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CERTIFIED FOR PARTIAL PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION et al., Plaintiffs and Appellants, v. GOVERNING BOARD OF THE SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT, Defendant and Respondent.	G032195 (Super. Ct. No. 01CC13679) ORDER MODIFYING OPINION AND DENYING PETITION FOR REHEARING; NO CHANGE IN JUDGMENT

The petition for rehearing is DENIED. It is ordered that the opinion filed on November 30, 2004, as modified by the order filed herein on December 10, 2004, be further modified as follows:

On page 5, delete the entire first two paragraphs beginning with "The District claims Schwab's lawsuit" and "Laches is ordinarily a question of fact" and replace with the following:

> The District contends Schwab's claims for reinstatement and backpay are barred by the doctrine of laches because he unreasonably delayed filing his grievance, potentially forcing the District to provide both

backpay to Schwab and wages to the employee hired to replace him.[1] We are not persuaded.

A review of the hearing transcript and the detailed minute order setting forth the trial court's findings and conclusions regarding the writ petition reveals nothing to indicate the trial court considered the issue of laches in denying the petition. Nonetheless, our task is to review the correctness of the trial court's judgment, not its reasoning. (*Ladas v. California State Auto Assn.* (1993) 19 Cal.App.4th 761, 769.) Accordingly, if the trial court's denial of the writ petition is correct on any ground, the decision must be upheld. (*Warmington Old Town Associates v. Tustin Unified School Dist.* (2002) 101 Cal.App.4th 840, 864.) Laches is ordinarily a question of fact to be determined by the trial court. (*Chang v. City of Palos Verdes Estates* (1979) 98 Cal.App.3d 557, 563). But if the underlying facts are undisputed, as here, the issue of laches may be decided as a matter of law.[2] (*Heavenly Valley v. El Dorado County Bd. of Equalization* (2000) 84 Cal.App.4th 1323, 1334; *San Bernardino Valley Audubon Society v. City of Moreno Valley* (1996) 44 Cal.App.4th 593, 605.)

In the present case, Schwab worked in excess of 195 days for the first time during the 1996-1997 academic year. Thus, as the District points out, under petitioners' interpretation of section 88003, Schwab first became entitled to status as a regular classified employee sometime in the spring of

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[1] Although the District contends Hamblen and Osuna's claims also are barred by laches, it fails to make any substantive argument regarding their actions. We therefore decline to address laches as it pertains to these two claimants.

[2] We acknowledge there exists an apparent dispute as to whether Schwab was "discharged" at the time he ceased performing duties for the District. This dispute, however, has no bearing on our determination.

1997. Schwab, however, did not challenge his nonclassified status until his employment ceased with the District in July 1999, when he and the other petitioners filed their grievance. Petitioners did not file their writ petition until October 2001, more than 17 months after the Arbitrator's Decision and Award. Finally, Schwab and the other petitioners did not obtain a hearing on their writ petition until February 2003. Unquestionably, Schwab delayed pursuing his remedies against the District.

Nevertheless, "[d]elay alone ordinarily does not constitute laches, as lapse of time is separately embodied in statutes of limitation. [Citation.] What makes the delay unreasonable in the case of laches is that it results in prejudice." (*Lam v. Bureau of Security & Investigative Services* (1995) 34 Cal.App.4th 29, 36, citing *Brown v. State Personnel Bd.* (1985) 166 Cal.App.3d 1151, 1159.) The California Supreme Court has stated the basic rule for applying the defense of laches as follows: "The doctrine of laches bars a cause of action when the plaintiff unreasonably delays in asserting or diligently pursuing the cause and the plaintiff has acquiesced in the act about which the plaintiff complains, or the delay has prejudiced defendant." (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 77; accord, *Piscioneri v. City of Ontario* (2002) 95 Cal.App.4th 1037, 1048 (*Piscioneri*).) The District, as the party asserting laches, has the burden of proving the elements of that defense. (*Mt. San Antonio Community College Dist. v. Public Employment Relations Bd.* (1989) 210 Cal.App.3d 178, 188.) "'Prejudice is never presumed; rather it must be affirmatively demonstrated by the defendant in order to sustain his burdens of proof and the production of evidence on the issue.'" (*Piscioneri, supra,* 95 Cal.App.4th at p. 1050.)

In support of its claim of prejudice, the District provided evidence it had replaced Schwab with another employee immediately upon his

departure from the District in the spring of 1999. Arguing this evidence is sufficient to demonstrate prejudice, the District cites *Conti v. Board of Civil Service Commissioners* (1969) 1 Cal.3d 351 (*Conti*) for the proposition that delay resulting in the hiring of a replacement worker may prejudice the employer "because reinstatement would require discharge of a substitute employee or because the employing agency, might be compelled to incur a double payment consisting of back pay to the discharged employee and salary to his replacement." (*Id.* at p. 360.) The District's reliance in *Conti* is misplaced.

