

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

MELISSA WASHINGTON,

Plaintiff and Appellant,

v.

ALTA LOMA SCHOOL DISTRICT,

Defendant and Respondent.

D088028

(Super. Ct. No. CIVSB2304148)

APPEAL from a judgment of the Superior Court of San Bernardino County, Tony Raphael, Judge. Reversed and remanded with directions. Equality Law and Tamra M. Smith for Plaintiff and Appellant. Fozi Dwork & Modafferi and Daniel S. Modafferi for Defendant and Respondent.

INTRODUCTION

Public school districts may not classify a teacher as a temporary employee “unless the position in which he or she is employed is ‘a position the law defines as temporary.’” (*Stockton Teachers Assn. CTA/NEA v. Stockton Unified School Dist.* (2012) 204 Cal.App.4th 446, 457 (*Stockton*)). Education Code section 44920 permits school districts to hire and classify a teacher as a temporary employee for up to one school year to replace a teacher who “has

been granted *leave* for a semester or a year, or is experiencing long-term illness.”¹ (Italics added.)

Relying on section 44920, the Alta Loma School District (District) defends its classification of Melissa Washington as a temporary employee for the three consecutive years she taught at the District’s elementary school. Specifically, the District claims it hired Washington to fill in for two permanent teachers who were sharing one full-time teaching position under a voluntary job-sharing arrangement. It contends such a job-sharing arrangement constitutes “leave” under section 44920, permitting the District to classify Washington as a temporary employee and ultimately to summarily dismiss her after her third year of teaching. We disagree.

We hold the term “leave” under section 44920 means “leave of absence.” Part-time work such as a teacher’s reduction in workload due to a voluntary job-sharing arrangement does not constitute a leave of absence under section 44920 that permits the hiring and classification of his or her replacement as a temporary employee. In reaching this conclusion, we follow our Supreme Court’s pronouncement in *Balen v. Peralta Junior College Dist.* (1974) 11 Cal.3d 821, 826 (*Balen*) that temporary classifications for teachers should be strictly construed.

We thus agree with Washington that she was misclassified as a temporary employee during the entire term of her employment. Under the Education Code, Washington defaulted to the classification of a probationary

¹ We use “teacher” to mean a “certificated teacher,” a person who holds a valid teaching credential issued by the California Commission on Teacher Credentialing and is legally authorized to teach in California’s public schools. (See *Stockton, supra*, 204 Cal.App.4th at p. 452 [“Certificated employees are those who have a credential or certificate issued by California’s Commission on Teacher Credentialing. (Ed. Code, §§ 44001–44006.)”].) Additionally, all further undesignated statutory references are to the Education Code.

employee for the first two school years, after which she became a permanent employee by operation of law for the third year. As a permanent employee, the District was not permitted to summarily dismiss Washington. The trial court erred by concluding otherwise and denying Washington's petition for writ of mandate (Code Civ. Proc., § 1085). We reverse the judgment and remand with instructions for the trial court to issue a writ of mandate directing the District to reinstate Washington as a permanent employee with the seniority date of August 2, 2019, and to hold further proceedings to determine her damages for lost compensation. In doing so, we reject the District's argument that the doctrine of laches bars the relief we grant Washington.

BACKGROUND

I.

Washington's Employment and Classification by the District

Washington began work at the District on August 2, 2019, when she was hired to teach a first-grade class at Stork Elementary for the entire 2019–2020 school year. During her interview, Washington was told she would be filling a new teaching position created by a last-minute increase in enrollment. Phillip Suttner, Stork Elementary's principal at the time, also testified he hired Washington for an additional first-grade class that was added due to increased enrollment.

Washington was not informed during her interview that she would be hired as a temporary employee rather than a probationary employee. But when she arrived at the District's office to sign her employment contract, she was presented with a contract for temporary employment. The human resources director told Washington it was “‘just part of the process’” and that she would be reclassified as a probationary employee in the future. The

employment contract Washington signed stated, “You are a temporary employee and will be required to render service for such length of time during the school year as the District governing board may direct. Employment is subject to termination by the governing board at any time.”

Washington twice asked Principal Suttner during her first school year about her temporary classification, and Suttner told her both times that he expected her to be classified as a probationary employee for the next school year. From speaking with Suttner and the human resources director, Washington understood that “the District’s regular procedure was to start new employees off with temporary status, then switch them to probationary 1, then to probationary 2.” Washington testified that “quite a few people,” including all the first-grade teachers, told her it was the normal process that she would be classified as probationary in the next school year. Suttner told her that for the 2019–2020 school year, “all other teachers hired the same year were also offered temporary contracts, with no exceptions.”

In March of the 2019–2020 school year, the COVID-19 pandemic began, and Washington switched to teaching her class remotely. Washington attested, “Around the end of the 2019–2020 school year, [Principal] Suttner told me that due to the uncertainty of the COVID-19 pandemic, the District would only offer me a temporary contract for the 2020–2021 school year, and would switch me to probationary the following school year.” As Washington recalled, Suttner apologized to her for the situation, and stated that, without exception, all the temporary teachers had been offered only temporary positions for the upcoming school year. Washington signed an employment contract with the same provisions regarding temporary employment as she had signed the previous year.

During the 2020–2021 school year, Washington taught third grade remotely because of the pandemic. Toward the end of that year, Suttner again told Washington that the District would offer her only a temporary contract for the 2021–2022 school year. As Washington testified, “Again, he apologized profusely. He said, this has never happened. I’m not sure what’s going on. But the [D]istrict did say that, again, because they’re unsure of the enrollment and numbers because of COVID, that I would be, again, a temporary teacher for another year. [¶] He did let me know that it would be—it might be possible for the following year to possibly even get tenureship, since I’d already been there a good amount of time, for three—for almost three years.” As in the previous year, Suttner told Washington that all the teachers on temporary contracts who would be returning the next year had been offered temporary contracts for the next school year, and “there were no exceptions.”

