered the District to give tenure to the first seven, since they had been employed on a part-time basis for at least the past three consecutive years. The Court found that the other five had been probationary employees upon their discharge, and they should have requested the discharge hearing to which they were entitled. The Court ordered the District to rehire these five with probationary status, or else afford them a discharge hearing upon request.

The parties have appealed and cross-appealed.

CASE # 11

The Warner Case

June 2, 1976

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

BLAINE A. WARNER, Petitioner, vs. NORTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT; GOVERNING BOARD OF THE NORTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT, Respondents.	No. 241265

THE WARNER CASE

Blaine Warner, a certificated instructor of mathematics, was employed in February, 1973, by the college district to teach seven units of mathematics courses, continuing to teach seven units at Cypress College for five consecutive semesters through the spring of 1975. His name appeared in the 1975-76 fall schedule to teach seven units once again, but upon appearing on campus September 11, 1975 (the first day of school), the teacher was told that he was no longer employed by the District. The next day he received a letter postmarked September 11, 1975, but dated September 3, 1975, stating that his name appeared in the schedule by mistake.

Warner filed in Superior Court and contended in his petitions that since he had been employed for five semesters in three consecutive years, and at a class hour load of 7/15ths of a full-time load, he had become tenured at the 7/15ths load by the start of the 1975-76 school year. He thus asked the trial court to reinstate him with all pay and benefits accordingly.

In its briefs, the District contended that Warner did not have the right to be classified as a tenured employee, since Education Code Section 13337.5 mandated that he be classified as a temporary employee. The District introduced evidence indicating that Warner had been employed under contracts each semester which stated "[t]he Board of Trustees has approved your appointment as a temporary employee for [the applicable semester] in the class or classes shown below: . . ." and listed the conditions under which employment would be terminated.

The District further argued that Warner had not achieved tenure status because he had not met the 60 percent requirement of Section 13337.5. Since he had always taught for less than 60 percent of a full-time load, he was a temporary employee and ineligible for tenure. This reasoning hinged upon an interpretation of the last paragraph of Section 13337.5 that it "stands by itself as clearly independent and bars Petitioner's claim for tenure status due to his service of 60% or less of a full load," whereas Warner argued that the paragraph is conditional upon the prior provisions of the section.

Although Warner's brief cited the Ferner case in which the last paragraph of 13337.5 is not seen to stand alone, the District in the Warner case argued that in Ferner that point was dictum, i.e., not necessary to the determination of the issue in question. In Childers vs. Childers (1946) 74 Cal. App. 2d 56, 168 Pac. 2d 218 (noted the brief for the District in the Warner case), the Court found that "[e]xpression of dictum is not binding on a court inferior to that which rendered the decision." The District also argued that the facts in the Ferner case were different from those at issue in Warner and thus should not be followed.

Finally, the District argued that the "Ferner interpretation of Section 13337.5 is plainly wrong and should not be followed," and that should the Court in Warner disagree with this position, the rule of stare decisis does not necessarily require that the Ferner opinion be followed, that "the courts will ordinarily follow precedents when the same points arise in subsequent litigation, although they will not persist in an absurdity or perpetuate a manifest error." (Here, the District cited Childers and added the emphasis immediately above.) Continuing, the District simply stated that "with all due respect to the appellate court, it is respectfully submitted that the discussion in Ferner pertaining to Section 13337.5 is manifestly wrong and its error should not be perpetuated." The position put forth by the District was that the prepositional phrase which introduces the last

paragraph of Section 13337.5, namely "Notwithstanding any other provision to the contrary . . .", means that the last paragraph does not apply to the prior three paragraphs, but instead stands alone and was meant by the Legislature to give community college districts flexibility in hiring.

The Superior Court in the Warner case decided in favor of the District and ordered that the District was to recover its costs resulting from the suit.

LEVEL D

In Superior Courts: No Decisions as of June 30, 1976

Case # 12	The Anderson Case
Case # 13	The CTA/Hawkins Case
Case # 14	The Covino Case
Case # 15	The Ferris/PTIA/LRCFT Case
Case # 16	The Marsh Case

LEVEL D

The five cases described in this section are substantially different from the eleven cases described previously in that no decisions have yet been rendered in any of the five as of the time this report was written.

Indeed, each of the five is at a different point of evolution along the road leading to a decision at Superior Court, and each of the five is moving at a different rate of progress along that path. In three of the five cases (Anderson, Covino, and Marsh), pleadings by both the petitioning teachers and the responding districts have been filed. In the two remaining cases (CTA/Hawkins and Ferris/PTIA/LRCFT), only the petitioning teachers and organizations have filed. Also, the two latter cases are class action suits which, by their nature, progress more slowly in the initial stages.

The "reporting out" of this category of cases, namely those where no decision has yet been rendered, necessitates a treatment considerably different from the manner in which court decisions (at any level) are described.

Therefore, this section of the report is in two distinct parts. First, there is a general description of the case as argued by the petitioners (in all five cases) and by the respondents (in three of the five cases). This first part is intended to present an overview of each case as seen by the litigants on both sides. The second part of this section focuses more closely on the reasoning supporting the positions espoused by petitioners and respondents. Interpretation of Education Code sections most often are at the heart of the disputes, so the full texts of the Education Code sections are reproduced, followed by a synopsis of each of the litigants' arguments over how the Code section in question should be interpreted to fit the particular fact situation of each case. In addition, the litigants' arguments have been grouped in this second part according to state and constitutional questions raised and other court cases cited as precedent.

LEVEL D: Part 1

Overview of the Cases

as Seen by

Petitioners and Respondents

CASE # 12

The Anderson Case

No Decision as of June 30, 1976

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MONTEREY

THOMAS L. ANDERSON, ANITA C. ARRELLANO-POHLHAMMER, DAVID G. CLEMENS, NANCY CASSELL, KATHLEEN D. DEVLIN, LINDA DUNNE, WILLIAM L. HOBBS, GUNNEL E. JEPSON, EDITH V. JOHNSEN, JERRY M. MAILMAN, MARLENE MARTIN, RAYLYN MOORE, THOMAS B. PELIKAN, LAVERNE B. RAGAN, PETER J. ROBINSON and ANDREA L. SPARK, Petitioners, vs. JEAN THOMAS, LILYAN ELDRED, SHERMAN SMITH, RUSSEL HANSEN, LEWIS FENTON, MEMBERS OF THE GOVERNING BOARD OF THE MONTEREY PENINSULA COMMUNITY COLLEGE DISTRICT OF MONTEREY COUNTY, Respondents.	No. 72216

The Petitioners' Case

This petition, filed by sixteen certificated employees, seeks to obtain reclassification of the petitioners from "temporary" to "contract" or "regular" employees and to require the District to compensate them accordingly.

It is an anachronism, argue the petitioners, to refer to the petitioners as "temporary," since some of them have been employed by the District prior to 1970, and one has been employed by the District since 1965. They have continually been employed by the District over this extended period of time and cannot be classified as "temporary" employees.

The District has maintained and offered classes not only in regular day college, but also in the evening program and in the community education program, which includes classes at Fort Ord under arrangements with the United States government. The petitioners have taught classes in one or more of these various programs, including the day program.

Petitioners are of the opinion that the classes taught by the petitioners, whether offered in the day program or any other program, bear the same course number, the same course description, entitle the student to the same credit, and require the same preparation and presentation by the instructor. The District advertises that these classes given in the evening and community education programs are the same as those in the day program. These classes, regardless of the program, are reported in the same fashion to the State of California, and they are treated the same in the District catalogue. Furthermore, there are full-time regular and contract teachers who teach in these various programs interchangeably. Petitioners believe that they should be treated in the same fashion as those regular full-time employees who are teaching the same classes, and to do otherwise would create an invidious discrimination proscribed by our federal and state Constitutions.

Over the years, say the petitioners, the District has expanded the number of "temporary" employees to staff the various classes offered by the College while keeping the "permanent" faculty at almost a constant level. During this period, the District has established two different salary schedules, one for the regular or contract employees and another for the "temporary" employees. The latter schedule is referred to as the "hourly schedule." This schedule provides compensation of approximately 50 percent of the salary provided for in the regular salary for the same work. Thus, there has been a tremendous growth in the employment of "temporary" employees. The District has used these "temporary" employees to subsidize the educational program by paying them substantially less salary than other instructors similarly situated, even though their duties are essentially the same.

The District has sought to justify the difference in compensation on a ground that temporary employees are not required to perform all of the duties that a regular classroom teacher must perform. The District will contend, say the petitioners, that temporary employees do not serve on college committees and participate in other outside classroom activities expected of contract and regular employees. Many of the temporary employees, allege the teachers, do, in fact, participate in committee work and perform as much, if not more, service to the College in this and related areas. The primary function of a teacher is to prepare for and teach students in the classroom, and the amount of time devoted to meeting with students must be the same, otherwise the quality of the instruction in the

various programs would significantly differ. The District will deny any qualitative difference, asserts the petition for the teachers. There is no justification for the substantial variation in compensation of approximately 50 percent, in the view of the petitioners.

Some of the petitioners have actually been classified in the past as permanent employees, says the document, but during the 1972-73 school year, the administration unilaterally revoked their permanent classification and subsequently reclassified these employees as "temporary." This action was clearly a denial of tenure, assert the petitioners--a denial of the petitioners' right to due process of law since there was no hearing or other proceeding to consider the factual and legal basis for this action, and this action must be set aside.

The petition contains information about the percentage of full-time service rendered by each of the petitioners since 1972 in any of the programs of the District and the percentage of full-time service based on the full-time teaching load policy which is the basis for determining part-time assignments. Next, it determines the salary which each of the petitioners would have received as a contract or regular employee and then computes the percentage that the actual service rendered bears to full-time employment. The difference between what the petitioners received as compensation and what they believe they should have received is included. Petitioners seek back salary, adjustments for retirement benefits, and such other relief as will give them the benefits of contract or regular status.

The Respondents' Case

Respondents allege that petitioner Anderson is not an employee of respondent District, having voluntarily terminated his employment in September, 1975. During the course of his employment, he was employed, served, and compensated as a temporary certificated employee pursuant to Education Code Sections 13329 and 13337.5. All other petitioners at all times have been employed and continue to be employed as temporary certificated employees pursuant to the temporary employment classification authorized or mandated by Sections 13337.5, 13329, and 13328.5.

All petitioners at the time of employment were hired on the basis of single semester oral contracts to perform classroom teaching services for the purposes stated in the above statutes. All petitioners have voluntarily agreed to be hired and paid as temporary teachers and have accepted temporary contracts for their services. All petitioners were apprised and aware of the temporary nature of their employment and their compensation at hourly rates for classroom instructors. The contracts varied in terms of hours per week, depending upon the nature of the particular classes taught during the respective semesters. Petitioners are barred by reason of their own conduct in consenting to, and serving under, contracts from validly asserting claims against respondent District with respect to contract or regular status and salary based on such status, including retroactive salary.

Further, all petitioners have waived any right to tenure and salary considerations in that they have requested the assignments in which they serve. In addition, no petitioner has served sufficient periods of time to warrant contract or regular status in respondent District. Petitioners are neither required nor do they perform services similar in scope, hours, and responsibility to contract and regular certificated employees. Petitioners are employed under different employment procedures and generally for different purposes.

