No. 98224-4

SUPREME COURT OF
THE STATE OF WASHINGTON

No. 362914-III

IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION III

MICHAEL F. CRONIN,

Respondent,

vs.

CENTRAL VALLEY SCHOOL DISTRICT,

Appellant.

RESPONDENT MICHAEL F. CRONIN'S ANSWER TO APPELLANT CENTRAL VALLEY SCHOOL DISTRICT'S PETITION FOR DISCRETIONARY REVIEW

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TABLE OF AUTHORITIES

Cases:

Statutes:

I. INTRODUCTION

This is not a case about *what* a teacher did to be terminated, but *how* a School District ignored and refused its statutory obligation to engage in the hearing process under RCW 28A.405, and in turn, violated the teacher's statutory and due process rights. This is not a case about whether a School District can terminate a teacher for cause, whether by discharge or nonrenewal. This is a case about whether a School District can cut off a teacher's pay and benefits, subsequently provide the teacher with a Notice of Probable Cause for non-renewal and discharge based on identical allegations, and then ignore the teacher's request for a statutory hearing pursuant to RCW 28A.405.310. This is a case about the missteps, unlawful legal positions and improper actions taken by Central Valley School District against Mr. Cronin over the course of almost eight and one-half years, starting when it attempted to terminate him on January 5, 2012, and then refused to engage in the statutory hearing process after he timely requested a hearing. And it is still ongoing today as the District is currently in contempt of court (affirmed by the Court of Appeals) for refusing to comply with a valid trial court order. This case is based upon a unique set of facts and circumstances surrounding this school district's intentional refusal to proceed to a statutory hearing on the merits of a teacher's discharge and non-renewal.

Respondent Michael F. Cronin ("Cronin") was employed as a teacher for Appellant Central Valley School District ("District") for seven years. He was unlawfully terminated from employment when the District violated his due process rights by deliberately refusing to accept his union representative's timely served request for a statutory hearing on the merits of his termination.

After almost eight and one-half years and four trips to the Court of Appeals, the District is requesting review of the Court of Appeals' decision (the "decision") that affirmed the trial court's order 1) placing the parties in status quo by requiring the District to participate in a statutory hearing which they had refused to do; 2) ordering Cronin be placed on pay and benefits pending the decision by the statutory hearing officer as he would have been in 2012 had the District complied with the applicable statutes and proceeded with a hearing; and 3) awarding Cronin his back wages and benefits, pre-judgment interest, along with attorney's fees and costs because it found that the District violated Cronin's due process rights by failing to participate in a statutory hearing after he timely appealed his termination.

The Honorable Judge John Cooney summarized the very essence of this case best when he remarked in his June 1, 2018, letter decision denying the District's motion for reconsideration that, "Mr. Cronin's statutory rights have, at worst, been completely ignored and, at best, delayed over six years."

II. ISSUES PRESENTED FOR REVIEW

Cronin is not cross appealing any issues.

III. STATEMENT OF THE CASE

A. The Facts Presented by the District are Disputed, Immaterial and Irrelevant to its Petition For Discretionary Review.

The allegations asserted against Cronin and the basis of his termination are disputed, irrelevant, and immaterial to the District's Petition for Review. The District has repeatedly attempted without success to use the factual allegations of disputed misconduct against Cronin to justify its actions when it violated Cronin's statutory and due process rights that every teacher in the State of

Washington is afforded when faced with termination by a school district. The trial court found the disputed allegations immaterial and irrelevant to its decision on Summary Judgment stating, "I'm not here to decide whether or not the facts warranted the discharge or the nonrenewal of a contract. That's something for a hearing examiner to decide, not for this Court." RP 3:24-4:3 April 27, 2018. The Court of Appeals Division III Commissioner likewise found the disputed allegations relating to the grounds for discharge and nonrenewal to be immaterial and irrelevant to the issues on appeal. No. 362910-4-III, Ruling, 4 (Nov. 30, 2018)(granting Cronin's motion to strike from the District's Statement of Facts the disputed factual allegations against Mr. Cronin reasoning that those allegations in their entirety were not relevant to the issues before the Court). Likewise, those factual allegations are not before this Court. They are nothing more than an effort to divert the Court's attention from the real issues, and to somehow give credence to the District's decision to deny Cronin his statutory due process rights.

