

Not Reported in Cal.Rptr.3d

2004 WL 2418112 (Cal.App. 4 Dist.)

Not Officially Published

(Cal. Rules of Court, Rules 976, 977)

(Cite as: 2004 WL 2418112 (Cal.App. 4 Dist.))

Briefs and Other Related Documents

Only the Westlaw citation is currently available.

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

Court of Appeal, Fourth District, Division 1, California.

Steven J. BOSSI, Plaintiff and Appellant,

v.

GOVERNING BOARD OF the SOUTHWESTERN
COMMUNITY COLLEGE DISTRICT, Defendant and

Respondent.

No. D043405.

(Super.Ct.No. GIS10381).

Oct. 29, 2004.

Review Denied Feb. 2, 2005.

APPEAL from a judgment of the Superior Court of San Diego County, [Luis R. Vargas](#), Judge. Reversed and remanded with directions.

Michael P. Baranic, Gattey Baranic LLP, San Diego, CA, for Plaintiff and Appellant.

[Randall L. Winet](#), Winet, Patrick & Weaver, Vista, CA, for Defendant and Respondent.

[O'ROURKE](#), J.

*1 After the Governing Board of the Southwestern Community College District (Board) failed to renew Steven J. Bossi's employment contract, Bossi filed a verified petition for a preemptory writ of mandate. Bossi appeals the court's denial of the writ, contending that as a permanent classified employee of Southwestern Community College District (District), he could be dismissed only for cause. We reverse because substantial evidence does not support the court's decision.

FACTUAL AND PROCEDURAL HISTORY

On October 14, 1994, District hired Bossi as Director of Computer Systems and Services. On November 15, 1994, Bossi entered into an employment contract for the 1994-1995 school year. On February 23, 1995, District provided Bossi with a probationary employee performance evaluation that recommended his employment be continued. Board then voted to reemploy Bossi under yearly contracts for each year through the 2001-2002 school year. On March 11, 2002, Board voted not to employ Boss for the 2002-2003 school year. On March 12, District mailed a written notice of this action to Bossi.

On October 17, 1994, shortly after he was hired, Bossi signed a form entitled Conditions of Employment, stating employment conditions were "furnished in accordance with Article 88168 of the Education Code." District's document entitled "New Employee Check List" shows that on the same day, District provided Bossi with a number of documents, including the Classified Employee Handbook (the Classified Handbook).

Section II, subdivision K of the Classified Handbook (subdivision II K), entitled "Probation and Permanent Status ([Education Code Section 88013](#))," provides that "[A]ll original appointments of Classified employees shall be for a probationary period of nine months from the anniversary date of employment." It also provides: "An employee who serves the required probationary period in a satisfactory manner, and is re-employed, shall be classified as a permanent employee, and shall be subject to dismissal only for cause."

In addition to the Classified Handbook, nonunion classified employees receive the Management, Supervisory and Confidential Supplement (Supplement). The introduction to Supplement provides: "*The Classified Staff Handbook provides information, procedures and policies that apply to all Classified employees of the College.* Additionally, all members of the Bargaining Unit are subject to the provisions of a contract that exists between the District Governing Board and California School employees Association, Chapter 524. Classified Management, Supervisory and Confidential employees are not members of the Classified Bargaining Unit; therefore, the provisions of the Contract do not apply to these employees. *In addition*

Not Officially Published**(Cal. Rules of Court, Rules 976, 977)****(Cite as: 2004 WL 2418112 (Cal.App. 4 Dist.))**

to the provisions of the Classified Staff Handbook, this supplement provides additional information which applies to those employees not included within the Classified Bargaining Unit. (Italics added.) Supplement contains no provisions regarding employee dismissal.

*2 District also publishes an Administrative Handbook. The Administrative Handbook provides that District may elect not to renew an administrative contract by notifying the administrator by March 15 "in accordance with the provisions of the Education Code." The Administrative Handbook does not distinguish between a probationary and a permanent employee, but rather distinguishes between a tenured and non-tenured employee. There is no evidence in the record that District provided Bossi with the Administrative Handbook.