Furthermore, petitioners are paid uniformly, based on like training and experience for classroom teaching services only, and are compensated according to

a salary schedule applicable to all hourly employees, including contract and regular employees who perform classroom teaching services over and beyond their regular full-time assignments. Said hourly salary schedule provides pro rata compensation to petitioners in proportion to the full-time assignment of contract and regular certificated employees.

Respondent wishes the Court to deny petitioners' writ.

CASE # 13

The CTA/Hawkins Case

No Decision as of June 30, 1976

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CALIFORNIA TEACHERS ASSOCIATION and THOMAS W. HAWKINS, JR., individually and on behalf of all other persons similarly situated, Petitioners, vs. RIO HONDO COMMUNITY COLLEGE DISTRICT; RIO HONDO COMMUNITY COLLEGE DISTRICT BOARD OF TRUSTEES; J. SPURGEON FINNEY, President, Rio Hondo Community College District Board of Trustees; CARLOS RODRIGUEZ, CLIFFORD DOBSON, WILLIAM M. LASSLEBEN, JR., and MARILEE MORGAN, Trustees, Rio Hondo Community College District; and WALTER GARCIA, Superintendent, Rio Hondo Community College District and President, Rio Hondo Community College, Respondents.	No. CA 000307 CLASS ACTION

THE CTA/HAWKINS CASE

The Petitioners' Case

The petition states Hawkins has been classified as a temporary employee since September, 1967. He purportedly has been fired from his job at the end of each academic semester since 1967, and has been rehired at the beginning of each academic semester since 1967. The firings bore no relation to his ability as a teacher. Hawkins has appropriate credentials and teaches courses of accepted importance interchangeably with contract and regular teachers. Class members possess also proper credentials and teach courses of accepted importance. No class member was hired to fill vacancies created by absences for leaves or for long-term illnesses.

Over the years, the District has expanded the number of temporary teachers while keeping the permanent faculty at almost a constant level. According to the petition, there are almost 50 percent more temporary employees than contract and regular employees combined. The petitioner contends that the employment of Hawkins and members of the class as temporary employees was not, and is not, based on provisions in Education Code Sections 13337.5, 13337, or 13337.3.

It is their opinion they should be properly classified as contract or regular employees. Moreover, the classification of class members as temporary employees is arbitrary and capricious, since they perform the same work and have the same responsibilities as contract and regular employees. Furthermore, the District has had ample opportunity to determine whether class members have performed their duties efficiently and well. Most class members, if not all, have been evaluated and have been found to be competent, effective, and efficient teachers. Also, argue the petitioners, the District's classification as temporary employees was and is designed to circumvent the tenure laws while violating the equal protection clause of the Fourteenth Amendment of the U.S. Constitution, as well as the equal protection clause of Article I, Section 7, of the California Constitution. In addition, according to the petition, they are entitled to pro rata salary.

The petitioners ask the Court to issue an Alternate Writ of Mandate, directing the District to classify them as contract or regular employees, depending on their length of service; awarding up to four years' back pay equal to the difference between their salaries as temporary employees and the salaries to which they are entitled as contract or regular employees (this will amount to approximately $3,000,000.00 for the class); or to show cause why they should not be directed to do so.

The Respondents' Case

(As of June 30, 1976, attorneys for the District had not yet filed responses in this case.)

CASE # 14

The Covino Case

No Decision as of June 30, 1976

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

WILLIAM A. COVINO, Petitioner, vs. GOVERNING BOARD OF THE CONTRA COSTA COMMUNITY COLLEGE DISTRICT OF CONTRA COSTA COUNTY CALIFORNIA; a body corporate and politic; and DOES I through V, Respondents.	No. 164097

THE COVINO CASE

The Petitioner's Case

Petitioner was hired by the District to teach in the English Department of Diablo Valley College as a full-time temporary teacher for the period September 2, 1975, through June 11, 1976, for the purpose of filling the position of a teacher on sabbatical leave. Prior to his employment, he was advised by letter from the College of the District's regulation prohibiting additional employment under Education Code Section 13337.5. The petitioner, therefore, was made aware of the policy of refusing to rehire for a subsequent year any and all full-time temporary teachers hired for the purpose of replacing permanent teachers on sabbatical leave. Also, it seems according to the petitioner that the District, from its interpretation of the law, hires each year completely new teachers to fill sabbatical positions and replaces all temporary teachers each consecutive year.

On April 7, 1976, the petitioner notified the District he wished to be considered for an additinnal year of employment. He believes there are sabbatical replacement openings within the English Department of Diablo Valley College. On April 29, the District advised they would not reemploy for the next year those who have been full-time temporary instructors pursuant to the policy mentioned above.

It is the belief of the petitioner that he is well qualified for the open positions and is being precluded from accepting or being offered that employment solely by reason of the legal opinion of the District that by hiring him he will obtain status as a probationary teacher. In addition, the petitioner has offered to waive any and all rights to probationary or permanent status and any and all probationary and tenure rights in consideration of an additional year of employment.

The petitioner wishes the Court to issue a writ commanding respondents to consider him for employment for the school year 1976-77 as a full-time, temporary employee along with all other applicants for any vacancy existing within petitioner's certificate and abilities; and commanding respondents to accept petitioner's waiver of any and all probationary and tenure rights which would accrue as a result of his employment for a second year as a temporary employee.

The Respondents' Case

The District admits they have a policy of refusing to rehire for a subsequent year all full-time temporary teachers hired for the purpose of replacing permanent teachers on sabbatical leave. They further admit that the petitioner is well qualified and would be acceptable for temporary positions in the English Department for the 1976-77 school year as a sabbatical replacement but for the District's inability to further hire petitioner as a temporary employee. The reason for this refusal is that the respondent cannot lawfully employ petitioner as a temporary employee for more than two semesters or quarters within any period of three consecutive years (Education Code Section 13337.5); and that if petitioner was hired for an additional year, it would be required to hire him as a second-year contract (probationary) employee (Education Code Sections 13336 and 13345.10). In addition, the waiver of any tenure rights is expressly prohibited by statute. For the reasons stated, respondent asks the Court to deny the petition, and enter its declaratory judgment that respondent may not lawfully employ petitioner as a temporary teacher for the 1976-77 school year.

CASE # 15

The Ferris/PTIA/LRCFT Case

No Decision as of June 30, 1976

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

PETER P. FERRIS, GERALD ALLARD, PAULA ARONSON, ROBIN AURELIUS, HANNAH BIBERSTEIN, MARGERY C. BROOKS, MARIA DELGADO CAMPBELL, KATHY K. CLAYTON, CARL E. COLEMAN, ROBERT J. DOWNEY, CARLA R. FIELD, ROGER FRYER, DOUGLAS F. GARDNER, MALCOLM F. GIBLIN, LARKIE GILDERSLEEVE, JAMES T. GREEN, DENNIS J. HOCK, J. OGDEN HOFFMAN, JR., W. BRADLEY HOLMES, WILLIAM H. HOWARTH, CHRISTINE M. HUNTER, PAUL G. KINGSBURY, WULF H. MEYER, MARY W. SAMAAN, SUZANNE A. STEVENS, VICTOR L. WAID, MARY WEDDLE, E. ALLAN WILLEY, HAROLD S. WYLIE, et al, as individuals, and on behalf of all others similarly situated; and PART-TIME INSTRUCTORS ASSN., SACTO. AREA; and LOS RIOS COLLEGE FEDERATION OF TEACHERS, LOCAL 2279, AMER. FED. OF TEACHERS,

Petitioners,

vs.

LOS RIOS COMMUNITY COLLEGE DISTRICT: TOM DU HAIN, ROBERT LYNCH, GRACE OHLSON, DUANE R. ASTON, BASIL CLARK, GEORGE S. STEWART, and MARK SULLIVAN, members of the Governing Board, and E. J. KEEMA, Interim Chanc., EARL KLAPSTEIN, Chanc.-Elect, BERNARD R. FLANAGAN, Asst. Supt.; CHARLES NADLER, Dean of Instr., HERBERT H. BLOSSOM, Assoc. Dean of Evening College, and DAVID B. PROBERT, Asst. Dean of Evening College, Sacto. City College; OWEN S. STEWART, Dean of Instr., C. RUSSELL WARDEN, Assoc. Dean of Evening College and ELIZABETH ANN STEWART, Asst. Dean of Evening College, American River College; CHARLES G. SYNOLD, Dean of Instructional Services, ROBERT A. WYMAN, Assoc. Dean of Instructional Services and ELAINE J. REES, Interim Dean of Evening College of Cosumnes River College,

Respondents.

No. 261367

CLASS ACTION

The Petitioners' Case

This is a class action suit brought by twenty-nine part-time instructors on their behalf, individually, and as members of a class of part-time instructors, and by their voluntary organizations, acting on behalf of its members and other members of the class. There are approximately seven hundred teachers in the class. Petitioners are seeking a Writ of Mandate directing the District to classify class members as contract or regular employees according to the length of their service, to compensate part-time instructors of the same salary schedule in proportion to the amount of time actually served, and to accord part-time instructors their rights of due process in matters of reemployment, notice, and hearing, as mandated by the appropriate sections of the Education Code.

Class members are part-time teachers who have been wrongly classified either as "long-term temporary employees" or as "continuing first-year contract employees." Most class members have been so classified for more than a year, and some for as long as seventeen years.

It is the policy in the Los Rios District to hire part-time teachers a semester at a time. Their contracts state that they are temporary employees. The teachers are given the choice of accepting such designation or not working.

Class members have appropriate academic credentials. They have been evaluated and found to be competent, and there is no question about their ability to perform in the classroom. They teach regularly enrolled students in courses of accepted importance interchangeably with contract and regular employees. These courses have the same course number and course description as those taught by contract or regular teachers, entitle students to the same course credit, and require the same preparation and presentation by the instructor.

During the past six years, Los Rios has expanded the number of part-time instructors to teach various courses offered by the District, while keeping the full-time faculty at an almost constant level. There are now more part-time teachers than there are full-time teachers.

Because class members are classified as temporary or continuing first-year contract, they have not been accorded the rights of second-year contract or permanent instructors. These include the right to a pro rata salary and the right to due process in grievances and in matters of notice and hearing in the event of termination. Class members are paid a percentage of the pro rata salary, which diminishes the longer they stay with the District because part-timers are not given step increases for years of service, while the full-time instructors are.

The Respondents' Case

(As of June 30, 1976, attorneys for the District had not yet filed responses in this case.)

CASE # 16

The Marsh Case

No Decision as of June 30, 1976

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF NAPA

JOHN P. MARSH, TERRENCE D. LAMB, LEWIS J. GARRETT, JEFFREY J. HESSEMEYER, DALE JOHNSON, THOMAS W. LEDDY, NANCY MANAHAN, JOEL R. MILLS, JR., DOUGLAS MURRAY, FELICIA G. SHINNAMON, and SHARON TATE,

Petitioners,

vs.

No. 35191

THOMAS B. TURNBULL, THOMAS W. SALSMAN, PHILIP A. CHAMPLIN, JOAN MINGST, ROZ POTTER, WILLIAM A. ROBERTSON, and EMERY J. CURTICE, MEMBERS OF THE GOVERNING BOARD OF THE NAPA COMMUNITY COLLEGE DISTRICT OF NAPA COUNTY,

Respondents.

The Petitioners' Case

This petition, filed by eleven certified employees of the District, seeks to obtain reclassification of the petitioners from "temporary" to "contract" or "regular" employees, and to require the District to compensate them accordingly.