After that conversation, Washington signed an employment contract for the 2021–2022 school year, which contained the same provisions regarding temporary employment as the previous contracts. Washington explained that when the secretary in the human resources office gave her the contract to sign, “she apologized that this never happens, that she’s got quite a few temporary teachers going on their third year now as a temporary teacher.” The secretary “reiterated, as well, that for the following year, that [Washington] may be offered tenureship just because [she had] been there for so long.”

During the 2021–2022 school year, Washington began teaching third grade, but after approximately two weeks, the school switched her to fifth grade for the remainder of the school year.

In early March 2022, about eight weeks before the school year ended, the District's Assistant Superintendent of Human Resources, Donna Carlson, told Washington the District would not be offering her, or any of the temporary teachers, a contract for the 2022–2023 school year. Carlson stated the decision was due to the loss of funding related to the COVID-19 pandemic and because of low enrollment.

Washington applied for temporary teaching positions that the District advertised for the next school year, but she was not hired.

II.

Petition for Writ of Mandate

In February 2023, Washington filed a verified petition for writ of mandate directing the District to reinstate her as a permanent employee with a seniority date of August 2, 2019. She further sought an order requiring that the District make her whole for lost wages and benefits, and any other appropriate relief.

Relevant here, in the petition's first cause of action Washington alleged she was misclassified as a temporary employee. Washington asserted she should have been classified as a probationary employee for her first two school years with the District, and then as a permanent employee in her third year. As such, the District could terminate Washington's employment at the end of her third year only if it followed the required procedures specified in the Education Code for terminating permanent employees. The District therefore had a mandatory duty to employ Washington as a permanent employee until it followed the proper procedures to terminate her employment.²

² Washington alleged in the second cause of action that even if she was properly classified as a temporary employee, the District failed to afford her

In October 2024, Washington filed a motion for a peremptory writ of mandate, which the District opposed.³ In March 2025, the trial court heard oral argument on the motion and considered the parties' evidence which included, among other things, the deposition testimony of Washington and Principal Suttner.⁴

In its opposition memorandum, the District claimed Washington was properly classified as a temporary teacher for each of the three school years because, each time, she was hired as a placeholder for two permanent certificated teachers at Stork Elementary, M.L. and A.H. Under a job-sharing arrangement, M.L. and A.H. shared one full-time teaching position.

preferential reemployment rights under section 44918 because it hired new teachers, instead of her, to fill the vacant positions for which she applied. Because we conclude that the District improperly classified her as a temporary employee, we need not consider Washington's claim for preferential reemployment. We thus limit our discussion to the first cause of action.

Washington also sought an award of attorney fees under Government Code section 800. On the District's motion, the trial court struck her prayer for attorney fees. Washington has not appealed this aspect of the court's decision.

³ Washington filed a motion to augment the appellate record with an annotated version of the declaration that her attorney filed in support of the motion for a peremptory writ of mandate. According to Washington, the annotated declaration "superimpose[s] in red text the page numbers in the appellate record where the evidence cited in the original declaration can be found." The District opposes augmentation. Although we appreciate counsel's intention to assist us in locating specific documents in the appellate record, we deny the motion to augment because the annotated declaration was not before the trial court. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3) ["Augmentation does not function to supplement the record with materials not before the trial court."].)

⁴ The parties have not provided us with a reporter's transcript from the hearing at which the parties presented oral argument.

The District argued the job-sharing arrangement constituted “leave” within the meaning of section 44920, which authorized it to hire and classify Washington as a temporary employee. The District also asserted that Washington’s misclassification claim was barred by the doctrine of laches because she delayed more than three years in raising the claim.

The trial court found the evidence established, contrary to the District’s claim, Washington “was *not* hired as a temporary employee to fill a specific vacancy created by the [M.L./A.H.] job share.” (Italics added.) In making this finding, the court credited Principal Suttner’s testimony that Washington was hired because of “increased enrollment.” As the court summarized, Suttner testified “there was going to be a Kindergarten–First Grade combo, or a First–Second Grade combo, but the ‘numbers increased’ and the ‘combo was dissolved just before the [2019–2020] school year started, and whoever was going to teach that combo class would have gone to either the straight [Kindergarten] or the straight second grade class. And [Washington] was brought in to teach the straight first grade class.’” Suttner also explained that “under the job share agreement, [M.L. and A.H.] each worked 50% of the school year and shared the same fourth grade class. . . . When asked if the job share had ‘anything to do with [Washington] being hired,’ he said: ‘No. The job share was in place before we needed an extra teacher.’”

The trial court found this evidence supported Washington’s argument that she was not hired to fill “a *specific* vacancy created by the [M.L./A.H.] job share,” but it determined Washington could nonetheless be “properly classified as a temporary [employee] based on a shortage of permanent teachers *resulting from* the [M.L./A.H.] job share.” (Italics added.) Based on

the District's spreadsheets of teacher assignments,⁵ the court found the number of temporary teachers during the years Washington was employed did not "exceed[] the total number of teacher vacancies created as a result of permanent and probationary employees being on leave at any one time," and "that would include teacher vacancies resulting from job share arrangements." Critical to the court's ruling was its agreement with "the District's interpretation that either [M.L.] or [A.H.] were effectively on leave at any given time during the entire school years under their job share agreement" within the meaning of section 44920. Consequently, on March 25, 2025, the court denied Washington's petition.

As to the District's laches argument, the trial court ruled the issue was "moot" because it found Washington failed to carry her burden on her misclassification claim. But it explained that if it were to consider the issue, "the District's laches argument would be persuasive." In the court's view, the doctrine of laches applied because Washington worked for three school years as a temporary employee and waited until February 2023 to file her petition, even though she testified that during her first school year "quite a few people' led her to believe she would be reclassified from temporary to probationary" for the next school year.

