

SUPREME COURT OF THE STATE OF WASHINGTON

BAYLEY CONSTRUCTION,

Appellant,

v.

DEPARTMENT OF LABOR AND  
INDUSTRIES,

Respondent.

**REPLY TO ANSWER  
TO MOTION TO  
STRIKE REPLY TO  
ANSWER TO  
PETITION FOR  
REVIEW**

**I. INTRODUCTION**

The Department of Labor & Industries moves to strike Bayley Construction’s reply to the answer to petition for review. A reply is only permitted if the respondent raises a new issue—no new issue was raised here.

**II. ARGUMENT**

RAP 13.4(d) only permits a reply to an answer to petition for review if the answer raises a new issue. Bayley asserts that the Department raised a new “argument” when the Department argued that the dictionary definitions of the terms of the regulation showed that Bayley violated the applicable regulation. Ans. to Mot. to Strike 2. Bayley conflates “argument” with “issue.” A respondent may raise an argument not addressed by the petitioner in response to an issue raised by the petitioner.

In its petition, Bayley raised the issue that it did not violate the regulation’s requirement regarding “maximum potential load.” Pet. 3. The Department responded in its answer that the Court of Appeals correctly found that under the dictionary definition of the terms that Bayley did violate the regulation. Ans. to Pet. 9 (citing *Bayley Constr. v. Dep’ of Labor & Indus.*, \_\_ Wn. App. \_\_, 450 P.3d 647, 660 (2019)). No new issue has been raised—the Department merely responded to arguments raised by Bayley.

In any event, Bayley’s reply goes far beyond talking about dictionary definitions, raising other arguments. Reply to Ans. to Pet. 6-11.

This Court should strike the reply as it is out of compliance with RAP 13.4(d).

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### III. CONCLUSION

The Department requests that this Court not consider the reply and strike it.

RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of February 2020.

Respectfully submitted,

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No. 97867-1

**SUPREME COURT OF THE STATE OF WASHINGTON**

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CERTIFICATE OF  
SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, she caused to be served the Department of Labor & Industries' Reply to Answer to Motion to Strike Reply to Answer to Petition for Review and this Certificate of Service in the below described manner:

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DATED this 6<sup>th</sup> day of February, 2020.

A handwritten signature in black ink, appearing to read "Shara Wusstig", written over a horizontal line.

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Reply to Answer to Motion to Strike Reply to Answer to Petition for Review

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