District has separate pay scales for classified management/supervisory positions and academic administrators. Bossi occupied the District's highest-level classified management position. At the April 18, 2001 Board meeting, Board made "offers of reemployment" to each member of the classified staff, including classified managers and non-supervisory classified employees. [FN1] In the agenda for the same meeting, Board also voted to reemploy academic administrators, which were placed into a separate category from the classified staff.

[FN1]. The suggested order of business/minutes of the April 18, 2001 Board meeting states: "C. REEMPLOYMENT OF CLASSIFIED STAFF (ENCLOSURE)

"All reemployment is for the same conditions as existed in the 2000-01 College Year unless otherwise noted....

"1) Recommend reemployment for the 2001-2002 college year of 338 Classified personnel per attached list...."

The court found Bossi to be an administrator under [Education Code section 87002](#). [FN2] Based upon that finding, the court determined Bossi's dismissal was governed by section 72411, which provides that District may chose not to renew a contract upon proper notification, as described in the Administrative Handbook. District

followed that procedure by providing Bossi with a written notice of its election not to rehire him on March 12, 2002. The court rejected Bossi's reliance upon subdivision II K of the Classified Handbook because subdivision II K refers to [Education Code section 88013](#), which contains an exception for employees employed under [Education Code section 72411](#). The court further found Bossi's name on a list of classified employees receiving offers of reemployment and his inclusion on a management /supervisory salary schedule failed to contradict his employment as an administrator subject to [section 72411](#).

[FN2]. All further statutory references are to the Education Code unless otherwise specified.

DISCUSSION

We review the trial court's ruling on a writ of mandate to determine whether the findings of the trial court are supported by substantial evidence. (*Saathoff v. City of San Diego* (1995) 35 Cal.App.4th 697, 700, 41 Cal.Rptr.2d 352.) After reviewing the entire record, we affirm only if the record contains evidence of " 'ponderable legal significance,' 'reasonable in nature, credible and of solid value' " that supports the judgment. (*Grappo v. Coventry Financial Corp.* (1991) 235 Cal.App.3d 496, 507, 286 Cal.Rptr. 714.)

The parties agree Bossi was employed as a classified [FN3] administrator, which is defined by [section 87002](#) as a supervisor or manager who is not employed as an educational administrator.

[FN3]. Most nonacademic positions are designated classified positions because a community college district must organize these positions into classes and occupational categories. (§§ 88003, 88076.)

[Section 88013](#) governs personnel management of classified employees. It provides in part: (a) "The governing board of a community college district shall prescribe written rules and regulations, governing the personnel management of the classified service, which shall be printed and made available to employees in the classified service, the public, and those concerned with the administration of this section, whereby these employees are, *except as provided in [Section 72411](#)*,

Not Reported in Cal.Rptr.3d
2004 WL 2418112 (Cal.App. 4 Dist.)

Not Officially Published

(Cal. Rules of Court, Rules 976, 977)

(Cite as: 2004 WL 2418112 (Cal.App. 4 Dist.))

designated as permanent employees of the district after serving a prescribed period of probation which shall not exceed one year...."

*3 "(b) Any employee designated as a permanent employee *shall be subject to disciplinary action only for cause* as prescribed by rule or regulation of the governing board, but the governing board's determination of the sufficiency of the cause for disciplinary action shall be conclusive." (Italics added.) " 'Disciplinary action' includes any action whereby an employee is deprived of an classification or any incident of any classification in which he or she has permanence, including *dismissal*, suspension, demotion, or any reassignment, without his or her voluntary consent, except a layoff for lack of work or lack of funds." (§ 88001, subd. (e), italics added.)

[Section 88013](#), subdivision (a) provides an exception for employees governed under [section 72411](#), which provides for a different dismissal procedure. [Section 72411](#) provides in part: "(a) Every educational administrator *shall* be employed, and all other administrators *may* be employed, by the governing board of the district by an appointment or contract of up to four years in duration.