DISCUSSION

The question presented in Washington's appeal of the trial court's denial of her petition for writ of mandate is whether the District was statutorily authorized to classify her as a temporary employee during her

⁵ Although it relied on the District's spreadsheets, the trial court noted Washington's argument that "the District's records indicate the number of temporary teachers hired far exceeded the number employees on leave" during her three years of employment and that her supporting evidence was "somewhat persuasive in that it highlights some inconsistencies in the District's arguments and its documentation."

employment with the District. The District has identified a single theory for its classification of Washington as a temporary employee: it maintains the grant of a job-sharing arrangement between two permanent teachers is a grant of “leave” under section 44920 that permits the hiring and classification of a temporary teacher to fill in.

We turn to the classification scheme under the Education Code and section 44920 to determine whether the situation presented here authorizes temporary classification. “In reviewing a trial court’s judgment on a petition for writ of mandate, we apply the substantial evidence test to the trial court’s factual findings and exercise our independent judgment on legal issues, such as the interpretation of statutory provisions.” (*Edwards v. Lake Elsinore Unified School Dist.* (2014) 230 Cal.App.4th 1532, 1539–1540 (*Edwards*); accord *Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 916 (*Kavanaugh*).)

I.

Classification Scheme Under the Education Code

“The Education Code establishes four possible classifications for certificated employees [(i.e. teachers)]: permanent, probationary, substitute and temporary.” (*Taylor v. Board of Trustees* (1984) 36 Cal.3d 500, 504 (*Taylor*).) It authorizes the governing boards of school districts “to hire, classify, promote and dismiss” teachers, but it establishes “a complex and somewhat rigid scheme to govern a board’s exercise of its decisionmaking power.” (*Kavanaugh, supra*, 29 Cal.4th at p. 917; see § 44831.) The proper classification of a teacher into one of these four categories “is often critical, for such status has ramifications for both the teacher and the district throughout the employment relationship.” (*Kavanaugh*, at p. 917.)

Classification, and the time of classification, determines “a teacher’s rights to reelection (retention) and promotion . . . and to determining the level of procedural protections to which a teacher is entitled should he or she be dismissed or nonreelected.” (*Kavanaugh, supra*, 29 Cal.4th at p. 921.) “For example, if a certificated probationary employee works for two complete consecutive school years and is then reelected for the next succeeding year, the employee is deemed elevated to permanent status by operation of law. (§ 44929.21, subd. (b).) In some circumstances, a probationary employee who is not informed of his or her nonreelection by March 15th of the current school year is deemed reelected for the following school year. (§§ 44929.21, subd. (b), 44955, subd. (c).) If a certificated employee works as a temporary employee for a complete school year and is then ‘reemployed for the following school year in a position requiring certification qualifications [he or she] must be classified by the governing board as a probationary employee and the previous year’s employment as a temporary employee shall be deemed one year’s employment as a probationary employee for purposes of acquiring permanent status.’ (§ 44917; see also § 44920.)” (*Kavanaugh*, at p. 917.)

“In general, permanent employees may not be dismissed unless one or more statutorily enumerated grounds are shown. (§ 44932.) Probationary employees may not be dismissed during the school year except for cause or unsatisfactory performance (§ 44948.3), but, on timely notice, ‘may be nonreelected without any showing of cause, without any statement of reasons, and without any right of appeal or administrative redress.’ ” (*Kavanaugh, supra*, 29 Cal.4th at p. 917.) “ ‘Substitute and temporary employees, on the other hand, fill the short range needs of a school district and generally may be summarily released.’ ” (*Ibid.*) This means “temporary teachers may be dismissed ‘[a]t the pleasure of the [governing] board prior to

serving during one school year at least 75 percent of the number of days the regular schools of the district are maintained’ (§ 44954, subd. (a)), and after that time so long as the temporary employee is notified before the end of the school year (*id.*, subd. (b)).” (*Kavanaugh*, at pp. 917–918.)

Unless the Education Code requires that a teacher be classified as permanent, substitute, or temporary, he or she “must be classified as probationary.” (*Stockton, supra*, 204 Cal.App.4th at pp. 450–451.) In other words, “probationary status is the default classification when the code does not specify another classification.” (*Id.* at p. 456; see also § 44915 [a district “shall classify as probationary employees, those persons employed in positions requiring certification qualifications for the school year, who have not been classified as permanent employees or as substitute employees”].)

II.

Temporary Classifications Are Strictly Construed

As our high court explained, “[t]he essence of the statutory classification system is that continuity of service restricts the power to terminate employment which the institution’s governing body would normally possess.” (*Balen, supra*, 11 Cal.3d at p. 826.) “Because the substitute and temporary classifications are not guaranteed procedural due process by statute, they are narrowly defined by the Legislature, and should be strictly interpreted.” (*Ibid.*)

Implementing this rule of strict interpretation, in *Balen* our Supreme Court determined that “because the teacher did not satisfy any of the specific definitions of temporary employment, the district had no discretion to classify him as temporary.” (*Vasquez v. Happy Valley Union School Dist.* (2008) 159 Cal.App.4th 969, 983 (*Vasquez*), citing *Balen, supra*, 11 Cal.3d at pp. 827–828, 829–831.) “Since *Balen*, appellate courts have interpreted the

temporary classifications narrowly—so much so that if a teacher does not satisfy the statutory grounds for a temporary classification, the default or catchall provision of section 44915 mandates the district classify the teacher as a probationary employee. . . . In other words, it is no longer the case that a school district and a teacher are free to negotiate a teacher’s classification in cases of a statutory gap.” (*Vasquez*, at p. 983.)

If a teacher “occupies a position the Code defines as temporary, [the teacher] is a temporary employee; if it is not a position that requires temporary classification (or permanent or substitute), [the teacher] is a probationary employee. (§ 44915.) The Code grants school districts no discretion to deviate from this statutory classification scheme.” (*Bakersfield Elementary Teachers Assn. v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260, 1299 (*Bakersfield*)). “The purpose of the classification scheme is ‘to limit rather than enlarge the power of school districts to classify teachers as temporary employees.’” (*Stockton, supra*, 204 Cal.App.4th at p. 456, citing *Bakersfield*, at p. 1280.) “The Education Code restricts a school district’s use of temporary employees, because ‘otherwise the benefits resulting from employment security for teachers could be subordinated to the administrative needs of a district.’” (*Stockton*, at pp. 456–457.)