It is telling that not **once**, ever, are the disputed factual allegations found on pages 5-8 of the District's brief relied upon much less even referenced in the Argument section of its brief. The merits of any allegations raised as grounds to terminate Cronin is within the sole purview and discretion of a statutory hearing officer and not this Court. RCW 28A.405.310.[1]

[1] The statutory hearing officer's decision finding probable cause to discharge and non-renew Mr. Cronin is presently on appeal before the Honorable Judge Raymond Clary in Spokane County Superior Court (Case No. 19-2-00279-32).

B. The District Violated Cronin's Statutory and Due Process Rights.

In January 2012, Cronin was employed with the Central Valley School District as a teacher. CP 311-14. He had good performance evaluations and his classroom performance was never an issue. CP 353. Although he had an alcohol problem outside of school, he was never under the influence at school or while teaching. CP 314. On September 30, 2011, after being placed on paid administrative leave, Cronin voluntarily entered an alcohol treatment program with knowledge and notice to the District. CP 313. After discharge from treatment on October 27, 2011, he reported to Geiger Correctional Facility to serve the remainder of a sentence on a previous DUI/Physical Control charge. *Id.* Work release was authorized at sentencing. *Judgment and Sentencing Order,* City of Spokane Case No. N10389 (Sept. 29, 2011).

On December 31, 2011 the District cut off Cronin's pay and benefits, despite the fact that he had work release. *Id.;* CP 14-15, 315. On January 6, 2012, 10 days before his release and while still incarcerated, Cronin received a certified letter from the District terminating his employment. CP 371-72. The District served him in jail knowing full well that he was still incarcerated. CP 700-02. Since he had no feasible way to appeal from jail, he had his union representative Sally McNair ("McNair") timely serve a request for a statutory hearing with the District's Superintendent as required by statute. CP 373.

On February 21, 2012, Cronin's attorney faxed a letter to the District's attorney inquiring about Cronin's January paycheck and requesting reinstatement of his pay and benefits pending the requested statutory hearing. CP 22-24. Six days later on February 28, 2012, McNair received a certified letter from the

District's Superintendent stating that McNair's request for statutory hearing on behalf of Cronin was not properly presented since she was not the employee and had no authority from Cronin to file the request. CP 32, 50. The District took the position from that point until now, Cronin was terminated and had waived his right to a statutory hearing. This was despite receiving McNair's request timely and knowing full well that Cronin was incarcerated and would be unable to personally present to the Superintendent a timely request for a statutory hearing. *Id.* On March 23, 2012, Cronin filed an action for declaratory relief and summary judgment to enforce his request for a statutory hearing and for pay and benefits pending a decision on the merits by a statutory hearing officer. CP 1-10.

This case has been to the Court of Appeals four times, the last decision affirmed Judge Cooney holding the District in contempt for intentionally refusing to comply with the Trial Court's order placing Cronin on pay and benefits pending a hearing on the merits. No. 36666-9-III, Jan. 30, 2020; Reconsideration denied on Mar. 4, 2020. It has now been almost eight and one-half years of protracted litigation determining whether the District had a legal right to ignore McNair's request for a statutory hearing. Three separate Court of Appeals' panels have found that the District's actions and legal positions were unlawful and in violation of Mr. Cronin's statutory and due process rights.

IV. ARGUMENT

A. The District Failed to Argue and Properly Incorporate the Prior Appellate Court Decisions in this Matter in Violation of RAP 2.5(c) and RAP 13.4(f).