"(b) If the governing board of a district determines that an administrator is not to be reemployed by appointment or contract in his or her administrative position upon the expiration of his or her appointment of contract, the administrator shall be given written notice of this determination by the governing board.... For [an] administrator [employed under contract for one-year or less], notice that the administrator may not be reemployed by appointment or contract in his or her administrative position for the following college year shall be given on or before March 15." District gave Bossi notice on March 12, which complies with the requirements of [section 72411](#), subdivision (b).

Substantial evidence does not support the court's conclusion Bossi was employed under section 74211. The court based its conclusion solely on that fact that Bossi is employed as a classified administrator under [section 87002](#). Although section 74211 governs the dismissal of all educational administrators, it provides that District *may* choose to

employ a classified administrator under its terms.

District's records show that on October 17, 1994, a few days after Bossi was hired, District presented him with the Classified Handbook. Further, District complied with procedures in the Classified Handbook by providing Bossi with a performance review, which listed Bossi's status as probationary employee, on February 23, 1995, during the nine-month probationary period described in the Classified Handbook. District reemployed Bossi for the 1995-1996 school year. Bossi's satisfactory performance review combined with reemployment satisfies the requirements for reclassifying him as a permanent employee, under subdivision II K of the Classified Handbook. As a permanent employee, Bossi could be terminated only for cause. In contrast, the Administrative Handbook does not discuss a probationary period for educational administrators. As mentioned above, there is no evidence in the record that Bossi received a copy of the Administrative Handbook. District's giving Bossi the Classified Handbook instead of the Administrative Handbook and providing him with a probationary performance review are uncontradicted evidence District employed Bossi under the conditions described in the Classified Handbook; that is, under [section 88013](#). (See [Healdsburg Police Officers Assn. v. City of Healdsburg \(1976\) 57 Cal.App.3d 444, 129 Cal.Rptr. 216](#) [police officers subject to termination procedure contained in employee manual even though they could be terminated without cause under [Government Code sections 36505, 36506](#)].)

*4 There is no evidence District chose to apply [section 72411](#) to Bossi. This conclusion is not contradicted by District's granting Bossi one-year contracts because District employed all classified employees, including nonsupervisory classified employees, for one-year terms. [\[FN4\]](#) Further, the declarations of three of District's classified administrators stating they believe District employs them under the provisions of [section 72411](#) does not provide evidence Bossi was employed under 72411 because District is not required to employ each and every classified administrator under [section 72411](#).

[FN4](#). The Board's policy of issuing "offers of reemployment" each year to the classified

Not Reported in Cal.Rptr.3d
2004 WL 2418112 (Cal.App. 4 Dist.)

Not Officially Published

(Cal. Rules of Court, Rules 976, 977)

(Cite as: 2004 WL 2418112 (Cal.App. 4 Dist.))

employees is inconsistent with the permanent status of those employees as defined by [section 88013](#) and the Classified Handbook. (See [Healdsburg Police Officers Assn. v. City of Healdsburg, supra, 57 Cal.App.3d 444, 129 Cal.Rptr. 216.](#))

DISPOSITION

The judgment is reversed. The court is directed to enter a judgment granting a writ of mandate requiring Southwestern Community College District to set aside its March 11, 2002 decision not to reemploy Steven J. Bossi and to grant any other relief the court finds necessary consistent with this opinion.

WE CONCUR: [BENKE](#), Acting P.J., and [NARES](#), J.

2004 WL 2418112 (Cal.App. 4 Dist.) Not Officially Published, (Cal. Rules of Court, Rules 976, 977)

Briefs and Other Related Documents ([Back to top](#))

- 2004 WL 2205645 (Appellate Brief) Appellant's Reply Brief (Jul. 14, 2004)
- 2004 WL 1683237 (Appellate Brief) Appellant's Opening Brief (May. 28, 2004)Original Image of this Document (PDF)
- [D043405](#) (Docket) (Nov. 24, 2003)

END OF DOCUMENT