Thus “the Education Code narrowly defines the circumstances in which teachers may be classified as temporary, apparently due to a specific concern school districts might exploit that designation to the detriment of the employees, in an attempt to maintain maximum flexibility in hiring teachers from year to year: ‘The Code recognizes two general kinds of temporary employees: those who are employed to serve for less than three or four months, or in some types of limited, emergency, or temporary assignments or classes (see §§ 44919, 44921, 44986); and those who are employed for up to

one year to replace a certificated employee who is on leave or has a lengthy illness (see §§ 44920, 44918).’ ” (*Henderson v. Newport-Mesa Unified School Dist.* (2013) 214 Cal.App.4th 478, 491, quoting *Bakersfield, supra*, 145 Cal.App.4th at p. 1281.) We now turn to the temporary employment classification under section 44920.

III.

A Voluntary Job-Sharing Arrangement Does Not Constitute “Leave” Authorizing Temporary Employment Classification Under Section 44920

Section 44920 provides: “Notwithstanding the provisions of Sections 44917 and 44919, the governing board of a school district may employ as a teacher, for a complete school year, but not less than one semester during a school year unless the date of rendering first paid service begins during the second semester and prior to March 15th, any person holding appropriate certification documents, and may classify such person as a temporary employee. The employment of such persons shall be based upon the need for additional certificated employees during a particular semester or year *because a certificated employee has been granted leave for a semester or year*, or is experiencing long-term illness, and shall be limited, in number of persons so employed, to that need, as determined by the governing board.” (Italics added.)

Here, the District contends that it hired Washington because “a certificated employee ha[d] been granted leave for a semester or year.” (§ 44920.) According to the District, when it approved the job-sharing arrangement of two permanent certificated employees at Stork Elementary, M.L. and A.H., that approval was equivalent to allowing M.L. and A.H. to take leave from their full-time teaching duties, as each of them switched to working only half of the time. As such, the District argues, it was authorized

to hire Washington as a temporary employee due to the “leave” created when it approved the job-sharing arrangement for M.L. and A.H.

Washington disputes whether the evidence supports the District’s claim she was hired because of the M.L./A.H. job-sharing arrangement. As noted, the trial court found the evidence, in particular Principal Suttner’s testimony, supported Washington’s contention that she was not hired to fill a specific vacancy created by the M.L./A.H. job-sharing arrangement.

Notwithstanding that the trial court’s factual finding is owed deference if supported by substantial evidence, we need not resolve this factual question. As we will explain, the District’s proffered justification for classifying Washington as a temporary employee fails for a more fundamental reason: The job-sharing arrangement the District approved for M.L. and A.H. does not qualify as a circumstance under which “a certificated employee has been granted leave for a semester or year” within the meaning of section 44920.

In the District, job-sharing arrangements are addressed in the collective bargaining agreement (CBA) between the District and the Alta Loma Educators Association.⁶ In Article V of the CBA, titled “Teaching Hours,” job sharing “is defined as that procedure where two (2) current unit members request to jointly share on an equal time basis full-time daily instructional duties.” According to the CBA, the District may grant a job-sharing arrangement “at its sole discretion” under specified conditions and procedures. Importantly, teachers approved for a job-sharing arrangement do not have a unilateral right to immediately return to a previous position after termination of a job-sharing arrangement. Instead, the CBA states, “Unit members in the time share program requesting return to full-time

⁶ The appellate record contains relevant portions of the “2021–2022” CBA.

teaching will be placed back into full-time teaching at their request at approximately the same grade level, subject to the seniority provisions of Article XI, ‘Transfer Procedures,’ and Article XII, ‘Reassignment,’ and *when it does not result in the laying off of a probationary or permanent teacher.*” (Italics added.) Further, “[e]ach job sharing arrangement shall be for one (1) year or until the next full-time teaching assignment, for which the teacher is qualified, *becomes available.*” (Italics added.)

Distinct from a job-sharing arrangement, Article X of the CBA is titled “Leaves of Absence.” In that article, “[a] leave of absence is an authorization for an employee to be absent from duty, generally for a specific period of time and for an approved purpose.” The CBA explains that “[a] leave protects the employee by holding a place for him/her in the District. If the employee notifies the District of their intent to return to duty for the following year no later than March 1 of the year they are on leave, the employee shall be returned to the same position he/she held when the leave was granted, provided the position still exists. . . . Exists means, for the purpose of this Article, that the position is still at the administrative site when the employee returns from leave regardless of who covered the position during the employee’s leave of absence.”

As the relevant facts are largely undisputed, whether a job-sharing arrangement such as the one here constitutes “leave” for the purposes of section 44920 is primarily a question of statutory interpretation. “ “ “When we interpret a statute, ‘[o]ur fundamental task . . . is to determine the Legislature’s intent so as to effectuate the law’s purpose. We first examine the statutory language, giving it a plain and commonsense meaning. We do not examine that language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to

harmonize the various parts of the enactment. If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend. If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute’s purpose, legislative history, and public policy.’ ” ’ ” (*Meza v. Portfolio Recovery Associates, LLC* (2019) 6 Cal.5th 844, 856.)

In authorizing temporary employment “because a certificated employee has been granted *leave* for a semester or year,” section 44920 does not provide a definition for the term “leave.” (§ 44920, italics added.) However, because “ “Education Code sections bearing upon the same subject should be read and construed together” ’ ” (*Vasquez, supra*, 159 Cal.App.4th at p. 984), we reasonably infer that the word “leave” in section 44920 is a shorthand for the phrase “leave of absence” that is used in other parts of the Education Code.

