IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION III

No. 313603-1-III

MICHAEL F. CRONIN

Appellant

vs.

CENTRAL VALLEY SCHOOL DISTRICT

Respondent

REPLY BRIEF OF APPELLANT

Larry J. Kuznetz
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Caselaw

Other

I. INTRODUCTION

Plaintiff/Appellant Michael F. Cronin (hereinafter "Cronin"), hereby replies to Central Valley School District/Respondent's (hereinafter "School District") response brief as follows:

II. ARGUMENT

a. With Cronin's timely request for a hearing, the trial court had subject matter jurisdiction and did not lose it by Cronin's failure to file a lawsuit to force the School District to name a nominee.

This case boils down to two distinct issues:

1. Was Cronin's request for statutory hearing made within ten days of receiving the District's Notice of Probable Cause to Terminate?; and,

2. Whether Sally McNair as representative of Mr. Cronin, had the right or authority to request a statutory hearing on his behalf, and/or at his direction.

The only step necessary for Cronin to invoke jurisdiction of the trial court, was to serve his request for hearing on the superintendent within 10 days of receipt of a notice of probable cause for discharge or non-renewal. RCW 28A.405.210; RCW 28A.405.300. Once having done so, Cronin perfected his appeal for all issues related to his employment including the failure to

pay wages and benefits. The School District acknowledges that with respect to discharge or non-renewal, the 30 day limitation set forth in RCW 28A.645.010 does not apply since those appeals are governed by RCW 28A.405. (Resp. Brief, p. 11, 12, & 18). RCW 28A.645.010 (second proviso).

The School District has only two bases to dismiss this case for lack of jurisdiction: 1) Cronin's request for hearing was not served upon the superintendent within 10 days of receipt of the notice of probable cause; or 2) Cronin's union representative, Sally McNair, (hereinafter "McNair"), could not as a matter of law, have authority to request a hearing on his behalf. If either of those two scenarios existed, the trial court could have properly dismissed Cronin's case for lack of jurisdiction. But neither defense existed and Cronin's request to the trial court to enforce his right to a statutory hearing and for continued benefits pending a decision by a statutory hearing officer should not have been dismissed.

1. Cronin's request for hearing was timely made.

Regarding its first defense, the School District admits the request for hearing was timely served on its superintendent within 10 days as required by RCW 28A.405.210 and .300. (Resp. Brief, p. 7). What it contends is that as a matter of law, McNair,

Cronin's designated union representative, did not or could not have authority to request a hearing on his behalf, even though the School District had been dealing with her during his incarceration and up to its termination notice.

2. Cronin can authorize his union representative to sign and serve a request for hearing on his behalf.

The School District contends that since it could not serve a Notice of Probable Cause on a designee of Cronin, a designee of Cronin could not request a hearing. What the School District ignores is that it has no legal basis for its contention that a designee cannot request a hearing. Since McNair was the exclusive representative of Cronin under the Collective Bargaining Agreement and represented him at all meetings before the School District prior to the notice of probable cause being issued, she did have authority to act on her member's behalf and request a hearing. (CP 28; 30-32; App. 1).

The District contends that "by plaintiff's own admitted facts" the request for hearing was not filed with anyone with authority to file such a request on plaintiff's behalf (Resp. Brief, p. 7). That is untrue. The record in this case is clear that Cronin gave his union representative the authority to take whatever steps were

necessary to appeal his termination. (CP 14-15; 31-32; 48; 201). Acting at all times in her capacity as his agent, representative and at his direction, McNair "filed" Cronin's request for hearing by timely serving the superintendent as required by law. RCW 28A.405.210 & .300. The request for hearing was filed with either actual or apparent authority to file such a request on Cronin's behalf. (CP 14-16; 28; 30-32; 48; 201). Furthermore, Cronin adopted the acts of his union representative when she appealed his termination and requested a hearing. (CP 14-15). Serving the superintendent within 10 days preserved Cronin's right to a statutory hearing. RCW 28A.405.300.