Even though the petitioners are assigned to the same instructional program and render the same teaching services, asserts the petition, they are not given the proper classification required by law and, as a result, are treated differently with regard to compensation, fringe benefits, scheduling, and other matters. This inequality of treatment cannot be justified legally or factually.

The present situation has arisen because the District has mistakenly interpreted the Education Code to permit employment of an unlimited number of instructors as temporary employees so long as they teach 60 percent or less of a full-time load (Education Code Section 13337.5). The utilization of part-time temporary employees has several important advantages to the College. The most important is that the College claims the teachers can be paid substantially less for the same service. At Napa College, compensation of part-time employees is based on a single hourly rate and amounts to between 25 percent and 50 percent of the salary paid full-time, contract, or regular employees. The other important advantage of the temporary classification is that employees so classified have little status. They may be terminated without a hearing. This means that the College administration has greater control over these employees and may govern with less participation from the faculty.

Both of these advantages have caused Napa College and most other community colleges in the State of California to refrain from employing new employees as regular or contract employees and to fill new positions almost exclusively with part-time temporary employees.

In the petition, the teachers present the percentage of full-time service rendered by each of the petitioners since 1973 in any of the programs of the District. They determine the percentage of full-time service based on the full-time teaching load policy, which the teachers contend should be the basis for determining part-time assignments. They then determine the salary which each of the petitioners would have received as a contract or regular employee and compute the percentage that the actual service rendered bears to full-time employment. They also determine the difference between what the petitioners received as compensation and what they believe the teachers should have received.

Petitioners seek back salary, adjustments for retirement benefits, and such other relief as will give them the benefits of contract or regular status.

The Respondents' Case

One of the petitioners, Douglas Murray, is not an employee of the District and is not on leave. When he was an employee, he served and was compensated as a temporary certificated employee.

All of the petitioners voluntarily agreed to be hired and paid as temporary teachers and accepted temporary, written contracts for services. All of the petitioners, assert the respondents, were apprised and aware of the temporary

nature of their employment and their compensation at hourly rates for classroom instruction. The contracts varied according to the particular circumstances of employment in each case.

Respondents argue that the petitioners are "estopped" by reason of their own conduct in consenting to, and serving under, each of the contracts from validly asserting claims against the District with respect to contract or regular status and salary based on such status, including retroactive salary. Further, say the respondents, all of the petitioners have waived any right to tenure and salary considerations in that they have requested the assignments in which they serve. And, none of the petitioners have served sufficient periods of time to warrant contract or regular status.

Neither are the petitioners required to perform services similar in scope, hours, and responsibility to contract and regular employees in the District. Different employment procedures and different purposes are involved.

According to respondents' arguments, the teachers are paid uniformly based on like training and experience for classroom teaching services only, and are compensated as per a salary schedule applicable to all hourly employees, including contract and regular employees who perform services over and beyond their regular full-time assignments. This hourly salary schedule provides pro rata compensation to the petitioners in proportion to the full-time assignment of contract and regular employees.

Additionally, respondents argue that if the petitioners are successful in their action against the District, the ruling will affect large numbers of other part-time employees, establishing permanency, bumping rights, and forcing the District to pay employees even when a class has been canceled for lack of the minimum number of students.

Further, if the petitioners were to win the case, this would place an intolerable financial burden on the District for the claimed past due wages alone. As the respondents assert, the petitioners "well know that respondent district is limited by statute and by the Governor's 'cap' as to the amount of revenue it can raise." And, the past due and prospective amounts requested by the petitioners would be increased as other part-time employees filed their claims.

The petitioners have at all times been employed and continue to be employed as temporary certificated employees pursuant to the temporary employment classifications authorized or mandated by Education Code Sections 13337.5, 13339, 13328.5, and other applicable sections.

Therefore, the respondents urge the Court to deny the relief sought by the petitioners, enter a judgment in favor of respondents, award respondents the costs of suit, and award respondents such other relief as it deems proper.

LEVEL D: Part 2

Reasoning Supporting the Positions Espoused by

Petitioners and Respondents, Case by Case

Education Code Section 13328.5

Notwithstanding Section 13328, a probationary employee employed by a community college district or a community college maintained by a unified or high school district who, in any school year consisting of two semesters or three quarters, has served more than 75 percent of the number of hours considered as a full-time assignment for permanent employees having similar duties in the community colleges of the district in which he is employed, shall be deemed to have served a complete school year.

* * *

RESPONDENTS

Anderson: Respondents argue that ten of the sixteen petitioners fail to state a cause of action for regular status, inasmuch as they allege service of not more than 75 percent of the hours per week considered a full-time assignment in any two consecutive years (see Section 13328.5). Thus, service of more than 75 percent of the hours per week considered a full-time assignment is required to achieve contract (probationary) status in any single year. Two years of such service are required to achieve regular (permanent) status (see Sections 13346.25, 13345.10, and 13346.20). These sections, when considered with Section 13328.5, require service of more than 75 percent of the hours per week of a full load assignment for the academic year. None of the petitioners named in the specific causes of action allege service more than 75 percent of the hours of a full-time assignment in any two consecutive years. Accordingly, they have failed to achieve any regular status, and their petition in that respect is groundless. In Vittal v. Long Beach Unified School District (1970), the court held that a teacher in a community college must serve more than 75 percent of the hours of a full-time assignment for a school year to achieve credit toward permanent status. The California Supreme Court in Balen v. Peralta held that complete school years for probationary purposes must be based on service of more than 75 percent of the hours in a school year in a community college. If it is argued by petitioners that the Attorney General has ruled that Section 13328.5 is no longer effective as concluded in his opinion, respondents can represent in good faith that the Attorney General is reconsidering this opinion at the request of state school authorities. Therefore, that opinion should not be considered determinative at this time. Section 13328.5 clearly mandates that the named petitioners cannot qualify for contract or regular status because of their admitted service of less than the number of hours required for contract (and eventually regular) classification. Petitioners are correctly classified as temporary employees. Accordingly, their petition for contract or regular status and back pay based on such status is meritless.

Covino: Not used.

Marsh: Respondents argue, in essence, as in Anderson above.

Education Code Section 13336

Except as provided in Sections 13337.3 and 13337.5, governing boards of school districts shall classify as substitute employees those persons employed in positions requiring certification qualifications, to fill positions of regularly employed persons absent from service.

After September 1 of any school year, the governing board of any school district may employ, for the remainder of the school year, in substitute status any otherwise qualified person who consents to be so employed in a position for which no regular employee is available, including persons retired for service under the State Teachers' Retirement System. Inability to acquire the services of a qualified regular employee shall be demonstrated to the satisfaction of the Commission for Teacher Preparation and Licensing.

Any person employed for one complete school year as a temporary employee shall, if reemployed for the following school year in a position requiring certification qualifications, be classified by the governing board as a probationary employee and the previous year's employment as a temporary employee shall be deemed one year's employment as a probationary employee for purposes of acquiring permanent status.

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RESPONDENTS

Anderson: Not used.

Covino: Respondents argue that under Education Code Section 13336, having employed petitioner for one full year as a temporary employee, the respondent would be required to classify the petitioner as a probationary (contract) employee if he was rehired, with probationary credit for the previous year of temporary employment (note Section 13345.10). A second-year contract employee can be terminated only for cause, if he demands a hearing (Sections 13346.25 and 13346.32). The waiver of any tenure rights under Chapter 2 of Division 10 of the Education Code (Sections 13186.5 to 13575.7, inclusive) is expressly prohibited by statute: "Except as provided in Sections 13406 and 13448, any contract or agreement, express or implied, made by any employee to waive the benefits of this chapter or any part thereof is null and void" (note Section 13338.1).

Marsh: Not used.

Education Code Section 13337.3

Notwithstanding the provisions of Sections 13336 and 13337, the governing board of a school district may employ as a teacher, for a complete school year but not less than one semester during a school year unless the date of rendering first paid service begins during the second semester and prior to March 15th, any person holding appropriate certification documents, and may classify such person as a temporary employee. The employment of such persons shall be based upon the need for additional certificated employees during a particular semester or year because a certificated employee has been granted leave for a semester or year, or is experiencing long-term illness, and shall be limited, in number of persons so employed, to that need, as determined by the governing board.

Any person employed for one complete school year as a temporary employee shall, if reemployed for the following school year in a vacant position requiring certification qualifications, be classified by the governing board as a probationary employee and the previous year's employment as a temporary employee shall be deemed one year's employment as a probationary employee for purposes of acquiring permanent status.

For purposes of this section "vacant position" means a position in which the employee is qualified to serve and which is not filled by a permanent or probationary employee. It shall not include a position which would be filled by a permanent or probationary employee except for the fact that such employee is on leave.

* * *

PETITIONERS

Anderson: Not used.

CTA/Hawkins: Petitioners argue that Education Code Section 13337.3 permits a community college district to employ a teacher as a temporary employee for one complete school year, notwithstanding Education Code Section 13337, if there is a need created by absences for leaves or for long-term illnesses. The District's employment of petitioners was not and is not based on vacancies created by absences for leave or long-term illnesses. In any event, the Code further provides that any person so employed, if reemployed for the following school year in a position requiring certification qualifications, be classified as a probationary employee.

Covino: Petitioner argues that he may be rehired as a temporary employee under this section, which does not contain the prohibition discussed in Section 13337.5. Section 13337.3 is a statute of general application to school districts, and ". . . It is the general rule that where the general statute standing alone would include the same matter as the special act, and thus conflict with it, the special act will be considered as an exception to the general statute whether it was passed before or after such general enactment." If Section 13337.3 is applicable in the case of community colleges, the provisions of Section 13337.5 must be treated as surplusage and given no effect.

Ferris/PTIA/LRCFT: Petitioners argue that the present authority for community college districts to employ certificated persons as temporary employees is to be found in Section 13337.3, which became operative July 1, 1973, and which provides that temporary employees may be hired "because a certificated employee has been granted leave for a semester or a year, or is experiencing long-term illness, and shall be limited, in number of persons so employed, to that need, as determined by the governing board." But even if a certificated instructor is hired under the conditions stated above, the term during which such status may continue is restricted by the final paragraph. This paragraph disposes of the District's contention that it can rehire and rehire people in a continuing first-year contract status.

Marsh: Not used.

Education Code Section 13337.5

Notwithstanding the provisions of Section 13337, the governing board of a school district maintaining a community college may employ as a teacher in grade 13 or grade 14, for a complete school year but not less than a complete semester or quarter during a school year, any person holding appropriate certification documents, and may classify such person as a temporary employee. The employment of such persons shall be based upon the need for additional certificated employees for

grades 13 and 14 during a particular semester or quarter because of the higher enrollment of students in those grades during that semester or quarter as compared to the other semester or quarter in the academic year, or because a certificated employee has been granted leave for a semester, quarter, or year, or is experiencing long-term illness, and shall be limited, in number of persons so employed, to that need, as determined by the governing board.

Such employment may be pursuant to contract fixing a salary for the entire semester or quarter.

No person shall be so employed by any one district for more than two semesters or quarters within any period of three consecutive years.

Notwithstanding any other provision to the contrary, any person who is employed to teach adult or community college classes for not more than 60 percent of the hours per week considered a full-time assignment for permanent employees having comparable duties shall be classified as a temporary employee, and shall not become a probationary employee under the provisions of Section 13446.