The brief passage from *Conti* relied upon by the District merely recognized an agency employer *might* suffer prejudice *if* the agency were required to discharge a replacement employee, or *if* the agency were required to make a double payment. *Conti's* point was not that such prejudice would inevitably follow from the agency's hiring of a replacement employee, but that any potential prejudice must be demonstrated; it will not be presumed. The court made this unmistakably clear in the portion of its opinion immediately following that quoted by the District: "But . . . such matters, if true, are easily provable by the employing agency. [¶] Many public agencies employ thousands of persons; vacant positions suitable for reinstatement of a discharged employee may occur with regularity. If a suitable vacancy exists, the discharged employee, by waiving his claim to back salary and other benefits, can often eliminate the last vestige of prejudice." (*Conti, supra*, 1 Cal.3d at p. 360.)

The District has provided no evidence demonstrating that reinstatement of Schwab would require the termination of the worker hired to replace him, or would cause the District to pay for two employees where

only one is needed. As *Conti* noted, "such matters, if true, are easily provable." Moreover, our affirmance of the trial court's denial of backpay to petitioners (see part IV, *post*) eliminates any potential prejudice of a "double payment" consisting of backpay to Schwab and the wages of his replacement.

The District argues even if it did not suffer prejudice from Schwab's delay in seeking redress, Schwab's acquiescence in the District's actions provides an alternate basis for invoking the doctrine of laches. In support of its argument, the District cites evidence that Schwab signed a monthly "Substitute Time Card" during his employment, accepted payment as a substitute, and was utilized as a substitute worker in place of permanent employees on leave. The District also argues Schwab implicitly acknowledged his continuing status as a nonclassified substitute worker when he applied for several permanent positions during the time he claims he was entitled to classified worker status.

Although cases interpreting the "prejudice" requirement for laches are legion, those interpreting the "acquiescence" requirement are few. On this subject, the District cites as its sole authority the case of *American Federation of Teachers v. Board of Education* (1977) 77 Cal.App.3d 100 (*AFT*). *AFT,* however, did not purport to interpret the acquiescence requirement, but centered its laches analysis on prejudice.

In *AFT,* a teacher entered into a written employment contract specifying she would be a temporary employee pursuant to a specific Education Code statute. Several months after her employment term expired, she learned her employment contract had specified the wrong statute to authorize her temporary employment, and filed suit to obtain probationary status for a permanent teaching position. *AFT* upheld the trial

court's conclusion the teacher's claim was barred by the doctrines of laches and estoppel. (*Id.* at pp. 103-104.)

The Court of Appeal recognized the school district suffered prejudice when it detrimentally relied upon both the teacher's execution of a written contract confirming her temporary status and her delay in filing a claim. As a consequence, the school district could no longer provide the statutory required notice of termination given to probationary employees the district no longer wished to retain. (*Aft, supra,* 77 Cal.3d at p. 109.) Nothing in *AFT* suggests the court would have found the teacher's claims barred by laches simply by virtue of the teacher's execution of the employment contract and the delay in pursuing her claims.

Even assuming, arguendo, the court's finding of prejudice was not necessary to the court's finding of laches in *AFT,* the present case is factually distinguishable. Unlike the teacher in *AFT,* Schwab filed his grievance almost immediately after he left the District's employ in July 1999. In *AFT,* the teacher's status was designated by an employment contract that did not provide for any change in employment status; Schwab's execution of a monthly "Substitute Time Card," however, was not intended to memorialize any agreement on how he would be treated in the future, but was simply a means for him to be paid. More importantly, unlike *AFT,* there exists in the present case a statute mandating the District's treatment of substitute workers who work over 75 percent of any given college year. (See part III, *post*.)

The notion that Schwab "acquiesced" in the District's treatment of him merely by continuing to work in a capacity as a substitute worker, signing time cards, and accepting his wages, cannot be accepted in the face of a statute expressly dictating the manner in which his employment was to

be handled. A contrary conclusion would undermine the various laws specifically tailored to protect employee rights. In an analogous context, the court in *California School Employees Assn. v. Santee School Dist.* (1982) 129 Cal.App.3d 785, 788-789, recognized that a worker's voluntary acceptance of employment under terms in conflict with a statutory mandate "certainly is not a waiver of any statutory rights and to hold otherwise would be to open the door to possible loss of a myriad of employee rights."

Finally, Schwab's quest for a permanent position during the time he worked as a substitute worker is not evidence of his acquiescence in the District's treatment of him. Instead, it simply disclosed a continuing interest in becoming a permanent employee and a desire to achieve this goal without the necessity of filing a grievance or lawsuit.

Accordingly, we conclude, the District has not met its burden of proof to establish the defense of laches.

These modifications do not change the judgment.

ARONSON, J.

WE CONCUR:

O'LEARY, ACTING P. J.

FYBEL, J.