There is nothing in the statute or case law that requires a teacher to personally sign a request for hearing. The School District has shown no prejudice by McNair's request for hearing on behalf of Cronin. Under the circumstances, it was clearly apprised of Cronin's intent to request a hearing. (CP 56-58; 172-174; 176-178; 181-182).

The School District contends that the Superintendent determined that McNair's letter requesting a hearing was not a valid request for a hearing because she was not an employee. (Resp. Brief, p. 8). The problem with that argument is that no one

knew of the School District's decision not to give effect to the request for hearing because it was never communicated to Cronin or McNair until the February 28, 2012 letter from the superintendent. (CP 32; 50; 216-220). How could an appeal be taken to something that was solely within the mind of the Superintendent?

The School District argues that the reason it never responded to McNair's letter when delivered to them was for fear that any response would either be an admission that her letter was proper or a waiver of its ability to contest the letter as improper. (Resp. Brief, p. 40). But then the School District claims that, "as a courtesy", it sent the February 28, 2012, response to McNair informing her that it did not consider her hearing request to be valid. (Resp. Brief, p. 46, fn. 13). If the District was concerned about an admission or waiving its argument, then why "as a courtesy" did it send a response? Why did the Superintendent address the precise issues it now claims it was afraid to admit or waive at the time McNair's letter requesting a hearing was received? The District intentionally failed to act and now seeks to benefit from its conduct.

What the School District really disputes in this case is whether or not the Union had the right or the authority to request a hearing on behalf of a member. If it is determined that McNair had the authority to request a hearing on Cronin's behalf, then the trial court had subject matter jurisdiction and could have required the School District to proceed to hearing. The School District intentionally ignored Cronin's request for hearing, intentionally ignored its obligation to identify a nominee to select a hearing officer, and when Cronin moved to enforce his right to hearing, argued that the trial court had no jurisdiction because Cronin failed to enforce the School District's failure to appoint a nominee. What the School District ignores is that lack of jurisdiction is not founded on failure to appoint a nominee, but on a failure to request a hearing within 10 days, RCW 28A.405.300. Once the court has jurisdiction, it does not automatically lose it because Cronin failed to file a lawsuit to force the School District to name a nominee. If it is determined that Cronin timely filed his request for hearing within ten days, then the court has jurisdiction. Hypothetical syllogisms aside, the trial court does not lose jurisdiction simply because the School District decides to intentionally fail to process a valid request for hearing, no matter

what enforcement method Cronin chose to use to force them to comply with the hearing process.

b. In order to determine jurisdiction, the court must determine the merits of whether or not Cronin made a timely request for hearing.

The School District urges this court to make limited assumptions and accept hypothetical syllogisms in order to determine jurisdiction in this case. There is no basis for the District's position because jurisdiction is founded on the timeliness of Cronin's request for hearing, not on the School District's failure to appoint a nominee. Cronin does not ask the court to make assumptions for one particular purpose when it's convenient, then ignore the undisputed facts that Cronin's request for hearing was timely. If there are issues of fact as to whether Cronin perfected his request for hearing, then summary judgment was inappropriate and this matter should be remanded to the trial court to determine jurisdiction based on whether a timely request for hearing was made within ten days.

The District argues that Cronin's "January 11 request for action was a request for the 'board of directors of the district or its designee' to appoint a nominee" (Resp. Brief, p. 24, 33). This is untrue. Plaintiff's request was for a statutory hearing, not a

request for action or request that the School District appoint a nominee. Nowhere in McNair's January 11, 2013, request for hearing did she request or solicit action by the School District to appoint a nominee. (CP 48). It is not required under the statute. RCW 28A.405.210 or .300. The appointment of a nominee is a statutorily mandated function which the District refused to perform.

The District wants the best of all worlds. They want the unilateral discretion to determine that Cronin did not make a proper hearing request, resulting in no obligation on its part to appoint a nominee. On the other hand they want to prevent Cronin from enforcing what he contends was a proper hearing request by requiring him to file a lawsuit within 30 days of the School District's failure to appoint a nominee. The problem with their logic is that they unilaterally assume that a proper hearing request was not made. If that assumption is factually incorrect, the School District acknowledges that they were, in fact, obligated to appoint a nominee (Resp. Brief p. 25).