* * *

PETITIONERS

Anderson: Petitioners argue that in 1967, the Legislature enacted Section 13337.5, which created a new kind of "temporary" employee who could be hired for an entire school year if there was a need based on higher enrollment or vacancies created by virtue of absences for leaves or long-term illnesses. The language of Section 13337.5 provides a very limited authorization to community colleges to hire temporary employees. Furthermore, the section provides that no person shall be employed as a temporary employee for more than two semesters or quarters within any period of three consecutive years. ". . . [w]e must start with the proposition that the Legislature did not intend that the temporary classification to [sic] be used as a wholesale way of avoiding tenure." In Balen, the Supreme Court criticized, but did not rule on the College's contention that the less than 60 percent provision, set forth in the last paragraph of Section 13337.5, should be read as transcending all of the other limitations imposed on the employment of temporary employees. In Ferner v. Harris, the Court of Appeal held that the 60 percent rule did not apply to a community college teacher because he was not hired under any of the conditions specified, i.e., he was not hired due to an increase in enrollment or because of a vacancy due to absence for leave or illness. Thus, the Court of Appeal considered the limitations of the first and third paragraphs as applicable to an employee who served less than 60 percent of a full-time position. Therefore, any community college teacher who is not employed under the limitations of the first and third paragraphs is improperly classified as temporary, and anyone classified as temporary more than two semesters within any three-year period has been improperly classified. Petitioners in this case were employed to take regular positions, in lieu of hiring contract or regular employees, and accordingly, the petitioner could not be classified as temporary.

CTA/Hawkins: Petitioners argue that Education Code Section 13337.5 provides conditions for hiring; however, community college districts no longer have authority to employ temporary employees under Section 13337.5. In any event, the District's employment of petitioners as temporary employees was not and is not based on higher enrollment in a particular semester, as compared to the other semester in the academic year, or to fill vacancies created by absences for leaves or for long-term illnesses.

Covino: Petitioner argues that prior to being hired he was advised of the respondent's legal opinion that pursuant to Section 13337.5 ". . . the district is prohibited from hiring you as a temporary employee for more than two semesters within any period of three consecutive years."

Ferris/PTIA/LRCFT: Petitioners argue that the District has wrongfully made two classifications which are not to be found in the Code: the first, "long-term temporary," and the second, "continuing first-year contract" employees. The rationale for both of these classifications has been found by the District in Section 13337.5. However, in Ferner v. Harris, Ferner was a part-time teacher who taught 13/45ths of a full-time position, who was classified as temporary, and who had taught full time for three years and part time for a fourth year. He sued to mandate the District to reclassify him. The District argued that it could classify part-time teachers as temporary employees under the last paragraph of Section 13337.5 without regard to the limitations in the first and third paragraphs. The court disagreed. Furthermore, the authorization for community college districts to hire under Section 13337.5 expired on September 1, 1974, by provision of Section 13346.40.

Marsh: Petitioners argue that in 1967, the Legislature enacted Section 13337.5, which created a new kind of "temporary employee" who could be hired for reasons previously noted. The language provides a very limited authorization to community colleges to hire temporary employees. In analyzing the scope of temporary classification, one must start with the proposition that the Legislature did not intend the classification to be used as a wholesale way of avoiding tenure. The Supreme Court has recently restated that temporary classification should be strictly construed and narrowly defined because there is no guarantee of due process. Therefore, any community college teacher who was not employed under the limitations of the first and third paragraphs is improperly classified as temporary, and anyone classified as temporary more than two semesters within any three-year period has been improperly classified. Petitioners in this case were employed to take regular positions, in lieu of hiring contract or regular employees, and accordingly, the petitioners could not be classified as temporary.

RESPONDENTS

Anderson: Respondents argue that the petitioners, who allege services of 60 percent or less of the hours per week considered a full-time assignment, are temporary employees whose service is not creditable towards contract (probationary) classification. Under Section 13337.5, there are two distinct temporary employment conditions authorized. Thus, an instructor may be hired in a community college district for full time or less under the first three paragraphs for purposes of increased load or for replacement of other instructors for not more than two semesters in any three consecutive years, and an instructor may be hired under the last paragraph for 60 percent or less of the hours for a full-time assignment regardless of the reason and for an indefinite period of time. This is exactly what has happened in petitioners' cases, with the exception of petitioner Ragan. The prohibition in the third paragraph, to the effect no person shall be employed for more than two semesters or quarters within any period of three consecutive years, has not been violated. That prohibition clearly applies to employment authorized in the preceding paragraphs. To contend otherwise would render the last paragraph meaningless and destroy the obvious harmonization of such provisions within the same section (see Balen v. Peralta). Petitioners contend that the last paragraph of the section does not stand apart to authorize the employment of temporary instructors for 60 percent or less of the full-time load, in that such

provision is conditioned upon the prior provisions of the section. This conclusion is unsupportable in view of the last paragraph beginning with "Notwithstanding any other provision . . ." An examination of the section in its entirety discloses that the last paragraph stands by itself. No mention is made in the first three paragraphs of any limitation of the teaching assignment. They do not restrict the amount of "load" a temporary teacher may carry. Only the last (the fourth) paragraph carries a limitation, which paragraph is clear, viz., "Notwithstanding any other provision . . ." In the second paragraph, the Legislature uses the phrase "such employment," referring, of course, to the employment described in the first paragraph of the section. Again, in the third paragraph, the Legislature uses the words "No person shall be so employed," which obviously refers to the foregoing provisions of the section. But in the last paragraph there is no such reference, the Legislature stating simply ". . . any person who is employed to teach adult or community college classes . . ." The first paragraph of the section refers to service of a "complete school year" but not less than a complete semester or quarter during a school year. Thus, the service contemplated in the first paragraph is service of more than 75 percent of the hours considered a full-time assignment, in other words, a full-time position as a temporary employee serving as a replacement for an instructor on leave or serving for the purpose of meeting increased student "loads." The independent nature of the last paragraph is further indicated by the reference therein to teachers in adult classes (see Sections 5702, 5552, and 25502). If petitioners' contention is correct that the last paragraph is conditioned upon the first three paragraphs, it follows that instructors hired for 60 percent or less of the hours per week in an adult class must be hired as replacements or as instructors meeting increased student load requirements. This contention is absurd, inasmuch as adult schools, like community colleges, must have the flexibility to hire instructors who teach specialized courses, among others, to meet the diversified academic needs of students in adult schools and community colleges. The requirements of flexible hiring for adult programs suggest that the restraints of the first three paragraphs of the section are not applicable to 60 percent or less employees of adult schools any more than they are applicable to 60 percent or less community college employees. The restraints cannot logically apply to adult school employees and, therefore, they cannot apply to community college employees, since the language of the provision is the same as to both. Such instructional needs in adult schools, like specialized instructional needs in community college classes, require the flexibility in employment given by temporary employee classification. Otherwise, a school district would be "locked in" to a permanent hiring process for such "temporary need" employees. The issue here is whether 60 percent or less service is temporary in nature regardless of the length of employment. The last clause in Section 13337.5 uses the word "shall" twice. The district "shall" classify such 60 percent or less employees as temporary, and such employees "shall not" become probationary employees. Where a statute is free from ambiguity, it requires no interpretation and should be enforced as written. Respondent board, therefore, has clear authority to employ petitioners with no tenure consideration pursuant to this statutory section. Temporary employees meet the immense academic diversity of community colleges. Not only are they authorized to take the places of regularly employed teachers who are absent on leave or ill, they are authorized under Section 13337.5 to meet the unpredictable student class loads that occur at the beginning of the semester, or because of longer range impact exemplified by programs to assist veterans returning to school. If more students then expected enroll for certain classes, the college must have the authority to set up classes to meet the student overload. This is what is provided for in Section 13337.5. Full-time teachers who serve these purposes in excess of two semesters gain contract status and, therefore, are protected against unlimited hiring. Those who

serve 60 percent or less are not given contract status because their load is substantially smaller than full-time instructors and the need for them is so diverse that the college must have the leverage to hire and terminate them at the end of their contract period. Otherwise, the college district would be perpetually committed to these instructors who might teach no more than one course in one semester, e.g., real estate or business law, or who teach to fulfill a special need, such as the medical emergency course required for ambulance drivers. Petitioners' claims would destroy this authority and require continuing contracts for such limited-time personnel after two semesters of service.

Covino: Respondents argue that Section 13337.5 provides for the hiring of long-term temporary teaching employees by community college districts. The policy of the respondent district against hiring temporary teachers for a second consecutive year is responsive to this statutory prohibition. Petitioner argues that he may be rehired as a temporary employee under Section 13337.3, which does not contain the prohibition discussed above. This issue is the subject of a recent county counsel opinion which concluded that a community college district must proceed under Section 13337.5 rather than Section 13337.3 in hiring temporary teachers. The opinion stated that "Education Code Article 3.5 (13345 et seq.) of Chapter 2 of Division 10 governs the employment of teachers employed by community college districts." Article 3.5 directed classification of certificated employees as contract, regular, or temporary. Although Section 13346.40 was repealed in 1974, Article 3.5 made "no provision for temporary employees other than to require their classification." Section 13337.5 of Division 10 had not been repealed and "remained applicable to community college employees." Section 13337.3 also was seen as remaining applicable. Although both sections concerned the long-term temporary employee, Section 13337.3 is a "statute of general application to school districts." However, Section 13337.5 is a "statute of limited application to community college teachers." The county counsel opinion contained three conclusions: (1) the "special statute" (section 13337.5) is controlling; (2) that "[i]f section 13337.3 is applicable in the case of community colleges, the provisions of section 13337.5 must be treated as surplusage and given no effect," which is contrary to the law of statutory construction; and finally, (3) ". . .section 13346.40 made specific reference to employment of temporary community college teachers under section 13337.5 and made no reference to section 13337.3. Although section 13346.40 has been repealed, its language gives a clear indication of the legislative's [sic] intent. It is section 13337.5 which is applicable to community colleges."

Marsh: Respondents argue, in essence, as in Anderson above.

Education Code Section 13345

The provisions of this article govern the employment of persons by a district to serve in positions for which certification qualifications are required and establish certain rights for such employees. Other provisions of the law which govern the employment of persons in positions requiring certification qualifications by a school district or establish rights and responsibilities for such persons shall be applied to persons employed by community college districts in a manner consistent with the provisions of this article.

* * *

PETITIONERS

Anderson: Petitioners record in their writ this section and indicate that the legislative change of classification scheme for community colleges became effective on September 1, 1972.

CTA/Hawkins: Not used.

Covino: Not used.

Ferris/PTIA/LRCFT: Petitioners argue that this is a proper case for class action. There is no adequate remedy in law because the part-time instructors have been required to sign contracts which purport to deprive them of their statutory rights contrary to Sections 13345 to 13348.5.

Marsh: Petitioners record the entire Code section in writ.

Education Code Section 13346

The governing board of a district shall employ each certificated person as one of the following: contract employee, regular employee, or temporary employee.

* * *

RESPONDENTS

Anderson: Section 13346 requires governing boards of community college districts to employ certificated persons as one of the following: contract, regular, or temporary. Thus, petitioners' contention that there is no authorization for employment of temporary instructors in community colleges is unsupportable. Moreover, Section 25490.25 provides that substitute and short-term employees shall be employed as temporary employees. If the Court has any further doubt as to the authority to hire temporary employees as authorized by Section 13337.5, attention is invited to Section 13345, which provides that other provisions of the law which confirm the employment of persons in positions requiring certification qualifications or establish rights and responsibilities shall be applied to persons employed by community college districts in a manner consistent with the provisions in Article 3.5. As noted above, Section 13346 authorizes the employment of temporary employees.