This is the third time that the District has sought discretionary review from this Court. Its first two petitions were previously denied. *Cronin v. Cent. Valley*

Sch. Dist., 180 Wn. 2d 1030 (Aug. 6, 2014); *Cronin v. Cent. Valley Sch. Dist.,* 186 Wn.2d 1021 (Nov. 2, 2016). However, in this petition, the District now requests that this Court revisit both prior unpublished Court of Appeals decisions pursuant to RAP 2.5(c). Pet. 2-3. Without any authority, the District attempts to incorporate those decisions generally and never articulates what specific issues should be reviewed or why the law of the case should not be followed as required by RAP 2.5. *See Id.*

Under RAP 2.5(c), a reviewing court *may* review a prior appellate decision where justice would best be served. This is a high threshold and burden required of the requesting party. *Folsom v. County of Spokane,* 111 Wn.2d 256, 264 (1988)(stating that reconsideration of prior decisions will be granted in the limited circumstances where a prior holding was "clearly erroneous" or would "result in a manifest injustice"); *see also Arnold v. Saberhagen Holdings, Inc.,* 159 Wn. App. 1025 (2011)(finding it improper to revisit a prior holding "absent a showing of manifest error or an intervening change in the law"). The District did not address or argue in its brief why this Court should not follow the law of the case, or why the prior decisions by the Court of Appeals were clearly erroneous or would result in a manifest injustice. The District has failed to meet its burden and show why revisiting the prior decisions is appropriate under RAP 2.5(c).

Secondly, the District violated RAP 13.4(f) when it did not specifically state the issues presented for review under the prior decisions but has simply attempted to generally incorporate them by reference. Pet. 2-3. Incorporating issues or argument by reference raised in other pleadings is improper. *Tamosaitis*

v. Bechtel Nat., Inc., 182 Wn. App. 241, 248 (2014) *citing Diversified Wood Recycling, Inc. v. Johnson,* 161 Wn. App. 859, 890 (2011); *State v. Gramble,* 168 Wn.2d 161, 180 (2010). The proper approach is for the party to set forth its complete argument and issues on review. *State v. I.N.A.,* 446 P.3d 175 (2019). An argument or issue not briefed and simply incorporated from another pleading is considered abandoned. *Holland v. City of Tacoma,* 90 Wn. App. 533, 537-38 (1998). The District waived and abandoned the issues for review under the prior Court of Appeals' decisions by failing to articulate the issues for Cronin to address from those decisions in his Answer to this Court. Accordingly, this Court should deny review of any issues from the prior decisions in this matter.

B. The District Failed to Demonstrate Any Issues Meriting Review Pursuant to the Considerations Governing Acceptance of Review under RAP 13.4(b).

Under RAP 13.4(b), "A petition for review will be accepted by the Supreme Court **only**" if the Court of Appeals decision is: (1) in conflict with a decision of the Supreme Court; (2) in conflict with a *published* decision of the Court of Appeals; (3) raises a significant constitutional question of law; or (4) involves an issue of substantial public interest. If the petitioning party fails to demonstrate the existence of any issues meriting review under RAP 13.4(b), discretionary review will be denied. *In re Wilson,* 338 P.3d 275 (2013).

The District has failed to demonstrate that the decision by the Court of Appeals merits review under RAP 13.4(b). Ultimately, the Petition for Discretionary review only argues that the Court of Appeals "erred" in its ruling. The District even concedes this is the basis for requesting review in its opening statements: "The District now respectfully requests this Court to accept review

and *correct the legal errors* that have led to this *flawed outcome*." Pet. 2. (emphasis added). The District argues that review should be accepted on the basis of the following alleged legal errors: 1) the finding that McNair sufficiently requested a statutory hearing for non-renewal (*Id.* at 14); 2) the finding that the District did not comply with RCW 28A.405.310 when it ignored Cronin's request for a hearing and refused to engage in the statutory hearing process (*Id.* at 15); 3) that the 2020 decision contradicts the 2016 unpublished opinion (*Id.* at 18); and 4) refusing to consider the briefing submitted by Amici Curiae (*Id.* at 19). None of these arguments are a basis under RAP 13.4(b) to accept review by this Court. As the District does not raise any issues that merit or warrant review by this Court, the petition for discretionary review should be denied.

1. The Court of Appeals Decision does not Conflict with a Decision of the Supreme Court nor does it Raise a Significant Constitutional Issue of Law.