The School District incorrectly assumes that both parties urge the counting of days from a trigger event (Resp. Brief p. 26, fn. 10). From Cronin's perspective, the only relevant triggering

event is whether he timely requested a statutory hearing within 10 days. If a timely request for hearing was made, then jurisdiction exists. No further counting is required to determine jurisdiction. Failure to appoint a nominee is not a separate triggering event.

The School District argues in its hypothetical, that the court must determine when the Superintendent "failed to act on a properly presented request for hearing". (Resp. Brief, p. 23-29). This argument presupposes a burden on the teacher that does not exist in the law. If a teacher makes a timely request for hearing, the burden is not on the teacher to file a lawsuit within 30 days because the school district decides not to respond, or "fails to act" on the properly presented request for hearing. The court has jurisdiction arising from a teacher's properly presented request for hearing, and does not lose jurisdiction if the school district decides not to respond. Otherwise, in every case when a teacher requests a hearing, the school district will not act and hope the teacher doesn't file a lawsuit within 30 days so it can argue the court lacks jurisdiction. There is no requirement under the law that once a teacher makes a timely request for hearing, he/she has the added burden to file a lawsuit within 30 days of the date

the school district has "failed to act" on a properly presented request for hearing.

This matter does not default to the first proviso of RCW 28A.645.010 by virtue of the School District's refusal to act in the face of a timely request for statutory hearing. Otherwise, any refusal by the District after a properly presented request for hearing would force a teacher to file a lawsuit.

The School District cites *Porter v. Seattle School Dist.*, 160 Wn. App. 872, 880, 248 P.3d 1111 (2011), in support of its position. That case involved the failure to place certain parents on a curriculum committee. It had nothing to do with a teacher discharge. That case did not fall under the second proviso of RCW 28A.645.010. (CP 172; 255). The School District did not respond to the fact that *Porter* was not a discharge case and has cited no discharge case that supports its position.

The School District argues that appointing a nominee is an employee benefit and the cases cited involve the 30 day time limit under RCW 28A.645.010 as it applies to employee benefits. (Resp. Brief, p. 41-42). Appointing a nominee is not an employee benefit. It benefits the school district, not the teacher. The nominee represents the party and selects a hearing officer. It is of no

benefit to the teacher since the teacher has no say in who the district appoints.

c. The statutory requirement that the School District name a nominee is not a "decision" under RCW 28A.645.010.

The District acknowledges that RCW 28A.405.310 requires the School District name a nominee within 15 days of receiving a request for hearing. (Resp. Brief. p. 4). This is a statutory requirement and not a "decision" submitted to them for decision or action under RCW 28A.645.010. (CP 180-181). Other than termination claims, lawsuits under the second proviso are limited to school official or school board decisions. The School District's failure to appoint a nominee is not a "decision or order," or the "failure to act upon same when properly presented." Nothing was presented by Cronin to the School District that it failed to act upon. (CP 217-222; 256-258). The requirement to select a nominee is procedural and not a "decision" requiring a lawsuit under RCW 28A.645.010 for failing to act.

The School District argues it has no duty or obligation to inform a teacher that it is not going to act. Although a school district can fail to act, it may only do so after a matter has been "properly presented" to it. The 30 day limitation to file an action

under RCW 28A.645.010 is only triggered by 1) a decision by the school; or 2) a failure to act after a matter is properly presented. Requiring that a matter be properly presented assures that the recipient has knowledge that the 30 day limitation is triggered from the date the matter was properly presented but not acted upon. Otherwise, the School District retains the unbridled and unfettered discretion to decide if they are going to fail to act without some request being properly presented.