Covino: Not used.

Marsh: Respondents point out that Section 13346 deals exclusively with community college personnel and provides for the employment of three categories of certificated employees: contract, regular, and temporary. Respondents are, therefore, at a loss as to how to prepare a defense to a charge that the classification of "temporary" no longer exists when, in fact, it does exist.

Education Code Section 13346.20

If a contract employee is working under his first contract, the governing board, at its discretion and not subject to judicial review except as expressly provided herein, shall elect one of the following alternatives:

(a) Not enter into a contract for a second academic year.

(b) Enter into a contract for a second academic year.

(c) Employ the contract employee as a regular employee for all subsequent academic years.

* * *

PETITIONERS

Anderson: Petitioners argue that in 1972, the Legislature changed the classification scheme for community college instructors (see Section 13345). The Legislature also gave the community colleges the right to release first-year contract employees without the necessity of a hearing (see Sections 13346.20, 13346.32, and 13443).

CTA/Hawkins: Not used.

Covino: Not used.

Ferris/PTIA/LRCFT: Petitioners record the entire Code section in writ.

Marsh: Petitioners argue as in Anderson above.

Education Code Section 13346.25

If a contract employee is employed under his second consecutive contract entered into pursuant to Section 13346.20, the governing board, at its discretion and not subject to judicial review except as expressly provided herein, shall elect one of the following alternatives:

(a) Employ the contract employee as a regular employee for all subsequent academic years.

(b) Not employ the contract employee as a regular employee.

* * *

PETITIONERS

Anderson: Petitioners argue that since 1972, any contract instructor who has served two years and is reemployed for the third must be classified as "regular" (Section 13346.25). Petitioners contend that none of them has ever been properly classified as "temporary," and they must be reclassified as either "contract" (two years or less) or "regular" (more than two years) whether part time or full time.

CTA/Hawkins: Not used.

Covino: Not used.

Ferris/PTIA/LRCFT: Petitioners record the entire Code section in writ.

Marsh: Petitioners argue as in Anderson above.

Education Code Section 13346.30

The governing board shall give written notice of its decision under Section 13346.20 and the reasons therefor to the employee on or before March 15 of the academic year covered by the existing contract. Failure to give the notice as required to a contract employee under his first contract shall be deemed an extension of the existing contract without change for the following academic year. The governing board shall give written notice of its decision under Section 13346.25 and the reasons therefor to the employee on or before March 15 of the academic year covered by the existing contract. Failure to give the notice as required to a contract employee under his second consecutive contract shall be deemed a decision to employ him as a regular employee for all subsequent academic years.

* * *

PETITIONERS

Anderson: Not used.

CTA/Hawkins: Not used.

Covino: Not used.

Ferris/PTIA/LRCFT: Petitioners argue that Section 13346.30 would appear to mean that failure to give notice as provided results in a rehiring of the probationary employee for a second contract year. Los Rios administrators have read this as creating a "continuing first-year contract employee." There is no other authority in case or Code for such a classification. It is a "palpable absurdity" and an evasion of the plain intent and meaning of the section. In a contract employee's second academic year, "failure to give the notice as required [that is, before March 15 of the existing contract year] shall be deemed a decision to employ him as a regular employee for all subsequent academic years." This means, of course, that the certificated employee will have earned tenure. The failure of the District to read the law as it is plainly written and to apply it as mandated to part-time instructors in the District must be regarded as arbitrary and capricious within the meaning of Section 800 of the Government Code.

Marsh: Not used.

Education Code Section 13346.32

If the contract employee objects to the decision of the governing board made pursuant to Section 13346.25, he may request a hearing. The hearing shall be requested and conducted, and the proposed decision shall be prepared, in accordance with the provisions of Section 13443.

* * *

PETITIONERS

Anderson: Petitioners record the entire Code section in writ.

CTA/Hawkins: Not used.

Covino: Not used.

Ferris/PTIA/LRCFT: Not used.

Marsh: Petitioners record the entire Code section in writ.

Education Code Section 13346.40

(a) The governing board of a school district may employ temporary employees pursuant to Section 13329 and 13337.5. Substitute employees may be employed pursuant to Section 13336.

(b) For the purposes of the sections specified in subdivision (a), a "probationary employee" is a "contract employee," and a "permanent employee" is a regular employee.

(c) This section shall cease to be operative on September 1, 1974, and as of that date is repealed.

* * *

PETITIONERS

Anderson: Petitioners argue that Section 13346.40, which created the new classification scheme, also provided for limited authorization to hire temporary employees under Sections 13337.5 and 13329. Petitioners believe that the Legislature intended, with the automatic repeal of Section 13346.40, that the community colleges would have two years to phase out Sections 13337.5 and 13329 employees. Since the community colleges have the power, which other school districts do not, to terminate a first-year contract employee without a hearing, it makes sense that the "temporary" classification was really no longer needed at the community college level.

CTA/Hawkins: Petitioners argue that this section authorized employment under Section 13337.5, but that it was repealed effective September 1, 1974.

Covino: Not used.

Ferris/PTIA/LRCFT: Petitioners argue that the authorization for community college districts to hire employees under Section 13337.5 expired on September 1, 1974, by provision of Section 13346.40. The provisions of Section 13337.5 for employment of temporary community college certificated employees were, thereby, made inoperative. Since then, the only applicable provision for the employment of temporary employees in community colleges is Section 13337.3, which was effective August 1, 1973.

Marsh: Not used.

RESPONDENTS

Anderson: The claim by petitioners that the repeal of Section 13346.40 establishes that community colleges have no authority to hire temporary teachers is disputed by the respondents. That section was repealed by virtue of its own provisions on September 1, 1974. The Attorney General, however, has ruled that the repeal of

this section does not have the effect of terminating the community colleges' authority to employ substitutes and temporary employees. Instead, its repeal has the effect of removing a superfluous provision of the Education Code (Ops. Cal. Atty. Gen. CV 74/106, published June [illegible], 1974). The Attorney General concluded that the reason for the repeal of this section was because the section originally provided in 1971 that if a temporary employee had been employed for 75 percent or more of the days on which classes were maintained during that academic year, the governing board shall deem the employee a contract employee. Since these provisions were in conflict with Section 13337.5, providing for a 60 percent or less of the hours per week rule for temporary employees, they were repealed.

Covino: Respondent argues that until its repeal in September, 1974, Section 13346.40 provided that temporary employees could be employed pursuant to Sections 13329 and 13337.5. Upon the repeal of Section 13346.40, Section 13337.5 has remained applicable to community college employees. Section 13346.40 made specific reference to employment of temporary community college teachers under Section 13337.5 and made no reference to Section 13337.3. Although Section 13346.40 has been repealed, its language gives a clear indication of legislative intent. It is Section 13337.5 which is applicable to community colleges.

Marsh: Respondents argue, in essence, as in Anderson above.

Education Code Section 13348.05

Until terminated in accordance with provisions of law, a part-time regular employee shall be assigned, and compensated, for a period of service less than 75 percent of the number of days the colleges of the district are maintained during each academic year. The governing board of the employing district may establish an assignment for any period of days less than 75 percent.

At its discretion, the governing board of the employing district may assign and compensate a part-time regular employee for a period of service of 75 percent or more of the number of days the colleges of the district are maintained during each academic year. Such an assignment shall not change the employee's classification to that of full-time regular employee unless an assignment of this type is made for two consecutive academic years.

* * *

RESPONDENTS

Anderson: On the issue of remuneration, respondents point out that Section 13348.05 was operative September 1, 1972, and in effect authorizes the board in its discretion to grant part-time status for a period of service less than 75 percent of the number of days the colleges of the district are maintained during each academic year. The same section authorizes the board to provide such compensation as determined in its discretion to such an employee. None of the petitioners alleges such service. Section 13506 supports respondents' conclusion that only tenured or probationary instructors are entitled to part-time pay within the discretionary authority of Section 13348.05. Section 13506 provides in substance that employees are entitled to equal pay based on equal training and experience. Specific exception, however, is made as to community college districts. Thus, the principle of like pay for like experience and training does not apply to community college districts by reason of express statutory mandate. In excepting community

colleges from the provisions of Section 13506, the California Legislature has recognized the need for flexibility in certain categories of the public sector, including community colleges, and has made it specifically clear that classification on a salary schedule on the basis of uniform allowance for years of training and experience is not mandatory. Unless statutory mandate compels otherwise, the position of a teacher is created and fixed by the terms of the contract of employment (Matthews v. Board of Education). (Also see Rutley v. Belmont Elementary School District, 1973.) Differences in salary schedules based on temporary employment classification as opposed to some other authorized employee classification is clearly permissible under the Education Code (see Sections 13337.5, 13467, 13502, and 13506).

Covino: Not used.

Marsh: Respondents argue, in essence, as in Anderson above.

Education Code Section 13503.1

Any person employed by a district in a position requiring certification qualifications who serves less than the minimum schoolday as defined in Sections 11003 to 11008, inclusive, or 11052 may specifically contract to serve as a part-time employee. In fixing the compensation of part-time employees, governing boards shall provide an amount which bears the same ratio to the amount provided full-time employees as the time actually served by such part-time employees bears to the time actually served by full-time employees of the same grade or assignment. This section shall not apply to any person classified as a temporary employee under Section 13337 and 13337.5, or any person employed as a part-time employee above and beyond his employment as a full-time employee in the same school district.

* * *

PETITIONERS

Anderson: Petitioners argue that if the court finds that the petitioners should be reclassified as contract or regular employees, then it follows that they must be paid in accordance with the regular District salary schedule (Campbell v. Graham-Armstrong (1973) 9 C3d 482). If they are full time, then they are entitled to a full-time salary (Section 13503). If part time, then they are entitled to a pro rata salary based on the regular salary schedule (Section 13503.1).

CTA/Hawkins: Petitioners argue that this section entitles part-time teachers to a pro rata salary based on the salary paid full-time teachers.

Covino: Not used.

Ferris/PTIA/LRCFT: Petitioners assert that they will establish that the District has consistently paid part-time teachers who are entitled to contract or regular classification on hourly pay schedules, which are only a partial percentage of the pay schedules given full-time teachers of equal qualifications and assignments in proportion to the amount of time actually served. The hourly pay schedule is in violation of Section 13503.1. It has been argued that this section does not apply to community college teachers because it seems to be limited, by definition, to teachers in K-12. The effect of this argument is nullified by the fact Section 13503.1 was enacted in 1968, and at that time the classification of community college teachers was governed by the sections dealing with high school teachers.

Marsh: Petitioners argue that if the court holds that the proper classification of petitioners is contract or regular, then it follows that they must be paid in accordance with the regular district salary schedule (see argument in Anderson above).

RESPONDENTS

Anderson: Respondents point out that petitioners rely on Section 13503.1 to support their demand for pro rata pay. The reference is to part-time teachers, namely, those who serve less than the minimum school day as defined in Sections 11003 to 11008, inclusive, or in Section 11052. None of these sections, however, applies to community colleges. Section 13503.1 expressly excepts temporary employees hired under Sections 13337 and 13337.5. Assuming, arguendo, that Section 13503.1 does apply to community college districts, petitioners, in order to support a claim for pro rata pay, must establish a statutory classification and factual basis as part-time instructors who, by reason of their part-time status, are earning credit or have earned credit toward permanent classification or tenure.