Despite specifically citing RAP 13.4(b)(1) as a basis for review, the District did not cite or reference a single Supreme Court case that conflicts with the Court of Appeals decision in this case. *See* Pet. 2, ii. That is because there is none. Nor does the District contend or argue that the decision implicates a significant constitutional issue. Accordingly, discretionary review is unwarranted under RAP 13.4(b)(1) and (b)(3).

2. The Court of Appeals Decisions do not Conflict with a *Published* Decision of the Court of Appeals, nor are the Prior Decisions in this Case Inconsistent.

a. The Prior Court of Appeals' Decisions are Unpublished and Are Consistent.

After Mr. Cronin filed his declaratory relief action, the District moved for summary judgment arguing that the Superior Court lacked subject matter jurisdiction pursuant to RCW 28A.645.010, claiming that Cronin: 1) failed to file

his declaratory action within 30 days of the superintendent's *uncommunicated* decision that McNair's letter requesting a statutory hearing was not accepted by the District because she was not an employee of the District; and 2) failed to file within 30 days after the 15 days had expired from when the District failed and refused to appoint a nominee to select a hearing officer under RCW 28A.405.310. CP 87-134. On November 29, 2012 the Honorable Jerome Leveque entered an order granting summary judgment to the District. *Id.*

After a motion for reconsideration was denied, Cronin filed a notice of appeal with Division III on December 21, 2012. In an unpublished opinion issued on March 13, 2014, the Court of Appeals unanimously overturned the trial court, and remanded the matter for further proceedings. (CP 300-308). The Court of Appeals reasoned:

> The District refused to comply with the hearing procedure set forth in RCW 28A.405.310... Nothing in RCW 28A.645.010 authorizes an appeal from a mere failure to respond; rather, there must be a decision, order, or failure to act. The District argues its failure to act in January made the March appeal untimely. But, the District's February 21, 2012 letter informing Mr. Cronin that it would not comply with RCW 28A.405.310(4) was the rendition of a decision, triggering the 30-day period to appeal. *Id.* at 304, 306.

The District petitioned this Court for review, which was denied. *Supra.* Next, on remand, there were cross motions for summary judgment and the District argued: 1) that Cronin failed to timely elect a remedy between either a grievance under the Collective Bargaining Agreement or a statutory hearing; and 2) that McNair lacked authority to request a statutory hearing on Cronin's behalf. CP 389-415. The Honorable Kathleen M. O'Connor denied the motion insofar as McNair having authority to act on Cronin's behalf, but granted the District's

motion finding that she failed to timely elect a remedy. CP 589-92. Cronin thereupon appealed on January 5, 2015.

In a second unpublished opinion, the Court of Appeals again unanimously reversed and held that McNair was an authorized agent of Cronin who had timely appealed Cronin's right to a statutory hearing. CP 606-38. As the facts were not in dispute, the Court of Appeals determined that: 1) the District ignored and refused to participate in a statutory hearing; 2) that Cronin was entitled to a statutory hearing on the merits of his termination; and 3) that McNair had properly and timely requested a hearing on his behalf. *Id.* Cronin's request for declaratory relief was granted, "to the extent the request demands that the school district participate in the statutory hearing process to resolve the merits of Cronin's discharge from employment and nonrenewal of his teaching contract." *Id.* The issues relating to pay and benefits were remanded to the trial court. *Id.*

The District again petitioned for discretionary review and was again denied. *Supra.* Now, back before the trial court for the third time, on remand and per the Court of Appeals' instruction, Judge Cooney heard cross motions for summary judgment and determined that Cronin was entitled to: 1) a statutory hearing on the merits; 2) reinstatement of pay and benefits pending the decision by the statutory hearing officer; 3) back pay and benefits; 4) prejudgment interest; and 5) attorney's fees and costs. (CP 1100-03; RP 6:16-24, April 27, 2018). Cronin's request for double damages on wages owed and for the tax consequences of the

award were denied. The parties cross-appealed.[2]