In this instance, the statutory requirement under RCW 28A.405.310 to name a nominee is not something Cronin "properly presented" to the School District for decision. Naming a nominee was a mandatory duty required by statute. (CP 217-222; 256-258). But even if it weren't, Cronin would have no idea what was in the School District's mind unless it formalized notice to him of its decision. How does a teacher know whether or not the school district's failure to process a request for statutory hearing was inadvertent or intentional? To the School District, it makes little difference. But that ignores the statutory mandate that the School District either has to make a decision or fail to act when properly presented in order to trigger the 30 day time limit to file

suit. Neither was done in this case regarding the School District's failure to name a nominee.

d. Plaintiff's declaratory judgment action was timely filed.

The School District contends that Cronin's declaratory judgment action is governed under the second proviso to RCW 28A.645.010 requiring that "all other cases" be filed within 30 days of a decision. (Resp. Brief, p. 10-13; 18-19; 21). The second proviso to RCW 28A.645.010 does not apply to this declaratory judgment complaint because the court has jurisdiction to enforce Cronin's timely request for a hearing within 10 days under RCW 28A.400, which is specifically exempted from the 30 day limitation requirement. See also RCW 28A.405.370. (CP 169-172; 217-220; 256-258). But even if the first proviso to RCW 28A.645.010 applies, Cronin's declaratory judgment request was timely filed within 30 days of receipt by McNair of the School District's decision not to give effect to her letter requesting a statutory hearing. (CP 171). Its response of February 28, 2012, was the first notice to Cronin or McNair that there was a dispute regarding McNair's request for hearing. (CP 169-172). The declaratory judgment action was filed on March 23, 2012, within 30 days of the February 28, 2012 letter from the superintendent. (CP 3; 50).

The trial court had jurisdiction to enforce Cronin's request for a statutory hearing.

Under the School District's logic, any action brought against a school district would default to the first proviso of RCW 28A.645.010. But that is untrue. Tort claims against a school district are not subject to RCW 28A.645.010. (RCW 4.96.010; *Mountain View School v. Issaquah School Dist.*, 58 Wn.App. 630, 794 P.2d 560 (1990)). Neither are emotional distress, civil rights or unfair labor practice claims (*Wright v. Terrell*, 135 Wn.App. 722, 145 P.3rd 1230, *rev'd,* 162 Wn.2d 192, 170 P.3rd 570 (2006); *Strong V. Terrell*, 147 Wn.App. 376, 195 P.3rd 977, *rev. denied*, 165 Wn.2d 1051, 208 P.3rd 555 (2008)). In discharge or non-renewal appeals, once a teacher has timely perfected a request for a statutory hearing, the first proviso of RCW 28A.645.010 is irrelevant. Otherwise, the second proviso to RCW 28A.645.010 would be superfluous. (CP 217-220; 256-258).

The School District did not address Cronin's argument that subject matter jurisdiction exists by virtue of his timely appeal within ten days from the School District's notice of decision to terminate. Once having perfected his request for hearing, the first proviso is irrelevant. The School District wants this court to

create an exception under the second proviso of RCW 28A.645.010 to default to the first proviso of RCW 28A.645.010 when they intentionally choose to ignore a valid request for hearing, even though teacher termination cases are exempted from the 30 day timeline.

e. The 30 day timeline of RCW 28A.645.010 was not triggered when the School District failed to pay Cronin his wages and benefits.

The School District contends that Cronin's declaratory judgment action came too late to assert his claim for back pay and benefits, since Cronin failed to appeal those claims within 30 days of the School District's failure to pay them. The School District now claims that its response to McNair on February 28, 2012, gave plaintiff sufficient opportunity (2 days) to file a lawsuit to appeal the January 31, 2012 failure to pay wages. (Resp. Brief, p. 46, fn.13). What the School District ignores is that Cronin's timely request for hearing preserves his claim for back pay and benefits. (CP 62-66; 171). The School District's termination of pay and benefits was based upon its mistaken belief that Cronin's request for hearing was not timely and could not be made by a union representative. With a proper request for hearing, Cronin remains an employee of the school pending a decision on the

merits of whether the School District had sufficient cause to terminate him. (CP 59-67).

