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## Workplace Woes

*...and how  
employers  
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# Money



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## They're Baaaaack!

### *Employees Laid off in the Past Have Some Preferential Hiring Rankings in the Present*

By John B. Marcin

With the economy tightening and the financial markets being restructured, unemployment is at the top of everyone's list and worries. Wrongfully failing to rehire a former employee can cost a law firm Big Money.

Recently, unemployment levels reached numbers the country has not seen in decades. The financial crisis and employment markets emphasize the importance of a recent ruling by the California Court of Appeal; *Tucker v. Grossmont Union High School District*. On October 28, 2008, the Court held in favor of a laid-off employee, stating that school district employees that are laid off for fiscal or lack-of-work reasons have statutory preferential reemployment rights over new applicants for any position within that district for which the laid-off employee is qualified.

#### **FACTUAL BACKGROUND**

In 1982, Charles Joseph Tucker, Jr. ("Tucker") began working for Grossmont Union High School District ("Grossmont") as a general maintenance worker. After a year and a half, he was promoted to maintenance supervisor. He left Grossmont to pursue a Masters in Business Administration degree, and returned in 1996 as a director of maintenance and operations.

In 2004, Grossmont asked a state agency, the Fiscal Crisis and Management Team (FCMAT), to review its classified management structure. FCMAT recommended eliminating Tucker's position and combining his duties with those of other positions

to reduce expenditures. On January 13, 2005, Grossmont's Board of Trustees voted to eliminate Tucker's position. He was laid off effective April 2005.

In April 2005 Tucker applied for the position of maintenance manager with Grossmont. According to Grossmont's human resources director, this position was of a lower class and had different job responsibilities than Tucker's previous position. Although Tucker was qualified for the position, Grossmont hired someone else, an individual who had never before worked for Grossmont.

Tucker petitioned for a writ of mandate and declaratory relief. He alleged that Grossmont illegally laid him off; it did not comply with his "bumping rights," which he claimed gave him the right to move into a job held by a current employee; and it violated his right to reemployment under Education Code section 45298, which gives employees laid off for lack of work or lack of funds reemployment preference over new applicants.

The superior court found that Grossmont legitimately laid off Tucker for lack of work and/or lack of funds and Tucker had no "bumping rights." But the court also found that Tucker has the right to be reemployed in preference to new applicants under Section 45298. The court found that Section 45298 does not limit reemployment to a job only within a particular classification. It stated that in order to exercise his right to reemployment, Tucker must apply for an available position and satisfy the qualifications promulgated by District for the position sought. Grossmont appealed.

#### **ANALYSIS**

The governing board of a school district prescribes written rules and regulations regarding personnel management of the classified service. (Cal. Educ. Code § 45113(a).) However, "the governing board may lay off and reemploy classified employees only in accordance with procedures provided by Sections 45298 and 45308 . . ." (§ 45114.)

Section 45298 provides:

"Persons laid off because of lack of work or lack of funds are eligible to reemployment for a period of 39 months and shall be reemployed in preference to new applicants."

Section 45298 describes the rights of a laid-off employee in relation to new applicants. It specifies that the laid-off employee has a right to reemployment in preference to a new applicant. In enacting Section 45298, the Legislature did not specify that the laid-off employee's preference to reemployment over a new employee was restricted to reemployment only in the same class from which he was laid off. Because the Legislature did not

*The court found that Section 45298 does not limit reemployment to a job only within a particular classification.*

include this language, the Court concluded that the Legislature did not intend to so restrict a laid-off employee's preference to reemployment versus a new applicant.

The Court disagreed with Grossmont's suggestion that language in the second paragraph of Section 45298 supports its interpretation that a properly laid-off employee may only be rehired in his own class. The Court noted that second paragraph of Section 45298 states: "Employees who take voluntary demotions . . . shall be granted the same rights as persons laid off . . . provided, that the same tests for fitness under which they qualified for appointment to a class shall still apply." The Court held that these words mean that employees who took voluntary demotions and laid-off persons have the same rights vis-a-vis each other to reemployment as long as they are still qualified for the class of employment. The language does not suggest that a laid-off employee's reemployment rights versus a new applicant are restricted to the same class from which he or she was laid off.

The Court also found instructive the Education Code analysis in *California Teachers Assn. v. Governing Board of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 632 ("Rialto"). Although Rialto involved interpretation of a different statute, the court's reasoning was useful in Tucker. Section 44919(b) provides that a limited assignment supervising pupils in an athletic activity "shall first be made available to teachers presently employed by the district." *Rialto*, 14 Cal.4th at 632. The school district had asserted the hiring preference provided by the statute only required it to make the application and interview process available to current credentialed teachers. The court, however, observed this would in effect give current teachers no advantage over other applicants.

The *Rialto* court ruled that section 44919(b) intended to give preference to employment in coaching positions to credentialed teachers currently employed by a district over non-credentialed employees or non-employees. *Rialto*, 14 Cal.4th at 634. The court noted that because the district has the authority to set the criteria it uses to determine the qualifications for the position, Section 44919(b) does not provide a guarantee of employment, but the preference is limited to those applicants qualified for the coaching position based on the criteria that the district itself creates. A teacher applying for a coaching position would have to show that the applicant meets the qualifications promulgated by the district before the district would be prohibited from hiring a non-credentialed employee or non-employee in preference to the teacher. *Rialto*, 14 Cal.4th at 644.

As it is applied to Tucker's case, section 45298 provides a preference for a laid-off employee vis-à-vis new applicants for reemployment in a position for which the laid-off employee is qualified. The Court noted that Grossmont's suggested interpretation of reemployment only within the same class would allow a school district to eliminate the position or class after laying off the employee, thereby doing away with the benefit the Legislature intended to afford to the laid-off employee. Because a school district has broad discretion to define the qualifications required for any position for which it seeks applicants, Section 45298's preference for laid-off employees who can fulfill the qualifications of a position protects both the interests of the laid-off employee and the school district in having an employee qualified for the position.

Like its reasoning with respect to the provisions of the Education Code, the Court also found Grossmont's fears that an employee laid off for lack of work and/or lack of funds will have inappropriate priority over other employees to be unpersuasive and unfounded. Nothing in the statutory provisions gives the laid-off employee the right to a position currently held by another employee. Further, the Court noted that Section 45298 does not provide a guarantee of reemployment. A school district has the ability to set its own hiring criteria for any given position to ensure that it may hire a well-qualified individual to fill the position. Accordingly, if a laid-off employee does not meet the school district's employment criteria, Section 45298 does not force the school district to rehire the laid-off employee. However, the Section does provide Tucker with preferential reemployment rights over any new applicants to available positions for which he is qualified.

## CONCLUSION

The *Tucker* holding clarifies and reaffirms Legislative intent behind Section 45298 of the Education Code. That means that if an employee is laid-off for fiscal or lack-of-work reasons, and the school district opens up another position for which the laid-off employee may be qualified, that laid-off employee has preferential reemployment rights for a new position over any other new applicants. This does not mean, however, that if a laid-off employee is not qualified for any new positions, that a school district must rehire him. Section 45298 protects only those laid-off employees that meet the standards for a new position as set out by a school district.

# Craig P. Alexander

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