In a unanimous and published opinion, the Court of Appeals affirmed the trial court on all issues except double damages on wages owed. The Court found issues of fact and remanded that issue to the trial court. *Cronin v. Cent. Valley Sch. Dist.*, __ Wn. App. 2d __, 456 P.3d 843 (2020). The Court found that McNair's January 11, 2012 letter timely requested a statutory hearing for both nonrenewal and discharge as the request for a hearing under the statute does not require any specific language, just that it be in writing. *Id.* at 853. The Court further reasoned that because the District provided only *one* Notice of Probable Cause for *both* discharge and non-renewal and relied on *identical* allegations to justify *both* the non-renewal and discharge, "[t]here would be no reason to contest discharge but not renewal." *Id.* The Court determined that McNair's letter requesting a hearing was not misleading as the District was aware that she did not have access to Cronin who was incarcerated, and that the District understood her letter was intended to preserve all of Cronin's rights. *Id.* Accordingly, it was determined that Cronin properly and timely requested a statutory hearing for both his discharge and nonrenewal. *Id.*

The Court then relied on the clear and express language found in RCW 28A.405.210 to conclude that:

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[2] The District was also subsequently found in contempt because it never reinstated Cronin's pay and benefits pending the decision by the statutory hearing officer despite moving forward with the hearing as ordered by the Trial Court. *See* No. 36669-4-III (Jan. 30, 2020).

> RCW 28A.405.210[3] requires an employee who appeals a nonrenewal determination to be reemployed the ensuing term if a school district fails to provide the employee an opportunity for a timely hearing. Here, the District failed to provide Cronin the opportunity for a timely hearing. *Id.* at 855.

The Court of Appeals then limited its ruling, stating:

> [O]ur holding requires a school district to provide such employees only an opportunity for a hearing that is timely. Where hearings are delayed for practical reasons or because of an employee's request or agreement, a district has not failed its statutory obligation... A hearing that occurs beyond the contract year can still be considered timely, depending on the circumstances of delay. *Id.* at 854-55.

This ruling is not inconsistent with the prior decisions in this case, and in fact, each decision logically and reasonably builds upon the decision before it. The District's argument that the Court of Appeals decision in 2016 ordered an "untimely hearing" is inaccurate and a misrepresentation of the Court of Appeals' decisions. Rather, the decisions as a whole conclude that: (1) From the 2014 decision, Cronin timely and properly filed a declaratory judgment action in superior court to enforce his rights to a statutory hearing; (2) From the 2016 decision, Cronin through his authorized union representative (McNair) timely appealed and requested a statutory hearing in compliance with RCW 28A.405 that preserved his right to a hearing on the merits; and (3) From the 2020 decision: a) the District ignored Cronin's appeal and refused to proceed to a statutory hearing; b) the District's refusal to proceed to a statutory hearing did not provide Cronin an opportunity for a hearing in a timely manner under the

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[3] RCW 28A.405.210 states in pertinent part: "[An employee notified of nonrenewal who requests a hearing] shall be granted opportunity for a hearing pursuant to RCW 28A.405.310 to determine whether there is sufficient cause or causes for nonrenewal of contract. ... *If any such notification or opportunity for hearing is not timely given, the employee entitled thereto shall be conclusively presumed to have been reemployed by the district for the next ensuing term.*" *Id.* at 854.

clear language of both the non-renewal (RCW 28A.405.210) and discharge statutes (RCW 28A.405.300); and c) Cronin's teaching contract was renewed under the terms of RCW 28A.405.210 and the award to him of back pay and benefits was affirmed. *Supra.* Not only are these decisions consistent with one another, but they are consistent with RCW 28A.405.210. Significantly, each Court of Appeals' decision concluded that the District did not comply with the procedures outlined in RCW 28A.405.310.[4]

What is also critically important to understand is that the first two earlier decisions by the Court of Appeals (2014 and 2016) were unpublished. RAP 13.4(b)(2) expressly requires that a decision be "in conflict with a ***published decision*** of the Court of Appeals[.]" (emphasis added). Accordingly, this Court should not accept review as the District's argument that there is an inherent and internal inconsistency between the Court of Appeals' decisions is not only inaccurate based upon a fair reading of the issues and rulings of each decision, but the underlying decisions are unpublished. No "conflict" between the decisions exist that would merit review by this Court.

b. The *Greene* decision Does Not Conflict with the Decision and is Readily Distinguishable Both by Issue and Ruling.

