

# TO KILL AB 2705

## Sponsorship, Costs, and Cervisi v. Unemployment Insurance Appeals Board

by Ryan Tripp

**In late 1983**, Gisele Cervisi and Sophia Lenetaki, part-time faculty members at City College of San Francisco, accepted part-time teaching assignments and subsequently taught French and Greek through spring 1984. Cervisi's name would later become synonymous with part-time faculty unemployment benefits and the idea of reasonable assurance through the landmark case *Cervisi v. California Unemployment Insurance Appeals Board*.

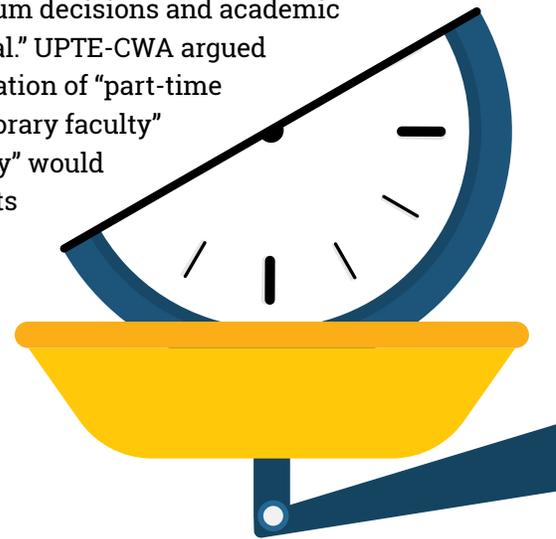
Nearly a quarter of a century later, this history-changing case would have a significant impact on a bill intended to rename "part-time faculty" to "contingent faculty" in California's education code.

In February 2014, former State Assemblyman Das Williams introduced AB 2705, which would have replaced the term "part-time" or "adjunct" with "contingent" in Ed. Code. The bill was sponsored by faculty at Butte College, Mt. San Jacinto College, and College of the Sequoias, who had joined the University Professional and Technical Employees-Communications Workers of America (UPTE-CWA). UPTE-CWA provided bargaining assistance and ultimately lobbied for the introduction of what would become AB 2705 (Williams). According to UPTE-CWA 2014 position papers, "many part-time faculty have been searching for a more accurate name/designation to better reflect their role within the CCC system. The current terms—'temporary'

and 'part-time'—are not only applied haphazardly but have also proven to be problematic due to their negative connotations."

The equation of "temporary" with "part-time faculty," declared the UPTE-CWA, "demeans their value, assumes they are not giving their full attention to student success and negates the fact that they are the instructional backbone of every community college." UPTE-CWA additionally held that California community college departments "use[d] this as an excuse to prevent part-time faculty members from engaging in department decisions, curriculum decisions and academic decisions in general." UPTE-CWA argued that the reclassification of "part-time faculty" and "temporary faculty" to "associate faculty" would leave local contracts unaltered while still precipitating "change [that] will provide clarity and bring recognition."

John Martin, an instructor at Butte College, a UPTE-CWA affiliate, served as chair of the



California Part-Time Faculty Association (CPFA). Martin spearheaded co-sponsorship of AB 2705 by the CPFA, adamant that the reclassification of “part-time” and “temporary” to “associate” would not compromise “the ability to secure unemployment benefits when faculty are not engaged in teaching either between terms or during the summer.”

According to Martin, the reclassification “is a step toward self-empowerment and self-identification” and a “major step in the process of respecting and acknowledging the ongoing contribution of non-tenured faculty to student success and the commitment to faculty development and governance.” He wrote that “what we choose to call ourselves is as important as gaining recognition in our ongoing efforts to gain not only respect but inclusion in shared governance, rights to due process and academic freedom, as well as benefits, improved office hours, parity pay, and more stable working conditions.”

Additional AB 2705 goals included an equal employment opportunity plan for achieving a predetermined ratio of “regular and contract faculty to associate faculty hiring” and establishing the order of employment of all “regular, contract, and associate employees” in a given district.

Less than a month later, the steering committee for the California Conference of the American Association of University Professors, which represented professors in the California State University, University of California, and California community college systems, endorsed the bill, declaring, “The bill only changes terminology, but we feel that this is an important first step in addressing the inequitable two-tier professoriate that has emerged in the California community college system.” The steering committee hoped that AB 2705 would ignite a “larger conversation about removing the artificial distinctions that segregate contingent and non-tenure-track faculty, and preclude their full participation in what AAUP calls ‘the life of the university’ [and community college].”