The concept of a “leave of absence” is extensively discussed in Article 3 of Chapter 4 of Part 25 of Division 3 of Title 2 of the Education Code, which is titled “Resignations, Dismissals and Leaves of Absences.” There, section 44962 states that “[g]overning boards of school districts may grant leaves of absence to persons employed in positions requiring certification qualifications.” Specific statutory sections in Article 3 provide for and describe various types of leaves that may be granted, including: mandatory or permissive leaves for employees charged with certain criminal offenses (§ 44940); various types of medical, parental and workers compensation leaves (§§ 44942, 44964, 44965, 44977, 44977.5, 44978.2, 44984); leave for study or travel (§ 44966); personal necessity leave (§ 44981); bereavement leave (§ 44985); disability leave (§ 44986); and leave to serve in certain

elected or appointed positions (§§ 44987, 44987.3). None of the leaves described in Article 3 include a job-sharing arrangement.

Consistent with how the District’s CBA defines it, job sharing is a type of part-time work arrangement under which teachers at the District are allowed to *reduce their workload*. And distinct from “leave of absence,” a part time work arrangement generally falls under Article 2 of Chapter 4 of Part 25 of Division 3 of Title 2 of the Education Code, which is titled “Employment.”⁷ Specifically, section 44922 states “the governing board of a school district or a county superintendent of schools may establish regulations which allow their certificated employees to reduce their workload from full-time to part-time duties.”

Based on the statutory framework as a whole, in which reduced workload arrangements are *not* categorized as a type of leave of absence, we conclude the Legislature did not intend, in section 44920, to refer to the type of job-sharing arrangement described in the CBA when it stated that a district could hire an employee on a temporary basis when “a certificated employee has been granted leave for a semester or year” (§ 44920). Our conclusion is faithful to the rule that we must narrowly interpret the

⁷ At least one type of leave identified in the Education Code can take the form of a part-time schedule. Specifically, section 44987 requires a district to grant leave to enable an employee to serve as an elected officer of a public employee organization, including “attendance by the employee at periodic, stated, special, or regular meetings of the body of the organization on which the employee serves as an officer.” (§ 44987, subd. (a)(2).) Case law holds that an employee covered by that provision must, upon request, be given “half-time leave” to serve the public employee organization. (*Tracy Educators Assn. v. Superior Court* (2002) 96 Cal.App.4th 530, 534.) However, that case law has no relevance here because the record contains no indication that M.L. and A.H. were approved for a job-sharing arrangement due to any service as elected officers of a public employee organization.

temporary classifications in the Education Code. (*Balen, supra*, 11 Cal.3d at p. 826; *Vasquez, supra*, 159 Cal.App.4th at p. 982.)

Our conclusion is further underscored by the plain commonsense meaning of the term “leave of absence.” Black’s Law Dictionary defines a leave of absence as “[a] worker’s temporary absence from employment or duty *with the intention to return.*” (Black’s Law Dict. (12th ed. 2024) p. 1068, col. 2, italics added.) This definition is consistent with the CBA, which describes a leave of absence as “protect[ing] the employee by holding a place for him/her in the District.” A job-sharing arrangement as described in the CBA does not meet this common definition of a leave of absence because there is no expectation that the participating employee will return to the same position. Instead, the CBA states that if an employee in a job-sharing arrangement requests to return to full-time teaching, that employee will be placed back at the same grade level only “when it does not result in the laying off of a probationary or permanent teacher” and when a full-time position “becomes available.” Accordingly, the type of job-sharing arrangement at issue here does not qualify as a leave of absence as that term is commonly used.

The District contends that *American Federation of Teachers v. Board of Education* (1977) 77 Cal.App.3d 100 (*American Federation*) supports its treatment of the M.L./A.H. job-sharing arrangement as “leave” within the meaning of section 44920 because *American Federation* established that “a teacher does not need to be fully removed from any work at the school district to be on leave.” Building on that concept, the District argues that the M.L./A.H. job-sharing arrangement may be described as a “leave” even though M.L. and A.H. were still physically present at the District on a part-time basis. We are not persuaded.

American Federation concerned a teacher hired to teach a class normally taught by another teacher who had been reassigned to a categorically funded reading program. (*American Federation, supra*, 77 Cal.App.3d at p. 103.) The replacement teacher asserted “her temporary classification was incorrect because she was not employed in a categorically funded program,” as asserted by the district.⁸ (*Ibid.*) Although the court in *American Federation* agreed the replacement teacher was not employed in a categorically funded program, it concluded her temporary classification was proper because she was filling in for the regularly-assigned teacher who was effectively placed on a “leave of absence” by virtue of re-assignment to a categorically funded program.⁹ (*American Federation, supra*, 77 Cal.App.3d at pp. 106–107.) In concluding a teacher assigned to a categorically funded

⁸ At the time, the Education Code provided that “ ‘instructors in classes conducted under . . . categorically funded projects’ were excepted from the tenure provisions of the Education Code” and could be “ ‘terminated at the expiration of the contract or specially funded project without regard to other requirements of this code respecting the termination of probationary or permanent employees.’ ” (*American Federation, supra*, 77 Cal.App.3d at p. 103, fn. 2.)

⁹ In reaching this conclusion, *American Federation* referred to section 13337.3, which was subsequently renumbered as section 44920. (*American Federation, supra*, 77 Cal.App.3d at pp. 106–107; Stats. 1976, ch. 1010, § 2; *Taylor, supra*, 36 Cal.3d at p. 507 [“In the 1976 reorganization of the Education Code, . . . section 13337.3 became section 44920.”].) As does the present-day version of section 44920, section 13337.3 “authorize[d] school districts to hire certificated employees for a complete school year or for no less than a semester and to classify them as temporary, based on the need for additional certificated employees, because a certificated employee has been granted a leave for a semester or year or has a long-term illness.” (*American Federation*, at p. 106, fn. 3; see also *Santa Barbara Federation of Teachers v. Santa Barbara High Sch. Dist.* (1977) 76 Cal.App.3d 223, 234, fn. 5 (*Santa Barbara*) [setting forth the full text of section 13337.3 prior to statutory reorganization].)

program was on “leave,” the court rejected the appellant’s argument that “a permanent employee who is on leave [must] be physically absent from the school district.” (*Id.* at p. 107.)