The District relies on *Greene v. Pateros School Dist.*, 59 Wn. App. 522 (1990) to justify the uncategorical position it took at the onset of this case. Pet. 15. *Greene* is not in conflict with the decision in this matter as Mr. Greene's

[4] "The District refused to comply with the hearing procedures set forth in RCW 28A.405.310." CP 304. "Instead, the district took the uncategorical position that the notice was void, because of the lack of Michael Cronin's signature[.]" CP 636. "Here, the District did not follow the procedures outline in RCW 28A.405.310. Instead the District refused to give Cronin his requested statutory hearing and asserted arguments that we have ultimately rejected." *Cronin,* 456 P.3d at 854.

appeal was not timely. Further, *Greene's* application to this case by the District was expressly rejected by the Court of Appeals. *Cronin,* 456 P.3d at 853.[5] After receiving a notice of nonrenewal, Mr. Greene made no effort to request a statutory hearing or otherwise appeal the notice, but he did send a letter seven days later to the superintendent to inquire about a seniority list that had been released prior to his notice of non-renewal. *Greene,* 59 Wn. App. at 526. He believed that his seniority status was incorrectly calculated and that he may be qualified for a seniority placement position. *Id.* at 526-27. Two days later, which was nine days after the notice of non-renewal, he and the superintendent met in person. *Id.* What was discussed is disputed. *Id.* However, Mr. Greene immediately contacted and met with an attorney that same day. *Id.*

Twelve days after the notice of non-renewal, he sent another letter, but this time to the school board, inquiring about the basis of the reduction in force and requested the school board consider addressing the reduced enrollment issue in a different manner. *Id.* at 528. He did not appeal or request a hearing on his nonrenewal. *Id.* Two days later, now 14 days after his notice of non-renewal, he submitted a written appeal for both his seniority placement and whether a reduction in force was necessary. *Id.* at 528-29. The trial court found that the request for a statutory hearing of the notice of non-renewal untimely and the Court of Appeals affirmed. The Court reasoned that the non-renewal statute required written notice, that the first letter could not be reasonably construed as a

[5] This argument should be struck entirely as there is no basis in the record for the District's claim that *Greene* was the basis for its decision in 2012 to challenge Cronin's hearing request or that it ever relied upon it. Nor does the District cite to the record for this assertion. Pet. 15.

request for a statutory hearing, and the subsequent letter of appeal was untimely. *Id.* at 530-31.

Nothing in *Greene* stands for the District's proposition that specific language for non-renewal is required to be stated when requesting a statutory hearing. Pet. 15. Nor does *Greene* stand for the proposition that a District should not presume that requesting "one type of hearing includes all others." *Id.* Unlike Cronin, the teacher in *Greene* failed to appeal or timely request a hearing at all. *Greene,* 59 Wn. App. at 526-27. Unlike Cronin, the District in *Greene* could in no way presume that a request for hearing was made at any point within the requisite 10 days as required by statute. *Id.* In Cronin, the District conceded that it understood McNair's letter to be an attempt to preserve all of Cronin's rights to a hearing on the merits but ignored it. *Cronin*, 456 P.3d at FN 5. McNair's timely letter specifically referenced the statutory hearing, RCW 28A.405.310. CP 373.

Accordingly, the District's reliance on *Greene* as a published Court of Appeals decision that conflicts with this decision is misplaced. It does not merit review under RAP 13.4(b)(2).

3. The Court of Appeals Decision does not Involve an Issue of Substantial Public Interest as the Ruling is Narrow, and the District's Position of Far Reaching Impact is Speculative.

This decision is based upon a unique set of facts and circumstances that does not involve a substantial public interest. The ruling is specifically narrow and the unique factual background underlying the decision further narrows the ruling and its implications. The District's arguments relating to the long-term and far reaching impact of the decision are purely speculative.

