No. 47812-9-II

THE COURT OF APPEALS, DIVISION II

State of Washington

DREW OTA, CRAIG GARDNER, ET AL,

PLAINTIFFS

v.

PIERCE COUNTY,

DEFENDANT

APPELLANT'S OPENING BRIEF

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ASSIGNMENTS OF ERROR

The Superior Court erred by determining plaintiffs' employment contract extinguished rights to recover for underpayment of wages due under Ch. 49.52 RCW and accordingly erred in summarily dismissing the complaint.

ISSUES RELATING TO ASSIGNMENTS OF ERROR

Can an employment agreement negotiated by a labor union extinguish the union members' right to prosecute an action under Ch. 49.52 RCW for underpayment of wages?

STATEMENT OF THE CASE

STANDARD OF REVIEW

This case calls upon the court to review a trial court's dismissal of a case by summary judgment. Such decisions are reviewed de novo. *Jones .v Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068 (2002).

Summary judgment is appropriate only where "the pleadings, affidavits, and depositions establish that there is

no genuine issue of material fact and that the moviong party is entitled to judgment as a matter of law." *Jones, supra*, 146 Wn.2d at 300-01; CR 56(c).

IMPORTANT FACTS

This is a pay dispute between a large number of Pierce County Corrections Officers and Pierce County.

Taking the facts in a light most favorable to the plaintiffs, the county pay structure has, for a long time, and certainly during the periods in question, involved an agreement to provide officers with so-called "step" increases – basically annual increases based on years of service. A new hire is paid at "step 1" until he or she has been with the department for 26 pay periods or one year. CP 78.[1]

At that point, and for the second year of service, the officer is paid at "step 2." During the third year of service, each officer is paid at "step 3" and so on, until the officer has received six "step" raises. Essentially, these pay raises recognize that there is a learning curve and that an officer learns a considerable amount each year, and should be compensated more fully if the officer has put in the time to learn on the job. Once, however, the officer has received six

[1] It does not appear that the electronic clerk's papers completely align as to page numbers with the printed "Index" prepared. It's not clear why that's so. For example, Mr. Ota's Declaration should start on page 338 according to the Index, but actually seems to start on page 342 of the electronic record. References here are to the electronic record.

"step" raises no further raises accrue; apparently, after six years, there isn't a lot more to learn and an officer with, say, ten years of service really hasn't got much more practical experience than an officer with six years. In all events, the contract provides – and every corrections officer knows – about the "step" raises that apply each year in the early stages of a career. CP 78.

In addition to and after the cost-of-living increase above has been applied, effective January 1, 2008, the pay range for the classification of Correctional Officer shall be adjusted as follows: Step 1 shall be dropped and the existing Steps 2 through 6 shall be moved down one step each, to Steps 1 through 5. A new Step 6 will be added which is approximately 2.5% higher than the existing top step. Employees shall each be moved to the corresponding new step number so that their pay rate will not be impacted by this change and step increase counters will continue. However, employees who have been at the top step of the range for a minimum of 26 accruable pay cycles will be advanced to the new Step 6.

CP 317.

What's going on here is that all of the old "step" rates were being adjusted up, so that the 2007 "step 2" rate became the 2008 "step 1" or new hire pay rate. The 2007 "step 3," which normally would not be earned until after completing two years of service – at the start of an officer's third year of service – became the pay rate for a "step 2" officer in 2008. There is no "step 7" to shift and so a new "step 6" rate had to be created without reference to the 2007 scale; it would be approximately 2.5% above the old "step 6."

This new scale, essentially shifting everyone up a pay grade beginning January of 2008, would constitute a significant raise in county pay. But, what Pierce County did

was to shift down the "step" level of every officer, essentially rolling-back years of service on their books.

An officer with one and one-half years of service in December of 2007 would be paid in December as a "step 2" officer. That officer would expect to receive the 2007 "step 3" rate beginning in January of 2008 as each "step" rate shifted. A December "step 4" officer would expect in January to start getting the old "step 5" rate, and so forth.

However, what actually happened was that the county, together with a union representative, agreed to shift down each officer's years of service.

What that meant functionally was that an officer being paid as a "step 2" in December of 2007 was expecting to start receiving the old "step 3" – new "step 2" rate – in January of 2008, however, there wasn't any increase in "step" pay because the county reclassified from "step 2" to "step 1," so that the officer's pay beginning in January of 2008 was unchanged from the rate paid in December of 2007.[2]

That interpretation didn't matter at all to someone with more than six years of service as of December 2007 because, with more than six years of service, an officer would be (sort of) a "step 7" – that is, rolling back years of service wouldn't matter; either way, the officer is paid the maximum "step" rate.