Covino: Not used.

Marsh: Respondents argue, in essence, as in Anderson above.

Education Code Section 25490.10

The employment, rights, responsibilities, dismissal, imposition of penalties for persons employed by a community college district in positions requiring certification qualifications shall be governed by the provisions of Article 3.5 (commencing with Section 13345) and Article 5.3 (commencing with Section 13480) of Chapter 2 of Division 10, with the exception given in Section 25490.05. The remainder of the provisions of Division 10 shall be applied to certificated persons employed by a community college district in accordance with their intent and in a manner consistent with the provisions of Articles 3.5 and 5.3 and with the provisions of this Chapter (hereinafter referred to in this chapter, collectively, as "this act").

Whenever in Sections 13404 to 13412, inclusive, the term "Commission on Professional Competence" is used, it shall be deemed for the purposes of this chapter to mean either "arbitrator" or "hearing officer," whichever is the case.

The provisions of this act shall take precedence, for the purposes of certificated persons employed by a community college district, over any other act enacted by the Legislature at any session which, explicitly or implicitly, would result in certificated persons employed by a community college district being governed by provisions inconsistent with the provisions of this act.

* * *

RESPONDENTS

Anderson: Respondents argue that if the Legislature intended, as petitioners contend, that community college districts can no longer hire temporary teachers as might be suggested by the repeal of Section 13346.40, the Legislature should have repealed Sections 13337.5, 13346, and 25490.25, as well. Moreover, Section 25490.10 provides that the employment rights and responsibilities for persons employed by community college districts shall be governed by the provisions of

Article 3.5, commencing with Section 13345, and by Article 5.3, commencing with Section 13480. Section 25490.10 also provides that the remainder of the provisions of the foregoing articles shall be applied to certificated personnel employed by a community college district in accordance with their intent and in a manner consistent with the provisions of those articles and with the provisions of Chapter 2.5, Division 18.5, commencing with Section 25490. Thus, the statutory scheme for community college teachers' employment clearly provides for employment of teachers in a temporary classification. Existence of such authority is wholly consistent with the needs in community college districts for short-term employment as replacements for absent personnel and to meet unpredictable increased pupil loads and to provide the diverse academic and educational specialized programs generally provided by instructors hired under Section 13337.5 for 60 percent or less of the hours per week considered a full-time assignment. In the latter case, such instructors must, by statutory mandate, be hired as temporary employees and are expressly prohibited from achieving probationary classification.

Covino: Respondents record the entire Code section in their writ.

Marsh: Not used.

Combinations of Education Code Sections

PETITIONERS

Anderson: Petitioners argue that prior to 1972, the Legislature required community colleges and all other public school districts to classify teachers in one of four categories: permanent, probationary, substitute, or temporary (Sections 13304, 13334, 13336, and 13337). Also regarding tenure, Sections 13309, 13310, and 13311 are sighted in support of petitioners' claim. Section 13506 is recorded in that it provides that salaries must be uniform, based on the training and experience. This section was amended in 1970 excepting community colleges. While it may be argued that the intent of the Legislature was to permit community colleges to compensate "true temporary employees" differently from other employees, such a distinction cannot be validly applied to the case at bar, because the petitioners render the same services as the contract and regular employees who are compensated substantially more for the same services. There is no reason to believe that the Legislature intended to overturn prior case law and permit arbitrary and discriminatory schemes for compensating community college personnel. In addition, Section 13503 provides that teachers who teach the minimum school day as defined by statute shall be classified as full time. The minimum school day for community college instruction is 180 minutes per day, or 15 hours per week (Section 11103). Some of the petitioners have taught the minimum school day and, therefore, should be classified and compensated accordingly.

CTA/Hawkins: Petitioners record Education Code Section 13446 and argue that petitioners have been classified as temporary employees for more than three school months.

Covino: Only Education Code Section 13337.3 is recorded in petitioner's writ.

Ferris/PTIA/LRCFT: Petitioners argue that there is no adequate remedy in law because the part-time instructors have been required to sign contracts which purport to deprive them of their statutory rights contrary to Sections 13345 to 13348.5. Teachers may not be forced to waive statutory benefits by contract

provisions. The instructors individually have requested hearings regarding the issues here, and in all cases such hearings have been denied. They further argue that the Education Code sections dealing with salaries of certificated employees are 13501 to 13532, Article VI. The sense of the entire article is that teachers of equal qualifications doing similar work shall be paid equally.

Marsh: Petitioners argue as in Anderson above.

State and Federal Constitutional Issues

PETITIONERS

Anderson: Petitioners argue that school districts are political subdivisions of the state and, as such, they are proscribed by the state and federal Constitutions from arbitrary, invidious, or irrational discrimination. The classification of temporary certificated employees has no rational basis and violates the Equal Protection Laws of the federal and state Constitutions. The question is whether the particular discrimination in question bears any "reasonable relation to a proper legislative objective" and any legislative classification which is purely arbitrary and capricious and based upon no reasonable or substantial difference between the classes is clearly unconstitutional" [sic]. Stated another way, neither the Fourteenth Amendment nor the state Constitution require everyone to be treated alike, but creating classes of groups and treating them differently must be based on rational distinctions. In the case at bar, the petitioners are performing services in the same fashion, of the same quality, and requiring the same effort as contract or regular employees, but are classified otherwise and, as a result of that classification, are paid substantially less than their colleagues simply because they bear that different classification. The practice of the respondents over the years has relegated petitioners to second class status and cannot withstand the scrutiny of a constitutional attack.

CTA/Hawkins: Petitioners argue that the use of a separate salary schedule to compensate employees for the same work violates the equal protection clause of the Fourteenth Amendment to the federal Constitution, as well as the equal protection clause of Article I, Section 7, of the California Constitution.

Covino: Not used.

Ferris/PTIA/LRCFT: Not used.

Marsh: Petitioners argue as in Anderson above.

RESPONDENTS

Anderson: Respondents argue that the validity of the temporary employment classification is reflected in the United States Supreme Court cases of Perry v. Sinderman (1972), and Board of Regents v. Roth (1972). In each, the instructor served under year-to-year contracts. In Sinderman's case, there was no state legislation granting tenure. He had received four one-year contracts. The Court rejected the "expectancy of continued employment" test as a basis for application of Fourteenth Amendment protections and said that there must instead be some proof showing a de facto tenure program. In the Roth case, the Court dealt with a nontenured teacher who, under Wisconsin statute, could obtain tenure only after four years of year-to-year employment. The Court held that in merely declining

to reemploy Roth, the Board of Regents had not abridged any property right under the Fourteenth Amendment. Obviously, then, permanent classification is not a constitutional right. Accordingly, petitioners' allegations that continued temporary classification is violative of the federal and state Constitutions are groundless.

Covino: Not used.

Marsh: Respondents assert that they "are at a complete loss as to how to defend against the statements that the classification imposed upon petitioners violates the equal protection clause of the Federal Constitution." Assuming that the reference is to the Fourteenth Amendment, respondents say that "we can only state that unless the work is equal, there is no requirement for the same amount of pay or the same classification." No facts are set forth by petitioners, allege the respondents. Further, respondent calls attention to the allegation by petitioners that the temporary classification violates Article 1, Sections 11 and 21, and Article 4, Section 16, of the California Constitution. Respondents are, in their words, "at a loss" again because those sections refer to "habeas corpus . . . in the case of rebellion or invasion," and "property owned before marriage . . ." Respondents say that on the assumption the references are to prior constitutional sections, they "are still at a loss." Prior Section 11 states "all laws of general nature shall have a uniform operation," and prior Section 21 mentioned that there shall be no special privileges granted and no immunities granted to one that are not granted to all. On the other hand, prior Section 16 of Article 4 dealt with how the Governor signs bills. Therefore, respondents assume that in this case the petitioners are referring to the new constitutional sections. Section 16 provides that "(a) All laws of a general nature have uniform operation" and "(b) A local or special statute is invalid in any case if a general statute can be made applicable." Continuing, respondents call attention to the fact that the Education Code sections limiting the use of temporary employees "are special statutes and in derogation of the general law." Therefore, assert the respondents, it would seem that "if petitioners are relying on these particular constitutional sections, they are in effect saying that the general law that allows the employment of a temporary employee where the entity has no need for a permanent or a full-time employee, should prevail over the very special and restrictive codes petitioners quote." Respondents agree with this. Finally, respondents refer to petitioners' claim "that the classification on a separate salary schedule for the same work violates the constitutional provisions referred to above," but point out that there is "no place within the petition that the petitioners state the acts which indicate that they are performing the same work."

The Issue of Circumvention

RESPONDENTS

Anderson: Respondents assert that petitioners' allegations of circumvention of tenure laws by the district are unfounded where no statute requires the granting of tenure. Petitioners add a "makeweight" assertion that respondents, in classifying them as temporary employees, are circumventing the statutes granting tenure. First, it has been explained that temporary status is not only permissible in community colleges and all other school districts, but is mandated in the case of 60 percent or less employees hired pursuant to the last clause of Section 13337.5. Second, case and legislative authority clearly provides that tenure can be granted only on the basis of statutory authorization (Brightman v. Board of

Education (1935); Branson v. Board of Education (1962)). Employment status evolves from operation of law, not by administrative edict or classification (Holbrook v. Board of Education). Unless a statute requires a district to grant tenure, the withholding of tenure does not constitute the circumvention of tenure statutes (Baldwin v. Fresno City School District (1954)).

Covino: Not used.

Marsh: Not used.

Samples of Other Cases Cited

PETITIONERS

Anderson:

Campbell v. Graham-Armstrong: It is well established under California law that a teacher's classification is based on statute not on contract. If the court finds that the petitioners should be reclassified as contract or regular employees, then it follows that they must be paid in accordance with the regular District salary schedule.

Holbrook v. Board of Education: It is well established that part-time teachers are covered by teacher tenure laws, as well as full-time employees, and that they may qualify, depending on the facts of the case, for permanent part-time status.

Balen v. Peralta Junior College District: In the recent decision, the Supreme Court, at page 826, said as follows: "The essence of the statutory classification system is that continuity of service restricts the power to terminate employment which the institution's governing body would normally possess. Thus, the Legislature has prevented the arbitrary dismissal of employees with positions of a settlement [sic] and continuing nature, i.e., permanent and probationary teachers, by requiring notice and hearing before termination." In Balen (page 829), the Supreme Court criticized, but did not rule on, the College's contention that the less than 60 percent provision, set forth in Section 13337.5, should be read as transcending all of the other limitations imposed on the employment of temporary employees.

Ferner v. Harris: In 1975, the Court of Appeal, First District, Division 2, held that the 60 percent rule did not apply to a community college teacher because he was not hired under any conditions specified in Section 13337.5, i.e., he was not hired due to an increase in enrollment or because of a vacancy due to absence for leave or illness.

Vittal v. Long Beach Unified School District: The Court of Appeal, in interpreting provisions of the Education Code with regard to tenure, said at page 120: "Our task is to ascertain the probable intent of the Legislature. In performing this duty we are not necessarily required to adopt a strictly literal interpretation of the language of a statute regardless of the reasonableness of the result. . . . It was the apparent intent of the Legislature in enacting the 'tenure' statutes that teachers who have faithfully served the indicated portion of the school year for three consecutive years should be entitled to permanent classification upon their contracting to teach a fourth year. The petitioner falls within the class of teachers intended to be benefited by the statute."