As discussed above in Section IV.B.2.a., the decision was specifically narrow

and limited in its application and scope. This decision specifically does not apply to hearings delayed: 1) for practical reasons; 2) because of a teacher's request; 3) by agreement; or 4) simply because it occurs beyond the contract year. *Cronin,* 456 P.3d at 854-55. Rather, a delay should be looked at on a case-by-case basis, "depending on the circumstances of delay." *Id.* The decision does not implicate a substantial or significant interest. Rather, the decision is limited because of Central Valley School District's actions when it decided that rather than simply engage in the statutory hearing process, it would defend its decision heretofore rejected even in the face of four Court of Appeals decisions. The decision only impacts teachers who encounter some kind of extraordinary delay caused by their school district employer after having timely requested a statutory hearing after being terminated. Nor does this decision implicate the vast majority of teacher termination cases which are heard in a timely manner without significant delay. In fact, neither side has been able to find a similar case with a similar delay in **any** jurisdiction as these facts have portrayed.

Cases turn on and are distinguished by the facts of each individual case. *State v. Greenewood,* 120 Wn.2d 585, 601 (1993); *State v. Williams,* 74 Wn. App 600, 603 (1994); *Guar. Tr. Co v. Cont'l Life Ins. Co.,* 159 Wn. 683, 687-88 (1930)(Court found no difficulty distinguishing the case before it from cases cited given the difference in facts); *U.S. v. Maclin,* 915 F.3d 440, 444 (7th Cir. 2019)("Each case must turn on its special facts"). Importantly, a unique set of facts result in holdings that are *limited* and *narrowed* to their factual contexts. *Sierra v. Nelson,* 2000 WL 1587652, *4 (Tex. App. Oct 26, 2000) (emphasis

added); *see also In re Facebook, Inc. IPO Sec. & Derivative Litig.*, 986 F. Supp. 2d 524, 538 (S.D.N.Y. 2014)(finding that opinions all have some precedential value, however, "the facts of this case are highly unique… The holding in the [opinion was] narrow… The uniqueness of this case undermines the Defendants' contention that the [opinion] opens the door" for future liability).

The long-term and far reaching consequences that the District argues will result from this decision is inconsistent with the narrow holding of and unique facts that underly the decision.

Nor does this decision eviscerate the statutory hearing process as claimed by the District, "by failing to require a teacher to use the statutory hearing process… create[ing] a side process by which a teacher can seek immediate reemployment from superior court before the hearing officer decides the merits or concludes that an untimely hearing occurred." Pet. 17. The "reemployment issue" came about because the District was ordered to pay Cronin his wages and benefits pending the statutory hearing decision. The Trial Court did not send Cronin back to the classroom, but "reemployed" him for the purpose of pay and benefits pending the hearing on the merits. CP 1100-03. Commissioner Wasson already rejected this same argument when the District argued for a stay claiming a multitude of horrors if Cronin could be reemployed and returned to the classroom through a side process. No. 36291-4-III, Ruling 3 (Nov. 30, 2018). It is clear from the record that was never what Judge Cooney claimed or intended. *Id.* Since 2012, the District's undying litigation strategy/decision has clearly been to stand by its initial decision to refuse Cronin a statutory hearing, believing that in doing

so, no matter how long the delay, its only liability exposure would be to pay Cronin through the end of his 2012 teaching contract. It was the District's intractable belief in its "uncategorical" legal position that resulted in the delay for a hearing.[6]

This decision does not result in allowing teachers to forego appealing and requesting a hearing and essentially obtaining tenure for a teacher during the litigation process. *Id.* It creates no right to "automatic tenure" simply because a court determined that the District's refusal to go to hearing violated the teacher's due process rights. This decision holds that when a District causes a delay in a teacher's statutory right to an opportunity for a timely statutory hearing by failing or refusing to comply with the provisions of RCW 28A.405.310 after the teacher timely requests a hearing, then the teacher cannot simply be considered summarily terminated at the end of the contract year.[7] School districts across the State can avoid any impact from this decision if they proceed with a timely statutory hearing and comply with the requirements of RCW 28A.405.310 after a timely request for hearing has been made by a teacher.