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[2] Officers all got a small "COLA" increase, but the base "step" hourly pay rate didn't go up in 2008.

That interpretation didn't matter at all to an officer with less than one full year of service as of December, 2007 because such an officer was being paid at the old "step 1" in December of 2007, and because one can't be rolled to any "step 0," the officer would actually get a January, 2008 raise to the new "step 1" – old "step 2" rate.

The fact that officers with less than a full year of service couldn't be rolled back created some interesting issues because what it practically meant was that after January, 2008 some officers with less service time began to lap officers with more service time and get paid more. That's so because each officer would "step up" in pay on his or her anniversary.

So, for example, imagine an officer with a hire date of February, 2007. That officer would be paid as a "step 1" in December of 2007 and would then be paid at "step 2" in January of 2008. That's so because the old "step 2" became the new "step 1" and no officer was paid below "step 1" – the new hire pay.

In February of 2008, however, that officer reaches his or her one-year anniversary, and "steps up" one level, to the 2008 "step 3" pay.

Now, imagine an officer with a hire date of May, 2006. Because that officer has over one year of service. That officer moved from "step 1" pay to "step 2" pay in May of 2007 and in December, 2007 was a "step 2" employee. In January,

2008, the officer would theoretically move to the old "step 3" pay. But, being a "step 2" employee in December of 2007, the officer in Janaury, 2008 was rolled back. Both the officer hired in May of 2006 and the officer hired in February of 2007 were paid at the old "step 2," new "step 1" rates of pay. In short, the officer with one and one-half years of service, the officer with just under a year of service, and a new hire were all paid the same.

That would be somewhat of a problem, but a bigger problem was that in February of 2008, the employee hired in February of 2007 would "step up" in pay, to "step 2," the old "step 3." The officer hired in May of 2006 would continue to be paid at the 2008 "step 1," (old "step 2") until May of 2008 when he/she "steps up" to the new "step 2."

So, between February of 2008 and May of 2008, the officer hired in February of 2007 got more pay than the officer hired in May of 2006.

To solve this problem, the county and a union representative agreed to simply reset everyone's date of hire to January. It meant that the "lapping" problem vanished but only because officers with more than a year of service as of December got delayed in their annual "step" pay raises.

The county agrees that this is how the problem was solved. Deborah Young, a human resources agent for the county describes it this way:

> Upon implementation of this language, it quickly became clear that if those employees who were at the old step 1 were simply moved to the new step 1 rate and allowed to continue with step counters, they were likely to pass up some of the employees who had been employed longer. The AFSCME representative, Brock Logan, called me with this concern. We both agreed that this needed to be addressed and the best way to do that was to restart the step increase counters for those employees. Therefore, it was as if they received their first step increase early (because their old pay rate had been deleted), so their step counters started over, just as they do every time any employee receives a step increase. Mr. Logan and I each verbally agreed to the following sentence: "Those employees who are at the old Step 1 shall be placed at the new Step 1 and their step increase counters shall start over."

CP 267-68.

The contract language at issue in the 2008 agreement is admittedly confusing and ambiguous. It says (see page 3 above): "Employees shall each be moved to the corresponding new step number so that their pay rate will not be impacted by this change and step counters increase counters will continue."

The words "so that their pay rate will not be impacted" was apparently read by the county to mean "so that their pay rate will not be increased [when the new step rates, based on shifting the old step rates goes into effect.]" But, the more reasonable interpretation is that: "so their pay rate will not

be impacted," means that, although the "step" rates shift and the old "step 2" becomes the new "step 1" employee's years of service and step increase dates are unaffected, so that everyone gets the increase in pay bargained for; the years of service don't shift, only the pay rates shift.

In all events, what should be apparent is that the contract is not the most artfully drafted and might be subject to clarification depending on what evidence is presented at trial.[3] It seems unlikely that anyone bargained for a whole range of increased "step" pay rates that were essentially illusury, which is what would be the case if the county simply rolls back years of service on employees at the same time "step rates" are increased, so that there isn't any actual change in base pay rate.

If the deputy's version of the contract is correct, then clearly the county has unlawfully withheld pay in violation of Ch. 49.52 RCW.

The trial court never addressed that issue because it held that the grievance procedure built into the collective bargaining agreement was the sole and exclusive remedy available to the aggrieved officers, dismissing the case on the grounds that whatever resulted from that procedure, constituted their entire remedy. Specifically, the court held: "RCW 49.52 is not an independent statutory obligation up

[3] It would have been wiser, and clearer, to simply restate the 2008 "step" pay rates for each grade, rather than shifting the rates from 2007 to-the-left so to speak.

which relief can be granted without applying the terms of the CBA [Collective Bargaining Agreement]. CP 371.