Mitchell v. The Board of Trustees: The Court, in defeating the school district's effort to avoid tenure, said, at page 67: "It appears *** [sic] that for some years the respondent board had pursued the practice each year of taking and accepting resignations from such teachers as would otherwise be entitled to permanent status. *** [sic] These resignations were required and accepted as a mere subterfuge in an obvious attempt to evade the tenure provisions of the statutes. *** [sic] Not only was this purported resignation an involuntary one which was coercively exacted from the petitioner but such an admitted attempt to evade and circumvent the law could not be upheld in any event."

Williams v. Rhodes: The Supreme Court of the United States, said: "Invidious distinctions cannot be enacted without a violation of the Equal Protection Clause. In determining whether or not a state law violates the Equal Protection Clause we must consider the facts and circumstances behind the law, the interest which the State claims to be protecting, and the interest which [sic] those who are disadvantaged by the classification."

CTA/Hawkins: None recorded.

Covino:

Balen v. Peralta Junior College District: Writ of Mandamus is an appropriate remedy for determining the employment rights of a teacher employed in a temporary status.

Ferris/PTIA/LRCFT:

Balen v. Peralta Junior College District: On September 1, 1972, Article 3.5 of Part 2, Division 10, Chapter 2, of the Education Code became operative. This Act established new law for the employment of community college certificated personnel. It was characterized by the Supreme Court in Balen, as "a separate classification scheme for community college instructors." The Court further said, "[t]he essence of the statutory classification system is that continuity of service restricts the power to terminate employment which the institution's governing body would normally possess. Thus, the legislature has prevented the arbitrary dismissal of employees with positions of a settled and continuing nature; that is, permanent and probationary teachers, by requiring notice and hearing before termination." As to the contention that probationary status applies only to full-time instructors, not to part-time instructors, the Court in Balen, page 829, said the following: "Nor is there merit to the contention that the statutes plaintiff relies on for probationary status, Sections 13334, 13337, and 13446, are not applicable to part-time employment. The probationary plan envisions a two-fold purpose: it allows the new teacher sufficient time to gain additional professional expertise, and provides the district with ample opportunity to evaluate the instructor's ability before recommending a tenured position. A part-time instructor, unlike a day-to-day substitute, generally serves under conditions comparable to those of his full-time counterpart; thus there is no reason for differentiating between their statuses for the purposes of attaining probationary classification, nor has the legislature directed us to do so."

Vittal v. Long Beach Unified School District: If a teacher meets the Education Code provision for permanent status, the attainment of such status is automatic and requires no application by the teacher or affirmative action by the Board.

Ferner v. Harris: The Court said, "[t]he College argues that the teacher is a temporary employee pursuant to the fourth paragraph of Section 13337.5 quoted above. However, a reading of the entire section readily indicates that this provision does not apply to the teacher, as he was not hired under the conditions set forth in its first paragraph. As his Brief notes, this Section merely grants a limited authority to school districts to employ and classify teachers as temporary under the three conditions of the first paragraph, ... As we have previously indicated, the teacher was not hired under any of these conditions. Further, the third paragraph of the section contains a built-in limitation to prevent a school district from employing and reemploying indefinitely a teacher as a temporary employee."

Dalkey, Deglow and Crowe v. Los Rios Community College District: Cited as evidence that District ". . . by its own verified admission . . . has employed such instructors semester by semester as 'temporary.'"

Fry v. Board of Education: The Supreme Court said: "It must be conceded that, within the limits fixed by the School Code, the Board has discretionary control over the salaries of teachers . . . However, it must also be conceded that the legislature had enjoined on such Boards, within reasonable limits, the principle of uniformity of treatment as to salary for those performing like services with like experience. This same limitation exists in the rules and regulations of the appellant Board . . ."

Aebli v. Board of Education: "There can be no doubt but that the board possesses the power to reduce salaries at the commencement of the school year, even of permanent employees with tenure, provided that there is a reasonable basis for such a reduction and provided the reduction is not the result of an unreasonable, arbitrary, or capricious act. . . . But this power is not unlimited. The board has no power to discriminate against any teacher. It cannot pick out some teachers in a particular category, and without a change in duties or functions classify that group for salary purposes different from others in the same category (Fry v. Board of Education 17 C2d 753), nor can it reduce salaries in an arbitrary, capricious, or unreasonable manner (Kacsur v. Board of Trustees, 18 C2d 586)."

Marsh:

See Anderson above, then add the following:

Curtis v. San Mateo Junior College District: Once the so-called 60 percent rule is thrown out, the particular program in which the petitioner rendered service is immaterial. Service in the day and evening programs can be combined in determining the proper classification.

RESPONDENTS

Anderson:

Vittal v. Long Beach Unified School District: The Court held that a teacher in a community college must serve more than 75 percent of the hours of a full-time assignment for a school year to achieve credit toward permanent status. Since a teacher serving fewer hours cannot achieve such status, her service does not constitute contract (probationary) status and is not creditable towards regular status.

Balen v. Peralta Junior College District: The Court held that complete school years for probationary purposes must be based on service of more than 75 percent of the hours in a school year in a community college. The Court also held that in view of the meager evidence presented in the case, it was unable to decide if Balen had carried the workload required by Section 13328 and 13328.5. The Court also stated: "In 1967 the legislature added to the Education Code section 13337.5 which allows districts to hire long-term temporary community college teachers, and provides in its last paragraph that 'any person who is employed to teach adult or junior college classes for not more than 60 percent of the hours per week considered a full-time assignment for permanent employees having comparable duties shall be classified as a temporary employee and shall not become a probationary employee under the provisions of section 13346.'"

Ferner v. Harris: The reliance of petitioners on the Ferner case is also unfounded. The reference in that case to the last paragraph of the section in issue is dictum. The case makes no reference to Section 13328.5 and, further, it applies to a full-time teacher who had taught three full years and who was reemployed in a part-time capacity after being reduced from a full-time position because of a reduction in program. The issue, then, was the extent of Ferner's tenure upon reemployment--whether he was entitled to full-time tenure or to part-time tenure because he was given a part-time job. The issue was not whether after three years of full-time service he was subject to the 60 percent rule under Section 13337.5 and then precluded from creditable service toward tenure. The issue here (that is, in Anderson) is whether 60 percent or less service is temporary in nature regardless of the length of employment.

Holbrook v. Board of Education: Employment status evolves from operation of law, not by administrative edict or classification.

Baldwin v. Fresno City School District: Unless a statute requires a district to grant tenure, the withholding of tenure does not constitute the circumvention of tenure statutes.

Covino:

People v. Gilbert: It is the general rule that where the general statute standing alone would include the same matter as the special act, and thus conflict with it, the special act will be considered as an exception to the general statute whether it was passed before or after such general enactment. And, "A cardinal rule of construction is that . . . a construction making some words surplusage is to be avoided."

Marsh:

Ferner v. Harris: Respondents argue much the same as in Anderson above. However, they add that the last paragraph of Section 13337.5 uses the word "shall" twice: the district "shall" classify such sixty percent or less employees as temporary; and, such employees "shall not" become probationary employees. Where a statute is free from ambiguity, argue respondents, it requires no interpretation and should be enforced as written (citing Malone v. State Employees Retirement System (1957) 151 CA2d 562). Therefore, respondent board "has clear authority to employ petitioners with no tenure consideration pursuant to this statutory section."

CONCLUSIONS

There are four categories of cases described in this report. Level A is the one case decided by the California Supreme Court. Level B reports on the six cases in which one of the state's Courts of Appeal has ruled. The four Level C cases are those which have been decided by Superior Courts and which are now on appeal moving toward decisions by Courts of Appeal. Finally, there are five Level D cases pending in the Superior Courts which had not been decided as of June 30, 1976.

Because of the system of separation of powers between legislative, executive, and judicial branches in state government (as well as in the federal government), the judiciary is not empowered to legislate. Nevertheless, in carrying out its assigned task of interpreting legislative enactments, that is statutory law, judicial decisions, as a practical matter, may have the effect of law, especially if the statutes are ambiguous, contradictory, or even silent on a specific issue. At the pinnacle of the state's judicial system resides the California Supreme Court, and as a practical matter, decisions of that body have the force of law in certain circumstances. Such is the case in Balen. The decision of the Supreme Court in Balen has had the effect of law because other courts in the state follow precedents established by the Supreme Court.

In a similar manner, published decisions of Courts of Appeal set precedent for courts within the jurisdictions of each respective Appellate District. Thus, a published decision of a Court of Appeal has the practical effect of law within that particular Appellate District. (For an explanation of the difference between published decisions and those not published, see the introduction to Level B cases.)

In short, the Balen case has set legal precedent statewide, while the Curtis, Ferner, and Vittal cases have set legal precedents in the Appellate Districts in which each was decided.

It is not advisable to draw general conclusions from the legal decisions described in this report, for the fundamental reason that each decision is based upon a specific set of facts and circumstances. Indeed, the decision of a court in a case only pertains to the particular facts and circumstances involved in the case at bar. If this is so, then one may ask how it is that a decision of the Supreme Court, or a published decision of a Court of Appeal, sets precedent. Legal precedent is followed by judges when the facts and circumstances of a case before a court are identical, or similar enough for close comparison, to the facts and circumstances involved in the precedent-setting decision. Then, and only then, is legal precedent controlling.

It follows that no iron-clad general conclusions about the status and pay of part-time teachers in California community colleges should be drawn on the basis of a reading of the descriptions of the court decisions in this report. To so conclude would be both risky and possibly misleading.

Without speaking to the question of how the courts have interpreted Education Code Section 13337.5, it may, nevertheless, be said that this one section has become the central focus of the preponderant number of cases covered in this report. Indeed, the meaning of one paragraph of Education Code Section 13337.5, namely the fourth and final paragraph, seems to be the most prevalent point of dispute between litigants and the most crucial area of interpretation of statutory intent for the courts to decide.

The situation is far from static. Any one of the several cases now on appeal, or any one of the cases which may be appealed at a future date, has the potential of reversing legal precedent set in earlier decisions and thereby creating new legal precedent.

Furthermore, the Legislature could, at any time, pass a law creating a new Code section or amending an existing section, and thereby clarify what now is considered to be either ambiguous or contradictory in the statutes. Unfortunately, it is not inconceivable (though one hopes it would be unlikely) that the Legislature could adopt new statutory law which would have the effect of further compounding the problem of interpreting existing statutory provisions.

Finally, it is evident that teachers and teacher organizations are continuing to go to court over the issues of the status and pay of part-time instructors in California community colleges. The cut-off date for court cases included in this report was June 30, 1976. However, several district superintendents and college presidents reported that they expected cases to be filed in the near future. It is understood that teachers have gone to court subsequent to the June 30, 1976, cut-off date of this report in the Contra Costa Community College District, Santa Monica Community College District, and San Diego Community College District. There may be others as well.

From this, it is apparent that the problems relative to the status and pay of part-time instructors in California community colleges are far from resolved. Those most directly concerned will continue to be involved in efforts, both legislative and judicial, to achieve solutions in an area which seems to be nothing short of chaotic at this time.