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[6] The District blames Cronin for the delay and claims that his sole remedy was to apply to the presiding judge for appointment of a hearing officer rather than file a declaratory judgment action. Pet. 16. No authority for such a claim is cited. There is no evidence in the record that the District would have agreed to go forward with a statutory hearing after appointment by presiding of a hearing officer rather than continue to appeal the decision to grant such an appointment and hearing on the merits. *See also Cronin,* 456 P.3d at 855.

[7] At the time, the District did not even pay Cronin through his Notice of Probable Cause, let alone through his contract. In fact, unbeknownst to Cronin, his pay was actually terminated by the District *prior* to even serving him the Notice of Probable Cause on January 6, 2012, and *prior* to the end of his teaching contract that year on August 31, 2012. CP 14, 315. Even the District admits it terminated Cronin's pay and benefits without notice when it argues, for the first time and without any citation to the record, that Cronin's initial lawsuit and claim for back pay was untimely because the District unilaterally decided to discontinue his pay and benefits while he was on administrative leave. Pet. 4.

This decision does not redefine the statutory hearing process as argued by the District. As the District notes, the legislature designed the hearing process to resolve disputes expeditiously. Pet. 8. That purpose has been totally undermined by the District's legal position since 2012. This decision does not erase the distinction between non-renewal and discharge. Nor has it undone statutory requirements and timelines. School District's should not be flippant with teachers' rights and livelihood. Cronin's award is not punitive, rather, its remedial for the damages the District caused him when it disregarded his due process and statutory rights, terminating him without a statutory hearing despite his timely request for one in compliance with the statute.

The District's claim that this case has far reaching implications for future cases is also entirely speculative. "[I]t is rather speculative to say that the ruling has precedential value for a large number of cases when those cases have yet to be brought." *Primavera Familienstifung v. Askin,* 139 F. Supp. 2d 567, 573 (S.D.N.Y. 2001). As Commissioner Wasson stated in her ruling denying the motion to permit an amicus brief, this case "is not the typical case in which a statutory hearing remains pending on the date of expiration of the nonrenewed contract." No. 36291-4-III, Ruling, 3 (July 2, 2019). Accordingly, as this decision does not involve issues of substantial interest under RAP 13.4(b)(4), the District's petition for discretionary review should be denied.

V. CONCLUSION

The Court of Appeals decision does not merit review under the considerations specified in RAP 13.4(b). The District's disagreement with the outcome is not a basis for review. The Court of Appeals decision does not

conflict with any published Supreme Court or Court of Appeals decisions. It does not raise an issue of law under either the State or Federal Constitution's. Finally, it does not rise to the level of substantial public interest. This decision is narrow and has limited application in the future. As a result, this decision has limited precedential value. The decision does not undermine the legislatures intent, nor does it impair any school district's decision or effort to terminate a teacher under RCW 28A.405. The District's argument that this decision has widespread impact is misguided, speculative, and does not demonstrate grounds for review.

Furthermore, pursuant to RAP 2.5(c), the District failed to argue to this Court any specific issues from the Court of Appeals prior decisions and why following the law of the case would work a manifest injustice. By failing to argue these issues specifically, they have been abandoned and the Court should deny reviewing the Court of Appeals' prior decisions in the matter. Accordingly, Cronin respectfully requests this Court deny the District's Petition for Discretionary Review in its entirety.

Respectfully submitted this 1st day of April, 2020.

POWELL, KUZNETZ & PARKER, P.S.

By for
Larry J. Kuznetz, WSBA #8697
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By
Sarah N. Harmon, WSBA #46493

Certificate of Service

I HEREBY CERTIFY that on the 1st day of April, 2020, I caused a true and correct copy of Brief of Respondent, to be sent by the method indicated below to:

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DATED at Spokane, WA this 1st day of April, 2020.

Ashley Sandaine

POWELL, KUZNETZ, AND PARKER, PS

April 01, 2020 - 1:01 PM

Filing Petition for Review

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Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	Michael F. Cronin v. Central Valley School District (362914)

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