We are not persuaded that *American Federation* is relevant to our analysis of the statutory question before us. For one thing, *American Federation* is not on point because it does not analyze whether a job-sharing arrangement constitutes “leave” within the meaning of section 44920. Instead it considered whether a teacher in a categorically funded position may be considered as being on “leave” within the meaning of section 44920. But to the extent the issue decided in *American Federation* is relevant here, after the time period that *American Federation* considered,¹⁰ the Legislature enacted a statutory provision specifically relating to employees who are hired to fill in for someone assigned to a categorically funded position. (See § 44909, subd. (b) [“Whenever a certificated employee in the regular educational program is assigned to a categorically funded project . . . and the school district employs an additional credentialed person to replace that certificated employee, the replacement certificated employee shall be subject to Section 44918.”]; see Stats.1977, ch. 378, § 1, p. 1365 [amending section 44909 to add the relevant language].) And tellingly, in enacting section 44909, the Legislature did *not* adopt *American Federation*’s analysis and specify that an employee taking over for someone assigned to a categorically funded position is filling in for someone on “leave.” (§ 44909, subd. (b).)

¹⁰ *American Federation* applied the statutes as they existed during the appellant’s employment during the 1975–1976 school year, rather than in December 1977 when *American Federation* was decided. (*American Federation, supra*, 77 Cal.App.3d at p. 103 & fn. 2.)

Most significantly, however, *American Federation* is not persuasive because, even though it was decided three years after *Balen*, *American Federation* did not, as *Balen* requires, strictly construe the temporary classification. (*Balen*, *supra*, 11 Cal.3d at p. 826.)

In sum, we conclude that even if, as the District contends, Washington was hired as a “placeholder” for the M.L./A.H. job-sharing arrangement, that job-sharing arrangement did not constitute “leave” within the meaning of section 44920 and therefore did not justify the District’s classification of Washington as a temporary employee in any of the three school years she was employed by the District.¹¹

¹¹ As we have mentioned, the trial court determined that even if the District did not hire Washington to fill a specific vacancy resulting from the M.L./A.H. job-sharing arrangement, Washington’s temporary classification was proper because spreadsheets created by the District showed that “the number of temporary employees did not exceed the number of vacancies resulting from teachers on leave as defined by Education Code section 44920.” Washington argues the court erred in relying on the spreadsheets because, among other problems, they contain incomplete information about the number of employees that the District classified as temporary, and they include employees hired as placeholders for teachers assigned to categorically funded positions. Although ruling against her, the court found Washington’s evidence on this point “somewhat persuasive in that it highlights some inconsistencies in the District’s arguments and its documentation.”

Here the District does not dispute Washington’s argument and does not attempt to defend the trial court’s conclusion that the District had no more temporary employees than it had employees on leave. However, regardless of the problems that Washington identifies with the spreadsheets, the trial court’s reliance on them to establish the ratio of temporary employees to employees on leave within the meaning of section 44920 was flawed for a more obvious reason. In using the spreadsheets to calculate the ratio of temporary employees to employees on leave, the trial court assumed that “the teacher vacancies resulting from job share agreements” as shown on the spreadsheets should be treated as vacancies as a result of “leave” within the meaning of section 44920. As we have just explained, a job-sharing

IV.

Washington Is Entitled to Reinstatement as a Permanent Employee and Lost Compensation

Having concluded Washington was misclassified as a temporary employee for all three school years she worked at the District, we turn to the consequences of her misclassification and whether she is entitled to the remedies that she seeks, including reinstatement as a permanent employee with a seniority date of August 2, 2019, and an award of lost compensation.

Washington brought her petition for writ of mandate under Code of Civil Procedure section 1085. “A writ of mandate ‘may be issued by any court . . . to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station.’” (*Kavanaugh, supra*, 29 Cal.4th at p. 916 [quoting Code Civ. Proc., § 1085, subd. (a)].) “To be entitled to relief, [Washington] must show the District has a clear, present and ministerial duty to reelect (rehire) her and that she has a clear, present and beneficial right to performance of that duty entitling her to a writ of mandate.” (*Kavanaugh*, at p. 916.) “‘A ministerial act is an act that a public officer is required to perform in a prescribed manner prescribed in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning such act’s propriety or impropriety, when a given state of facts exists.’” (*Ibid.*)

arrangement in the District does not constitute “leave” within the meaning of section 44920.

For these reasons, we do not address the trial court’s reliance on authorities holding that “a district’s ability to use section 44920’s temporary classification is not dependent on a one-to-one match of an employee on leave to a temporary teacher,” as long as “‘the number of temporary teachers [does] not exceed the total number of probationary and permanent employees on leave at any one time.’” (*McIntyre v. Sonoma Valley Unified School Dist.* (2012) 206 Cal.App.4th 170, 180–181 (*McIntyre*).)

As we have explained, unless the Education Code requires that a teacher be classified as permanent, substitute, or temporary, he or she “must be classified as probationary.” (*Stockton, supra*, 204 Cal.App.4th at pp. 450–451; see § 44915 [A district “shall classify as probationary employees, those persons employed in positions requiring certification qualifications for the school year, who have not been classified as permanent employees or as substitute employees.”].) Because Washington was not properly classified as a temporary employee during her first two school years, her classification defaulted by law to that of a probationary employee. (*Stockton*, at p. 456.)

After two years of employment as a probationary employee, Washington became a permanent employee by operation of law pursuant to section 44929.21, subdivision (b). That provision states, “Every employee of a school district of any type or class having an average daily attendance of 250 or more who, after having been employed by the district for two complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications shall, at the commencement of the succeeding school year be classified as and become a permanent employee of the district.” (§ 44929.21, subd. (b).) Further, “[i]n the event that the governing board does not give notice . . . on or before March 15 of the employee’s second complete consecutive school year” of “the decision to reelect or not reelect the employee for the next succeeding school year to the position” “the employee shall be deemed reelected for the next succeeding school year.” (§ 44929.21, subd. (b).)

