

CLIENT NEWS BRIEF

School District's Release of a Probationary Certificated Employee with a "Temporary" Release Letter Sufficient to Effectuate a Non-Reelection

In *Petersil v. Santa Monica-Malibu Unified School District* (September 6, 2013) __ Cal.App.4th __ 2013 WL 4804287, the California Court of Appeal found that a school district's improper classification and release of a certified employee as "temporary" instead of "probationary" did not nullify the notice of non-re-election provided to the employee. According to the court, the board's decision not to reelect the employee while under the mistaken belief that she was a temporary employee was irrelevant.

In this case, the district hired Shanna Petersil to serve as a temporary teacher for the 2008-2009 school year; however, Ms. Petersil signed her temporary teacher contract on her second day of employment. The employment relationship continued under the premise that she was a temporary teacher that school year even though, under *Kavanaugh v. West Sonoma County Union High School District* (2003) 29 Cal.4th 911, she was a probationary employee for the 2008-2009 school year because she did not timely sign the temporary contract. On March 9, 2009, the district sent a letter to Ms. Petersil by certified mail stating that "the Governing Board ... took action not to reemploy (her) for the upcoming 2009-2010 school year. This notice of non-re-election is provided pursuant to ... Education Code section 44954." Education Code section 44954 applies only to temporary employees. The letter also enclosed a copy of the board's resolution releasing "employees serving only pursuant to temporary employment contracts."

The district rehired Ms. Petersil to serve as a temporary teacher for the 2009-2010 school year. This time, Ms. Petersil signed a temporary teacher contract on her first day of service, and thereafter worked more than 75% of the 2009-2010 school year. On March 10, 2010, the district served Ms. Petersil with a notice of non-re-election / temporary release by certified mail. Similar to the March 2009 notice, the March 2010 notice referred to Education Code section 44954 and enclosed a copy of the board's resolution releasing temporary employees.

Prior to the beginning of the 2010-2011 school year, the district invited Ms. Petersil to return for another year as a temporary employee. Ms. Petersil could not report to work at the beginning of the school year due to the recent birth of her child. The district accordingly declined to offer Ms. Petersil a temporary position, although Ms. Petersil eventually began working part-time for the district.

In July 2011, Ms. Petersil filed a petition for writ of mandate in superior court, alleging that she was a permanent employee of the district and entitled to reinstatement. Ms. Petersil contended that she served as a probationary employee of the district for two complete consecutive school years (2008-2009 and 2009-2010) because the district had not timely served her with a notice of non-re-election pursuant to Education Code section 44929.21.

At the trial and appellate court levels, Ms. Petersil argued that the district had improperly classified her as a temporary employee in 2008-2009 because she began work prior to signing her temporary teacher contract. Ms. Petersil further argued that, as a probationary employee in 2008-2009, the district's service of a

September 2013
Number 61



Darren C. Kameya
Senior Counsel and Labor & Employment
Practice Group Co-Chair
Los Angeles Office
dkameya@lozanosmith.com



Ashleigh Rollins
Associate
San Diego Office
arollins@lozanosmith.com

LS Lozano Smith
ATTORNEYS AT LAW



As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

temporary release letter pursuant to Section 44954 was invalid and she was therefore reelected as a probationary employee for the 2009-2010 year. Under Ms. Petersil's theory, she continued to serve in a probationary capacity in 2009-2010 and the district's service of a temporary release letter in March 2010 failed to comply with the non-reelection procedure set forth in Section 44929.21, subdivision (b) of the Education Code. According to Ms. Petersil, the district owed her a permanent employee position for the 2010-2011 school year.

As a preliminary matter, the court agreed with Ms. Petersil's contention that the untimely execution of Ms. Petersil's temporary contract in 2008-2009 resulted in her serving as a probationary employee for the 2008-2009 school year. The court, however, agreed with the district and held that the March 2009 notice of non-reelection was effective although it expressly referred to Education Code section 44954, which applies only to temporary employees, while she was in actuality a probationary employee. The court found that the 2009 notice of non-reelection was valid and reasoned that Education Code section 44929.21, subdivision (b) does not require a particular form of notice of non-reelection, nor does it require that any statutory provision be cited in the notice. Education Code section 44929.21 merely requires that the probationary employee be notified of the board's decision not to reelect before March 15th of the second year of employment.

Ms. Petersil also argued that the 2009 notice of non-reelection was ineffective because it was sent by certified mail and was not personally served. The court dismissed this argument because the record reflected that Ms. Petersil had actual notice of the board's decision not to reelect her.

The court characterized Ms. Petersil as a temporary employee for her second year (the 2009-2010 school year), even though she was determined to be a probationary employee during her first school year. Ms. Petersil conceded that, if she was a temporary employee during the 2009-2010 school year, the 2010 notice was sufficient. The district, therefore, properly non-reelected Ms. Petersil after the 2010 school year.

For further detailed information regarding employee classification issues or other labor and employment questions, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).