Cronin has a continuing contract right and is entitled to receive full pay and benefits until a hearing on the merits determines the correctness of the School District's decision to terminate. (CP 62-67). The termination of pay and benefits was directly linked to the School District's termination of Cronin as an employee.

With a properly served request for statutory hearing, the School District is required to maintain pay and benefits until the merits of his case are heard. (CP 62-65; 171). Once properly appealed, Cronin does not have to file a lawsuit under RCW 28A.645.010 in order to preserve his claim for back pay and benefits.

If this court determines that the School District failed to participate in the hearing process by ignoring Cronin's timely and proper request for hearing, then the trial court had jurisdiction to address all claims. This would include ordering the matter to hearing immediately, and reinstating pay and benefits pending a hearing officer's decision on the merits of the School District's termination. But if this court determines that Cronin failed to

timely or improperly requested a hearing, then his case is dismissed for lack of jurisdiction and he has no claim for back pay and benefits.

The School District argues that this situation is similar to the request for back pay made in the *Blunt v. School Dist. No. 35*, 12 Wn.2d 336, 121 P.2d 367 (1942). (Resp. Brief, p. 15-17). In that case, the teacher did not appeal his termination and it became final and binding. Thereafter he tried to assert a claim for back wages arising out of his improper termination. The court held that having failed to appeal the merits of his termination, the pay issue became final and could not be pursued. 12 Wn. 2d at 338-339.

Cronin, however, timely appealed his termination and requested a statutory hearing. He has preserved his claim for wages and benefits since the merits of his termination have not become final and binding.

f. Cronin's declaratory judgment action is a request for the court to enforce his right to a statutory hearing.

The School District argues that Cronin's Complaint for Declaratory Judgment does not seek to invoke any relief under authority of Chapter 28A.405 RCW. (Resp. Brief, p. 18, fn.4). The

School District is incorrect. Plaintiff has been clear that his request for relief is for a statutory hearing pursuant to RCW 28A.405.310. Cronin's Motion for Declaratory Relief, his Complaint's First Cause of Action as well as the first prayer for relief, all incorporate RCW 28A.405.300 and 28A.405.310 as part of the request for relief. (CP 7, 9, 51 & 73).

The School District also relies on *Clark v. Selah*, 53 Wn. App. 832, 835, 770 P.2d 1062 (1989). That was a declaratory judgment action involving an appeal from a school district decision to deny employment related benefits. Unlike Cronin, *Clark* was not an appeal from a termination and was not under the second proviso of RCW 28A.645.010.

The School District contends that nowhere does RCW 28A.405 allow Cronin to bring a declaratory judgment action. In fact, the statute sets out no remedies for breach of its terms. RCW 28A.405 is about procedures relating to a teacher termination or other adverse action. Like many statutes, it does not have specific remedies for breach or violation of its terms. The School District has pointed to no particular statute that allows declaratory relief as its remedy. That is because the declaratory judgment statute is to be used to provide remedies not previously

provided by law. RCW 7.24.010; *Reeder v. King County*, 57 Wn.2d 563, 358 P.2d 810 (1961).

The District also contends that Cronin abandoned the argument that he satisfied the 30 day time limit in RCW 28A.645.010 (Resp. Brief, p. 48). This is untrue. Cronin did and has argued that he filed his declaratory judgment action within 30 days after being notified by the District that McNair's letter requesting a hearing was not being given any effect. (CP 171).

The School District argues that Cronin's declaratory judgment action is nothing more than a challenge to the School District's failure to act, which triggers the 30 day time to sue under RCW 28A.645.010. The School District contends that since Cronin's declaratory judgment action is not a teacher discharge or other adverse action, it falls under the category of "all other cases" which are subject to the 30 day timeline of RCW 28A.645.010. If we take the District's argument to its logical conclusion, then "all other cases" under RCW 28A.645.010 has to be cases other than teacher termination cases. We know that not every claim against a school district is subject to the 30 day time limitation of RCW 28A.645.010, such as discrimination and tort claims. The only way to harmonize the first and second proviso of RCW