Despite support from some in the field, the California Federation of Teachers (CFT) denounced AB 2705. The CFT opposition derived from



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the American Federation of Teachers' (AFT) previous role in a court case on unemployment insurance for "part-time" and "temporary" instructors who do not receive assignments in a given semester. In May 2014, the CFT posted a 25-year anniversary retrospective essay on this case.

The authors of AB 2705 assured constituents that "it is the intent of the Legislature, in enacting this act, to act consistently with, and in no way to compromise or limit, the holding of the Court of Appeals in the case of *Cervisi v. Unemployment Insurance Appeals Board* (1989), 208 Cal.App.3d 635."

In response to CFT's opposition, the Assembly Higher Education Committee, chaired by Das Williams, amended AB 2705. In a crucial revision, legislators reclassified "associate faculty" to "contingent faculty," which explicated the uncertainty of course loads for AB 2705 instructors on a semesterly basis. This alteration conformed with the rationale offered for the *Cervisi* appellate decision.

Jason Lee, deputy legislative counsel for the State Assembly, drafted an opinion arguing that the reclassification was unnecessary and that "part-time" and "temporary" instructors in California community colleges "who are eligible for unemployment insurance would not lose their eligibility as the result of their titles being statutorily changed to 'associate' faculty."

The Legislative Counsel's opinion rested on three premises. First, the *Cervisi* decision did not set the legal parameters for instructor unemployment insurance in California community colleges. Rather, compensation benefits were payable to eligible unemployed instructors by the

California Unemployment Insurance Code §1253.3. Any "reasonable assurance" of course assignments or employment in a subsequent semester or term rendered a given instructor ineligible for unemployment insurance. The code defined "reasonable assurance" as including, but not limited to, "an offer of employment or assignment made by the educational institution, provided that the offer or assignment is not contingent on enrollment, funding, or program changes."

Second, Counsel argued that "reasonable assurance" was the barometer for unemployment insurance eligibility. In this telling of the 1989 *Cervisi v. Unemployment Insurance Appeals Board*, the decision proffered the argument that any employment contingent on "adequate enrollment, funding, and approval of the District's Board of Governors" is not "reasonable assurance" of continued employment.

In the appellate case, the Court of Appeals upheld the *Cervisi* trial court decision, making the claimants eligible for unemployment insurance. The appellate court based its ruling on the "administrative record," which included a "standard faculty assignment form," stating that "employment is contingent upon ... adequate class enrollment." The "administrative records" also established that the entire district had undergone a significant drop in enrollment. "A contingent assignment," then, "is not a 'reasonable assurance' of continued employment."

Legislative Counsel premised its opinion—that the shift to "associate faculty" would not result in instructor ineligibility for unemployment insurance—reiterated that the appellate court "determined that they [claimants] did not have reasonable

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assurance under the plain meaning of §1253.3” and that AB 2705 would “not alter, add, or remove particular conditions of employment.”

The Part-Time Faculty Committee for the Faculty Association of California Community Colleges (FACCC) also reviewed the bill and recommended that FACCC support it; however, concerns remained about the potential impact on access to unemployment insurance. “It appears that during the recent language change from ‘associate’ to ‘contingent’ important language was deleted specifying regular and contract full-time faculty, and this must be restored.”

CFT representatives were not satisfied with the Assembly Committee on Higher Education’s assessment of the bill, nor with the qualified support issued from the FACCC.

The Assembly Higher Education Committee analysis of AB 2705 noted that the current classification was “convoluted and inconsistent; the terms ‘part-time’ and ‘temporary’ are used interchangeably and haphazardly throughout the code.” The sheer number of “extensive, complex statutes, many of which apply to ‘full-time,’

‘part-time,’ ‘temporary,’ ‘contract’ and other academic employees, in a wide array of situations related to multiple aspects of district employment,” exacerbated “the confusion” and heightened the need for a “standardized term.”

The analysis also addressed the Cervisi case. The 1989 ruling set a precedent by affirming “AFT’s view that part-time faculty do not have ‘reasonable assurance’ of assignment rights in the next school term and therefore should not be ineligible for unemployment benefits during periods of lay off ... part-time faculty who are unemployed after the end of any semester or summer session can therefore apply for and receive benefits.”