It is undisputed the District did not provide Washington with notice, after her second school year, that it was choosing not to reelect her as an employee for the next year. Instead, the District hired Washington once

again for the 2021–2022 school year. By operation of section 44929.21, subdivision (b), Washington transitioned at the beginning of her third school year from being classified as a probationary employee to being classified as a permanent employee.

After she became a permanent employee at the beginning of the 2021–2022 school year, the District was not authorized to summarily terminate Washington’s employment. “[A] permanent employee may not be dismissed unless one or more statutorily enumerated grounds are shown and then only after being afforded an opportunity for a due process hearing.” (*McIntyre, supra*, 206 Cal.App.4th at p. 175; see §§ 44932, 44933, 44955.) The District did not follow these statutory procedures. Instead, improperly treating Washington as a temporary employee, the District used the summary procedures available for such employees to notify Washington that she was not going to be employed in the 2022–2023 school year.

For these reasons, the District had a clear, present and ministerial duty to reelect Washington for the 2022–2023 school year, and she has a clear, present and beneficial right to performance of that duty. (Code Civ. Proc., § 1085, subd. (a); see *Kavanaugh, supra*, 29 Cal.4th at p. 916.) Washington is entitled to a writ of mandate ordering the District to reinstate her as a permanent employee with a seniority date on the undisputed first day that she began work at the District and should have been classified as a probationary employee: August 2, 2019.

Washington also seeks lost wages, benefits and any other compensation that she is owed because of the District’s improper termination of her employment. (See Code Civ. Proc, § 1095 [in a mandamus proceeding, “[i]f judgment be given for the applicant, the applicant may recover the damages which the applicant has sustained . . . as may be determined by the court”];

California Teachers Assn. v. Governing Bd. of the Golden Valley Unified School Dist. (2002) 98 Cal.App.4th 369, 386 [discussing remedy of backpay for wrongfully terminated teacher]; *Mass v. Board of Education* (1964) 61 Cal.2d 612, 630 [ordering back pay and other compensation for wrongfully suspended teacher in mandamus proceeding].) Because the parties have not yet litigated Washington’s claim for compensation from the District, we remand to the trial court for further proceedings on that issue.¹²

V.

Relief Is Not Barred by the Doctrine of Laches

As it did in the trial court, the District argues that Washington is barred by the doctrine of laches from obtaining relief in mandamus for the District’s improper classification of her as a temporary employee. Although the trial court stated “the laches issue is moot” because it had found Washington failed to carry her burden of proof on the misclassification claim, the court addressed the substance of the District’s laches defense and found it “persuasive.” We reach a different conclusion.

“ ‘Laches is an equitable, affirmative defense which requires a showing of both an unreasonable delay by the plaintiff in bringing suit, ‘ “plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay.’ ” ’ ” (*City of Hesperia v. Lake Arrowhead Community Services Dist.* (2023) 93 Cal.App.5th 489, 511 (*City of Hesperia*).) The doctrine “ ‘applies in equitable actions alone’ ” and “may be asserted as a

¹² Washington also argues that, as pled in her petition for writ of mandate, even if she was properly classified as a temporary employee, the District improperly failed to afford her preferential reemployment rights under section 44918. Because we conclude the District improperly classified Washington as a temporary employee, we do not consider Washington’s claim for preferential reemployment.

defense in ‘an equitable action seeking a writ of mandamus’ ” (*Ibid.*) “Laches is an equitable remedy, and as a general rule, a party seeking equitable relief must come into court with clean hands.” (*In re Marriage of Cutler* (2000) 79 Cal.App.4th 460, 478.)

“Although the showing necessary to assert a successful laches defense is clear, the standard of review applicable to a trial court’s determination regarding the defense of laches is not.” (*City of Hesperia, supra*, 93 Cal.App.5th at p. 512.) This court has concluded that a trial court’s laches determination is reviewed under a mixed standard—“i.e., review for abuse of discretion and substantial evidence.” (*Id.* at p. 513.) We “defer[] to the trial court’s weighing of the equities of the delay and prejudice and affirm[] so long as the application or denial of laches does not result in manifest injustice, but [we] consider[] whether the trial court’s factual findings are supported by substantial evidence.” (*Ibid.*; see also *Miller v. Eisenhower Medical Center* (1980) 27 Cal.3d 614, 624 [“Generally speaking, the existence of laches is a question of fact to be determined by the trial court in light of all of the applicable circumstances, and in the absence of manifest injustice or a lack of substantial support in the evidence its determination will be sustained.”].)

In the trial court’s analysis, Washington was barred from relief by laches because she continued to agree to work as a temporary employee in her second and third years of employment even though she was told during her first year of employment that she would be classified as a probationary employee in the next school year. Importantly, however, the trial court reached the issue of laches only *after* concluding (erroneously) that the Education Code permitted the District to classify Washington as a temporary employee for each of the three school years.

On appeal, in defending the trial court’s laches ruling, the District argues Washington’s misclassification claim is barred by the doctrine of laches because Washington acquiesced and delayed when she “repeatedly and knowingly accepted temporary employment contracts, year after year, and only brought this action *after* the District decided not to offer her a fourth contract.” Further, the District contends that the delay was prejudicial because, had it known Washington was claiming to be a probationary employee, it could have chosen not to reelect her employment at the end of the first or second school year to prevent her from becoming a permanent employee by operation of law. (See § 44929.21, subd. (b).)