28A.645.010 is that once a timely appeal is made by a teacher under the second proviso, jurisdiction is established for the trial court to enforce or handle any matter related to a teacher discharge or other adverse action under appeal. Otherwise, the second proviso to RCW 28A.645.010 is meaningless and any act, decision or failure to act by the school district between the time the teacher files a proper request for hearing, and the time a hearing officer is appointed, would default to the 30 day time limit and require a lawsuit to be filed. If the court adopts the School District's position, this would force a teacher to file a lawsuit within 30 days after the school district refuses to name a designee (RCW 28A.405.310(4)), refuses to appoint a nominee (RCW 28A.405.310(4)), refuses to pay the hearing officer's fees and expenses (RCW 28A.405.310(4)) or refuses to pay for a transcript of the proceedings before a hearing officer (RCW 28A.405.310. Other than enforcement of subpoenas and prehearing discovery under RCW 28A.405.310(9), the statute is silent regarding how a teacher brings a school district to a properly requested hearing.

In a teacher non-renewal situation, does the teacher have to file a lawsuit within 30 days of the school district's failure to perform a statutorily mandated twice yearly observation (RCW

28A.405.100(1)), or a failure to perform an evaluation that lasts less than sixty minutes (RCW 28A.405.100(1)), or a failure to document the results of the observation in writing and provide a copy to the teacher (RCW 28A.405.100(1), or a failure to have at least twice yearly statutorily mandated teacher/supervisor conferences to assess performance (RCW 28A.405.100(3))? Cronin's declaratory judgment action was to enforce a right to a hearing he timely requested. The action is a request to enforce a right under a teacher termination case and not "all other cases".

g. Election of remedies in this case is a non-issue.

The School District contends that McNair's efforts to serve a request for statutory hearing somehow unilaterally extended the time line for his request for hearing from ten days to thirty days. The election of remedies issue is a red herring and a non-issue. (CP 178-180). All McNair did was to preserve Cronin's right to a statutory hearing. Whether she also set in motion a timely request for grievance is irrelevant. The School District didn't object to McNair's letter requesting a hearing, never made known their concerns, and never filed suit or otherwise forced Cronin to elect a remedy. No extension of any timeline ever occurred. The

issue of an election of remedies is moot and not an issue in this case.

The District claims that Ms. McNair's request for hearing was "equivocal" and "at best a vague, evasive attempt to extend the right to request a hearing beyond the ten days mandated by statute. (Resp. Brief, p. 7-8). That is untrue. McNair clearly stated that she was "requesting a closed hearing on Mr. Cronin's behalf to determine whether there is sufficient cause for such adverse action." (CP 48). There is nothing vague, evasive or equivocal about that. Her letter was direct and sufficient to preserve a statutory hearing. (CP 173-174; 180).

h. The District fails to address the holding in *Mountain View School v. Issaquah School Dist.*

If the 30 day time limitation of RCW 28A.645.010 applies to Cronin, the School District ignores the holding in *Mountain View School v. Issaquah School Dist.*, 58 Wn. App. 630, 794 P.2d 560 (1990). There, the court held that RCW 28A.645.010 only applied to decisions the school board had authority to decide in the course of administering the school. Whether to appoint a nominee is not the type of matter the school decides in the regular course of administering the school. (CP 254-255).

Likewise, the School District's reliance on *Haynes v. Seattle School Dist.*, 111 Wn.2d at 252-253 cited in *Mountain View* is misplaced. *Haynes* involved the predecessor to RCW 28A.645.010 requiring any teacher discharge appeal to be made to the school board. Prior to the present statute, all teacher claims including contract rights and claims were brought before the school board. The present statute separated teacher termination cases from the 30 day time limit. The *Mountain View* court did not defer to *Haynes.*

i. The two year statute of limitations to file declaratory judgment action applies.

Plaintiff has not abandoned his argument that the two year statute of limitations in RCW 4.16.130 applies. (CP 34-36). Assuming a timely request for hearing is determined to have been made by the teacher, why is it inequitable for a teacher to assert such an action within two years? Teachers are well motivated to pursue a termination claim as quickly as possible, especially when a school district terminates pay and benefits. A school district is motivated to have a hearing on the merits as quickly as possible because of its obligation to continue a teacher on pay and benefits pending a decision on the merits through a statutory hearing.