According to CFT, any attempt to change the definition of “part-time faculty” and “temporary faculty” could potentially render the Cervisi decision “moot, and at the least give Administrative Law Judges throughout the state a basis upon which not to apply the findings in Cervisi.” CFT argued that the bill, “while well intended,” changed “the definition of part-time faculty in the ED” and “may have the effect of inviting courts to revisit the Cervisi decision held by the California Court of Appeals (1989), and make it harder

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to vindicate the rights of temporary CCC teachers to collect unemployment benefits.” In the CFT assessment of Cervisi, “the appellate court ruled that part-time, temporary instructors are eligible for unemployment if they have a teaching assignment that can be cancelled for lack of funding, low enrollment, or other factors.” In AB 2705 the change from “part-time and temporary faculty” to “contingent faculty,” while offering “some intangible benefit to employees who prefer to not be called part-time,” really amounted to “a case of unintended consequences.” The Education Code and case law did not deploy “part-time, temporary faculty” solely as “an accurate description.” This classification was what “labor attorneys rel[ie]d on for their opinions and cases under the Education Code.”

In August 2014, consultants for the California Senate Appropriations Committee provided a synopsis of revisions to the bill. In the revised AB 2705, Das Williams included a new field office

directive for the Employment Development Department in order to appraise the purpose of “unemployment insurance benefits that reflect the substitution of the term ‘contingent faculty’ for the terms ‘part-time faculty’ and ‘temporary faculty’ in the California Education Code.”

Consulting staff for the Senate Appropriations Committee noted that Education Code §87481, which similarly governed “the employment of part-time and temporary faculty, continue[s] to identify them as such.” The result would be “inconsistent references” that could “potentially both impact collective bargaining agreements and invite litigation.” The report further explicated this potential impact: in all likelihood, the 72 California community college districts would have to revise local collective bargaining agreements. The labor required to “review and revise documents could be deemed reimbursable,” but if any party disagreed “about when to use ‘contingent faculty’ and when to use ‘part-time

faculty’ or ‘temporary faculty’ in the agreement (especially in light of inconsistency in the code sections), there will be additional costs to renegotiate contracts, and negotiation costs are currently reimbursable under the existing mandate.” If deemed reimbursable, the costs would be minimal for California community college districts. Conversely, the costs would be deflected to the California state government and, ultimately, taxpayers. Approximations of these costs “exceed[ed] \$100,000 (General Fund) statewide.”

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The fiscal reservations of the California Senate Appropriations Committee, in concert with ongoing CFT opposition, effectively submerged AB 2705 into a legislative abyss. In the fall 2014 issue of *Academe Magazine*, the CFT Council president rejoiced, proclaiming that the “CFT succeeded in defeating an ill-considered legislative bill which purported to bring ‘respect’ to adjunct faculty members by changing their Education Code classification from ‘temporary’ to ‘contingent.’” The president argued that supporters of the bill had “overlooked the potential loss of unemployment benefit eligibility this change to the code would create. Fortunately, after a great deal of lobbying by the CFT, community college districts, and others, we were able to kill AB 2705.” He assured readers that the CFT planned on bringing “real dignity to part-time faculty” by launching a statewide campaign for pay equity, paid office hours, and employment security. The CFT also had begun to organize “a series of statewide actions that we hope will culminate in the governor recognizing these important needs in his January [2015] state budget proposal.” Designations such as “associate faculty” and “contingent faculty” heralded neither “dignity” nor accurate representation of “part-time faculty” contributions. Misled efforts by authors and sponsors of the bill had not been necessary in any case. In the CFT purview of “dignity,” gubernatorial budget allocations for pay parity accomplished the same goals with none of the consequences.

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AB 2705 perished in California legislative committee review, but the ideas contained therein live on. In 2021, amid remote instruction and the COVID-19 pandemic, instructors from the Santa Rosa Junior College District’s All Faculty Association (AFA) revived demands for district administrators to reclassify “adjunct” and “part-time faculty” to “associate faculty” in administrative documents. Despite pushback from some faculty, members of the Santa Rosa Junior College District’s AFA overwhelmingly approved measures to reclassify “part-time faculty” and “adjunct faculty” to “associate faculty.” Implementation is pending, but the movement breathed new life into the ideas conceived by authors and sponsors of AB 2705. Proponents of the Santa Rosa reclassification hope that the outcome of their district referendum will spark proposals in additional California community colleges. They anticipate many lives for such ideas and not reburials of the same. ■