

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

STEVEN N. SMITH
(Claimant)

LONG BEACH UNIFIED SCHOOLS
(Employer)

Office of Appeals No. LB-4P-10457

PRECEDENT
BENEFIT DECISION
No. P-B-419
Case No. 80-7002

The claimant appealed from an administrative law judge's decision holding him not entitled to unemployment insurance benefits under the provisions of section 1253.3 of the Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant worked for the Long Beach Unified Schools (hereinafter referred to as District) as a substitute teacher beginning September 17, 1979. As a substitute the claimant is called to work on a daily basis to fill in for an absent teacher. The District maintains a substitute assignment desk where personnel can telephone substitutes between 5 p.m. and 9 p.m. the night before or between 6 a.m. and 8 a.m. on the day service is needed. Substitutes are not called to work for less than a half day. If there is a special request for a substitute by a permanent teacher intending an absence, that request will be honored by the District although occasionally there are oversights.

During the 1979-1980 school year the claimant was called to work approximately 13 days during each month. He attributes the frequency of his work in part to special requests for his services and two long-term assignments. Prior to the filing of his claim for unemployment insurance benefits, the claimant last worked on June 11, 1980. He was given no date to return to work in the Fall of 1980.

On July 2, 1980 the District sent the claimant a form to ascertain whether he would be available for teaching during the 1980-1981 school year. The claimant filled out a form indicating he would be available and that he would need forms to renew his teaching credential. On August 8, 1980 the claimant received a form letter from the employer's Personnel Services Division addressed to substitute teachers, the second paragraph of which provides:

"Substitute teachers are given no assurance of employment. However, calls are rotated as equitably as possible in the best interest of the school district. Because the work of substitute employees is only from day to day, their services are used as needed. The success of the substitute in the situation to which he/she has been assigned is an important criterion in determining the frequency of calls."

This letter goes on to set forth the daily pay rate for substitutes depending on their type of credential and other matters relating to the general hours of work. The employer does publish a handbook which sets forth some of its policies regarding substitute teachers. For instance, substitutes do not receive dismissal notices. The employer does not utilize seniority in making substitute assignments. Substitute employment is described as casual, contingent on the needs of the District and the substitute's success in prior assignments.

The District maintains a list or pool of employees who regularly accept substitute assignments. Through September 9, 1980, the District ran a continuing advertisement for substitute teachers in a local newspaper.

The District maintains the claimant will be employed in the Fall of 1980 in the same capacity in which he worked during the prior school year and therefore he has reasonable assurance of continuing employment. The claimant argues he has no such reasonable assurance and therefore he is entitled to benefit payments.

REASONS FOR DECISION

Section 1253.3(a) and section 1253.3(b) of the California Unemployment Insurance Code provide for the payment of unemployment benefits to individuals based upon services in the employ of an educational institution. These sections further provide that unemployment benefits shall not be payable to an individual with respect to any week which begins during the period between two successive academic years or terms if the individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms.

Section 1253.3(f) further provides that for the purposes of this section and to the extent permitted by federal law, "reasonable assurance" includes, but is not limited to, an offer of employment made by the educational institution, provided that such offer is not contingent on enrollment, funding or program changes.

The sole issue in this case is, as a substitute did the claimant have a reasonable assurance of returning to work following the recess period. We hold he did not.

The District in this case specifically offered no assurance of employment to substitute teachers. The claimant's continued employment in the Fall depended upon his success in previous assignments and the needs of the district to fill an immediate vacancy. Substitute teachers are classified as casual employees by the District because of the tenuous nature of their employment.

As a substitute the claimant acquired no vested or protected right to continuous employment. He was not subject to termination since his job ended at the conclusion of each school day unless he was engaged in a long-term assignment. If the District no longer wished to retain the claimant's services he would simply not be called and the employer was under no obligation to disclose a reason for such termination. Such an arrangement makes the claimant's employment as a substitute tenuous at best and suggests impermanence as opposed to a continuing employment relationship.

Apparently, the District has an on-going need for substitutes as demonstrated by its advertisement for new hires. Since any new hire may be offered an assignment without regard to seniority with this employer, the claimant's chance of employment in the Fall will be diluted. His continued employment is a matter of chance rather than reasonably assured. While he may be called to work at some time in the future, "reasonable assurance" means more than a mere chance or possibility of employment.

In this case we find no offer of future employment, no contract for continuing services, and no commitment by the District to provide this claimant employment in the Fall. We conclude the claimant, as a substitute teacher, had no reasonable assurance of continued employment following the 1980 summer recess and he is not barred from receiving benefits by the provision of section 1253.3 of the Unemployment Insurance Code.

DECISION

The decision of the administrative law judge is reversed. Benefits are payable pursuant to the provisions of section 1253.3 of the Unemployment Insurance Code.

Sacramento, California, January 20, 1981.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

HERBERT RHODES

LORETTA A. WALKER

RAFAEL A. ARREOLA