The District contends that RCW 4.16.005 applies the two year statute unless a different limitation is prescribed by statute not contained in this chapter. They assert that RCW 28A.645.010 is just such a different limitation. They ignore, however, that RCW 28A.405.210 and .310 provide a ten day limitation, which was complied with in this instance.

j. Equitable principles apply to the School District's conduct.

The School District failed to respond to Cronin's timely request for a hearing. It intentionally and knowingly chose to ignore his request for hearing. The School District lacks clean hands and the failure to respond waives its right to argue that the court lacks jurisdiction. (CP 258). It is interesting that the School District's counsel was aware of the undersigned's appearance in the case, yet decided not to respond to the undersigned's inquiry. Rather, he had the District send notification to McNair although he indicated he was going to get back to the undersigned "as soon as possible" (CP 24-26).

The School District misstates that *Blunt, supra,* supports the position that it is under no obligation to inform anyone of a failure to act. On the contrary, it is the obligation of the District to appoint a nominee, not for the teacher to inquire why the school

district failed to appoint a nominee. In *Blunt* the employee was aware of the school district's position. He knew not only that he had been terminated, but of the decision of the school district not to pay him. Cronin, on the other hand, was not aware of the District's position until the Superintendent's letter to his union representative on February 28, 2012 (CP 50).

III. CONCLUSION

Jurisdiction exists by virtue of Cronin's timely request for hearing. The trial court declined to hear Cronin's motion for summary judgment under the mistaken belief that his failure to file a lawsuit to force the School District to appoint a nominee, divested the court of jurisdiction. As a result, the trial court never reached the merits of Cronin's contentions. (CP 278-279). The trial court erred. This matter should be remanded with instructions to find that jurisdiction exists and to determine the issues raised in Cronin's motion for summary judgment.

Dated this 14th day of June, 2013.

Respectfully submitted:

POWELL, KUZNETZ & PARKER, P.S.

By _____
Larry J. Kuznetz, WSBA #8697
Attorney for Appellant
Michael F. Cronin

APPENDIX

Article I-Administration of Agreement
Section B-Exclusive Recognition

ARTICLE I – ADMINSTRATION OF AGREEMENT

Section A – Duration

This agreement shall be in effect from September 1, 2010 through August 31, 2012.

CENTRAL VALLEY EDUCATION ASSOCIATION	**CENTRAL VALLEY SCHOOL DISTRICT**
BY: /s/ Richard A O'Brien CVEA President	BY: /s/ Anne Long President, Board of Directors
DATE: June 14, 2010	DATE: June 14, 2010

Section B – Exclusive Recognition

The District recognizes that the Association is the exclusive bargaining representative for all certificated personnel employed by the District, except the Superintendent, Assistant Superintendents Executive Directors of Learning and Teaching, Directors of Human Resources, Director of Technology and CTE, Director of Special Education, Special Education Coordinator(s), Director of Title 1/Special Programs, Director of Learning Services, Director of Assessment, Coordinator of Staff Development, Supervisor of Technology, Principals, Assistant Principals, and certificated substitutes who work fewer than twenty (20) consecutive days in the same assignment or thirty (30) accumulated days in the current or preceding school year.

The term "certificated employee" or "teacher" or "staff" shall refer to all regular certificated employees represented by the Association in the bargaining unit.

The term "temporary employee" shall refer to all substitute certificated employees included in the bargaining unit as per above. The following provisions shall apply to temporary employees:

Article I - A, B, C, D, H, I, J
Article II - A (parts 1, 2, 4C), F, G
Article III - A, B, C, D, G (except evaluation requirement), I, J for 20-day people
Article VI - A & G as per employee replaced, F

Unless the context in which they are used clearly requires otherwise, words used in this Agreement denoting gender shall include both the masculine and feminine; and, words denoting number shall include both the singular and plural.