However, because both the trial court and the District assume that the District *properly* classified Washington as a temporary employee based on the provisions of the Education Code, their laches analysis is missing a dispositive point. Section 44924 states that, with certain exceptions that are not relevant here, “any contract or agreement, express or implied, made by any employee to waive the benefits of this chapter [i.e., Employment—Certificated Employees] or any part thereof *is null and void*.” (§ 44924, italics added.) Thus, “contract terms cannot supersede the statutory protections for teachers set forth in the Education Code, including provisions governing their classification.” (*California Teachers Assn. v. Vallejo City Unified School Dist.* (2007) 149 Cal.App.4th 135, 147.) “The statutory provisions in the Education Code, governing the rights of teachers, are an expression of public policy; they cannot be bargained away either expressly or impliedly.” (*Hart Federation of Teachers v. William S. Hart Union High Sch. Dist.* (1977) 73 Cal.App.3d 211, 214.) Because, under section 44924, a teacher’s contractual acceptance of a temporary employee classification is null and void if that classification is contrary to the Education Code, courts

may not find a teacher guilty of laches based on his or her contractual acceptance of temporary classification, when that classification is not permitted by statute. (*Bakersfield, supra*, 145 Cal.App.4th at p. 1275.) That is precisely the situation here.

In *Bakersfield, supra*, 145 Cal.App.4th 1260, a teachers association claimed, on behalf of its members, that certain employees were improperly classified as temporary instead of probationary by a school district. (*Id.* at p. 1271.) Due to the improper classification, when the school district attempted to lay off those teachers, it did not follow the procedures applicable to probationary employees. (*Id.* at p. 1272; see also §§ 44955, 44949.) The school district “maintain[ed] the temporary employees, because they waited until after March 15 to challenge their classification, were guilty of laches. Had they objected sooner, the [school district] urge[d], it ‘could have simply provided them with notices of layoff and included them in the layoff hearing.’” (*Bakersfield*, at p. 1273.)

Bakersfield rejected the laches claim. Citing the principle that “any contractual provision purporting to waive the protections accorded certificated school employees by the Education Code, including the provisions governing their classification and termination, is ‘null and void,’” the *Bakersfield* court explained that “‘[a]lthough the contracts of employment accepted by petitioners purported to fix their status as that of temporary teachers, they are not estopped to claim probationary status if the statutory scheme of the Education Code compels the latter classification under the particular facts of each petitioner’s employment situation.’” (*Bakersfield, supra*, 145 Cal.App.4th at p. 1275, quoting *Santa Barbara, supra*, 76 Cal.App.3d at pp. 227–228.)

Laches is inappropriate here for another reason. As the *Bakersfield* court explained, “The [school district] may not now complain the temporary employees waited too long to assert a right the [school district] misled them into believing they already had given up. ‘One who comes into equity must come with cleans hands.’” (*Bakersfield, supra*, 145 Cal.App.4th at p. 1275.) Like *Bakersfield*, “the District led [Washington] to believe [she] had no choice but to acquiesce.” (*Id.* at p. 1274.) As established by the undisputed evidence, during each of the three school years she worked at the District, Washington was told there were “no exceptions” being made to classification of the newly hired group of teachers as temporary, due in part to the COVID-19 pandemic. She was also told by multiple District personnel that temporary classification was “‘just part of the process.’” “‘“The unclean hands doctrine ‘closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief.’” ’” (*Quick v. Pearson* (2010) 186 Cal.App.4th 371, 380.)

For all these reasons, the District’s requirement that Washington agree to classification as a temporary employee was contrary to law and therefore inequitable, defeating the application of laches.

Resisting this conclusion, the District argues the decision in *American Federation, supra*, 77 Cal.App.3d 100, supports its laches defense. We reject this argument for the same reasons it was rejected by the court in *Bakersfield*. As *Bakersfield* pointed out, there are two reasons why *American Federation*’s analysis of the laches issue is not applicable to a case such as Washington’s. (*Bakersfield, supra*, 145 Cal.App.4th at p. 1276.)

First, because *American Federation* concluded that the teacher’s employment *was* properly classified as temporary, it had no occasion to apply the rule that a contract to waive the benefits of the Education Code governing

the employment of certificated employees is null and void. (§ 44924; see also former § 13338.1.) Here, in contrast, we have concluded the Education Code did *not* permit the District to classify Washington as a temporary employee, and her agreement to serve in that classification was therefore null and void. (See *Bakersfield*, *supra*, 145 Cal.App.4th at p. 1276 [In *American Federation*, “the teacher’s classification ultimately was correct; here, . . . it was not correct (and, arguably, the [school district] should have known it was not).”].)

Second, unlike in *American Federation*, statements by the District induced Washington to accept her temporary classification based on promises of more favorable future classification. (See *Bakersfield*, *supra*, 145 Cal.App.4th at p. 1276 [“unlike the present case, nothing in [*American Federation*] suggests the teacher’s silence as to her classification was induced by any misrepresentations made to her by the district”].) “Where the delay in commencing action is induced by the conduct of the defendant, laches is no defense.” (*Ornbaun v. Main* (1961) 198 Cal.App.2d 92, 100.) Washington was told prior to each of the three school years that although she was being classified as temporary, she could expect to be hired the next year as probationary or even as permanent after the third school year. Such statements about her future classification, which ended up being false, were inducements for Washington to accept the temporary classification offered by the District and to not question whether the classification was in violation of the Education Code.

We therefore conclude Washington’s claim of misclassification was not barred by the doctrine of laches. Because the trial court erroneously concluded that the Education Code permitted the District to classify Washington as a temporary employee, it failed to recognize that Washington’s agreement to waive the protections of the Education Code was

null and void. (§ 44924.) By requiring that Washington agree to classification as a temporary employee in violation of the Education Code, the District acted with unclean hands, which bars the equitable relief it seeks. Further, application of the laches doctrine is inappropriate because the District induced Washington's delay in challenging her classification when it repeatedly made false promises that it would classify her as probationary or permanent in future school years.

DISPOSITION

The judgment is reversed. This matter is remanded to the trial court with instructions to issue a writ of mandate directing the District to reinstate Washington as a permanent employee of the District with a seniority date of August 2, 2019. Washington is also entitled to an award of lost compensation. The trial court is directed to hold further proceedings to determine the proper amount of damages for lost compensation as sought in Washington's petition for writ of mandate. Washington shall recover her costs on appeal. (Cal. Rules of Court, rule 8.278.)

DO, Acting P. J.

WE CONCUR:

RUBIN, J.

BERMÚDEZ, J.