APPENDICES

APPENDIX A

ATTORNEY GENERAL OPINIONS

The Attorney General of the State of California has issued three opinions in recent years, to the best of our knowledge, which relate directly to issues raised in the court cases described in this report. Readers who wish more detail, including the analysis on which each opinion is based, are encouraged to read the entire opinion. Presented here are only the questions posed and the general conclusion reached in each of the opinions by the Attorney General.

June 26, 1974 — To Sidney W. Brossman, Chancellor, California Community Colleges

"You have requested our opinion whether the repeal of Education Code section 13346.40 on September 1, 1974, will terminate the community colleges' authority to employ substitute and temporary employees on that date.

CONCLUSIONS

"The repeal of section 13346.40 does not have the effect of terminating the community colleges' authority to employ substitute and temporary employees; it has the effect of doing away with a now superfluous corrective provision."

October 23, 1974 — To Sidney W. Brossman, Chancellor, California Community Colleges

"You have requested our opinion on two questions: (1) Does section 13336.5 apply to the California community colleges? (2) If it does, does it supersede section 13337.5's prohibition against granting probationary status to employees who have been employed for 60%, or less, of the total number of hours of a regular school year?

CONCLUSION

"Education Code section 13336.5, being inconsistent with section 13346.20, does not apply to the California community colleges, and thus, the second question posed need not be reached."

September 10, 1975 — To Gary M. Gallery, Legal Counsel, California Community Colleges

"For the purpose of ascertaining whether an instructor has acquired tenure is it necessary to determine what constitutes a year of service for a full-time certificated employee of a community college?

"The conclusion is:

"Tenure is acquired if the instructor is rehired after completing the second consecutive year as a contract (probationary) employee. It is

unnecessary to compare the number of hours the employee worked with the number of hours worked by a full-time permanent employee or to determine the number of hours that would be worked by a full-time permanent employee."

Editor's Note: On November 10, 1975, Mr. Gallery requested in writing that the Attorney General reconsider the opinion, saying that the analysis and conclusion appear inconsistent with other interpretations of current law and that sections of the Education Code having direct bearing on the issues were not addressed in the opinion. To date, there has been no reconsideration of the opinion by the Attorney General.

APPENDIX B

STATUS OF COURT CASES

AS OF

JUNE 30, 1976

	Teacher(s) file petitions in Superior Court	District files responses in Superior Court	Superior Court hearing held	Superior Court decision rendered	Superior Court decision appealed by teacher(s)	Superior Court decision appealed by district	Court of Appeal hearing held	Court of Appeal decision rendered	Court of Appeal decision appealed by teacher(s)	Court of Appeal decision appealed by district	Supreme Court hearing held	Supreme Court decision rendered
The Anderson Case (Monterey Peninsula CC District)	12/15/75	2/2/76										
The Balen Case (Peralta CC District)	X	X	X	X	X		X	X	X		X	6/28/74
The CTA/Hawkins Case (Ric Hondo CC District)	2/4/76											
The Coffey Case (San Francisco CC District)	X	X	X	9/29/75								
The Covino Case (Contra Costa CC District)	5/17/76	5/24/76										
The Curtis Case (San Mateo CC District)	X	X	X	X	X		X	10/17/72				
The Dalkey/Deglow Case (Los Rios CC District)	X	X	X	3/17/75								
The Farner Case (Gavilan Joint CC District)	X		X	X		X	X	2/18/75				

	Teacher(s) file petitions in Superior Court	District files responses in Superior Court	Superior Court hearing held	Superior Court decision rendered	Superior Court decision appealed by teacher(s)	Superior Court decision appealed by district	Court of Appeal hearing held	Court of Appeal decision rendered	Court of Appeal decision appealed by teacher(s)	Court of Appeal decision appealed by district	Supreme Court hearing held	Supreme Court decision rendered
The Perris/PTIA/LRCPT Case (Los Rios CC District)	6/3/76											
The Kirk Case (San Mateo CC District)	X	X	X	X	X		X	6/20/76				
The Marsh Case (Napa CC District)	4/30/76 5/20/76 5/25/76	5/11/76 5/17/76										
The Nybakken Case (Hartnell CC District)	X	X	X	X	X		X	10/29/74				
The PFT/PPTTA/Walker Case (Peralta CC District)	X	X	X	7/28/75								
The Proctor Case (Sonoma County CC District)	X	X	X	X	X		X	1/21/76				
The Vittal Case (Long Beach Unified School District)	X	X	X	X	X	X	X	5/26/70				
The Warner Case (North Orange County CC District)	X	X	X	6/2/76								

APPENDIX C

CASES BY COLLEGE AND DISTRICT
(In the order in which they appear in the report)

Number	Name	College(s)	District
Level A			
1	The Balen Case	Laney College	Peralta Community College District
Level B			
2	The Curtis Case	College of San Mateo	San Mateo Community College District
3	The Ferner Case	Gavilan College	Gavilan Joint Community College District
4	The Kirk Case	College of San Mateo	San Mateo Community College District
5	The Nybakken Case	Hartnell College	Hartnell Community College District
6	The Proctor Case	Santa Rosa Junior College	Sonoma County Junior College District
7	The Vittal Case	Long Beach City College	Long Beach Unified School District
Level C			
8	The Coffey Case	City College of San Francisco	San Francisco Community College District
9	The Dalkey/Deglow Case	Sacramento City College	Los Rios Community College District
10	The PFT/PPTTA/ Walker Case	Laney College Merritt College	Peralta Community College District
11	The Warner Case	Cypress College	North Orange County Community College District
Level D			
12	The Anderson Case	Monterey Peninsula College	Monterey Peninsula Community College District
13	The CTA/Hawkins Case	Rio Hondo College	Rio Hondo Community College District
14	The Covino Case	Diablo Valley College	Contra Costa Community College District
15	The Ferris/PTIA/ LRCFT Case	American River College Cosumnes River College Sacramento City College	Los Rios Community College District
16	The Marsh Case	Napa College	Napa Community College District

APPENDIX D

ATTORNEYS FOR TEACHERS AND DISTRICTS

Case	Attorney for Teacher(s)	Attorney for District
The Anderson Case	Joseph G. Schumb, Jr.; LaCroix & Schumb; San Jose	Paul R. De Lay, Deputy County Counsel, County of Monterey (William H. Steffers, County Counsel); Salinas
The Balen Case	Dan W. Lacy; Strauss & Neibauer and Strauss; Oakland	Richard J. Moore, Alameda County Counsel, and Kelvin H. Booty, Jr., Deputy County Counsel; Oakland
The CTA/Hawkins Case	Howard M. Knee; Schwartz, Steinsapir & Dorhrmann; Los Angeles	Stephen K. Matson, Deputy County Counsel, County of Los Angeles (John H. Larson, County Counsel); Los Angeles
The Coffey Case	Stewart Weinberg; Van Bourg, Allen, Weinberg, Williams & Roger; San Francisco	B. Timothy Murphy, Deputy City Attorney (Thomas M. O'Connor, City Attorney); San Francisco
The Covino Case	Douglas E. Lord; Point Richmond	Arthur W. Walenta, Assistant County Counsel, Contra Costa County (John B. Clausen, County Counsel); Martinez
The Curtis Case	Richard H. Perry; Burlingame	L. M. Summey, Deputy District Attorney, San Mateo County (Keith C. Sorenson, District Attorney); Redwood City
The Dalkey/Deglow Case	John M. Poswall; Karlton, Blease & Vanderlaan; Sacramento	L. B. Elam, Deputy County Counsel, County of Sacramento (John B. Heinrich, County Counsel); Sacramento
The Ferher Case	Joseph G. Schumb, Jr.; LaCroix & Schumb; San Jose	Paul J. Mason, Deputy County Counsel, Santa Clara County (William M. Siegel, County Counsel); San Jose
The Ferris/PTIA/ LRCFT Case	Jack J. Moore; Sacramento	L. B. Elam, Deputy County Counsel, County of Sacramento (John B. Heinrich, County Counsel); Sacramento
The Kirk Case	Stewart Weinberg; Van Bourg, Allen, Weinberg, Williams & Roger; San Francisco	Thomas F. Casey, III, Deputy District Attorney, San Mateo County (Keith C. Sorenson, District Attorney); Redwood City

Case	Attorney for Teacher(s)	Attorney for District
The Marsh Case	Joseph G. Schumb, Jr.; LaCroix & Schumb; San Jose	R. Clifford Lober, Deputy County Counsel, Napa County (Stephen W. Hackett, County Counsel); Napa
The Nybakken Case	Herbert A. Schwartz; Hubbard, Schwartz, Shonholtz & Slatkow; Pacific Grove	Paul R. De Lay, Deputy County Counsel, County of Monterey (William H. Stoffers, County Counsel); Salinas
The PFT/PPTTA/ Walker Case	Stewart Weinberg; Van Bourg, Allen, Weinberg, Williams & Roger; San Francisco (in the trial court) Treuhaft, Walker, Nawi & Hendon; Oakland (on appeal to the Court of Appeal)	John A. Hudak, Deputy County Counsel, County of Alameda (Richard J. Moore, County Counsel); Oakland
The Proctor Case	Stewart Weinberg; Van Bourg, Allen, Weinberg, Williams & Roger; San Francisco	John C. Gaffney, Assistant County Counsel, Sonoma County (James Botz, County Counsel); Santa Rosa
The Vittal Case	Woodrow Baird; Baird, Baird & Wulfsberg; Long Beach	Raymond W. Schneider, Deputy County Counsel, and Louis S. Gordon, Deputy County Counsel, County of Los Angeles (John D. Maharg, County Counsel); Los Angeles
The Warner Case	Stewart Weinberg; Van Bourg, Allen Weinberg, Williams & Roger; San Francisco	Spencer E. Covert, Jr., and Patricia Reilly; Alexander Bowie; Newport Beach

APPENDIX E

CALIFORNIA COMMUNITY AND JUNIOR COLLEGE ASSOCIATION

April 26, 1976

TO: Superintendents and Presidents of CCJCA Member Institutions

FROM: David H. Mertes, Chairman, Committee on Continuing Education

SUBJECT: Court Cases Involving Issues Pertaining to Part-Time, Temporary Faculty

During the academic year, 1974-75, the Committee on Continuing Education of the California Community and Junior College Association conducted a statewide survey on the use of part-time, temporary faculty in California community colleges. As you are aware, the results of that survey are now available to all community colleges in the state. In addition, the Board of Directors of the California Community and Junior College Association adopted a series of recommended guidelines, proposed by the Committee on Continuing Education, to be used by each district in developing its own policies and procedures relative to the use of part-time, temporary faculty.

The next effort of the Committee on Continuing Education is directed toward the compilation of information on all court cases in California that involve issues relating to part-time, temporary faculty. It is our hope to prepare a brief summary of each case--the litigants, the key issues, the district involved, the status of the case, decisions (if any), implications for other districts--and make the information available as a reference document to each community college in the state.

In order to accomplish this goal, we need your assistance on two matters: (1) the name of a contact person from your college (district) who is generally knowledgeable about district litigation involving part-time, temporary faculty, and (2) copies of any briefs or decisions in which your district has been involved. Please provide the information requested on the enclosed postal card and return it as soon as possible. Copies of briefs or decisions involving your college or district should be mailed to Mr. William D. Plosser, Assistant Director, Programs, at the CCJCA office in Sacramento.

While all of us are extremely busy at this time of year, your help will make possible a document that is of urgent need in all colleges at the present time.

DHM:lkg

Enclosure