This timely appeal followed. CP 374-80.

APPLICABLE LAW AND ARGUMENT

The core of this appeal raises the question of whether a simple employment contract can override or destroy an employee's ***statutory*** right to a Superior Court action as a remedy for recovery of the wages for which they have contracted.

This case is not about a grievance as defined in the contract.

All of the contracts pertinent to this case define a grievance as "a dispute arising from a Management interpretation or application of the provisions of this agreement which adversely affects an employee's wages, hours or conditions of employment and is contrary to the terms of this agreement." CP 334. (The 2007–09 CBA at Article 18, Section 1.)

Not every claim against the county, and not every complaint about contract performance, is a "grievance"

which must follow the contract provisions for resolving a "grievance." That process applies only to a "grievance."

The county's simple refusal to just pay wages due is not a "grievance" as defined in the contracts for many reasons. Most importantly, the county's action in this case doesn't "adversely affect an employee's wages." That's so because the county can't affect ***the wages due under the contract*** by just refusing to pay. That kind of activity affects an employee's ***pay*** and his ***paycheck***, but it does nothing to affect the wages, hours or conditions of employment because all of those things remain entirely unchanged by the county's decision to simply not pay wages due.

Looking at the plaintiffs' problem from a practical perspective, it's obvious that an employee can bring a "grievance" only when the employee has some reason to object to the county's action. In this case, if the nonpayment of wages due is a "grievance," then to get properly paid, each affected deputy sheriff would be **required** to file a grievance every two weeks after inspecting his or her paycheck. No "grievance" could be filed in advance because no bjectionable action occurs until the county issues a defective paycheck.

A grievance filed more than ten days after issuance of the paychecks would be too late under the CBA's grievance procedures. The various contracts provide that "Grievances and appeals must be filed within the time limits specified below." And, the contracts also provide that "if a grievance is not presented . . . within the time limits the grievance/appeal shall be considered resolved." CP 334. (Article 18 of the CBA, section 2, last sentence.)

Pertinent to timely presentation of a "grievance," the contracts provide as follows: "The grievance shall be filed by the employee or shop steward with his or her immediate supervisor within ten (10) working days of the occurrence which gave rise to the grievance." CP 334. (Article 18 of the CBA, Section 2, Step 1.)

So, interpreting the nonpayment of wages due as a "grievance" means that every affected employee would be required to sequentially file a "grievance" every two weeks within 10 days of receiving a paycheck; baring that, all complaints about wages would be deemed "resolved" for that week.

This not only creates a fantastic amount of work for all involved, but effectively would shorten the statute of

limitations for bringing a wage-claim from six years to ten days.

It is also essential to also understand that the amount the county underpays each employee in any given paycheck is small. It's a few dollars differential in rates over about forty hours more-or-less (depending on overtime) and thus it would be economically impracticable for any employee to actually deploy the "grievance" procedure as a means of resolving that small pay shortage every two weeks.

Now, quite obviously, this whole problem ***could*** have been brought to the attention of management, and the parties ***could*** have arbitrated it early on and the county ***could*** have decided after losing one grievance arbitration that it wasn't paying the correct rates. And that could have been done long ago. But, the question here is not whether this dispute could have been cooperatively run through that process; anything ***could*** be resolved using that ADR process. The question before the court now is whether that ADR process is the process that each deputy sheriff ***must*** follow to obtain the pay bargained for in the contract.

Plaintiffs contend that every one of the deputy sheriffs affected are not ***required*** to use that procedure because the county's decision not to pay wages due does not give rise to a

"grievance" as that term is used in the various contracts. The county's decision affects plaintiffs' ***paychecks***, but it does not "adversely affect an employee's wages, hours or conditions of employment" which are fixed by the contract.

The county relied below on *Davis v. State Department of Transportation*, 138 Wash. App. 811, 159 P.3d 427 (2007). However, that case turned on a very special statute applicable to ferry employees; that being RCW 47.64.280 which provided: "Ferry system employees shall follow either the grievance procedures provided in a collective bargaining agreement, or if no such procedures are so provided, shall submit the grievances to the marine employees' commission as provided in RCW 47.64.280." That the court's decision rested squarely on this special provision is apparent from note 10, "Because our decision rests exclusively on RCW 47.64.150, and the State is not an employer under the Labor-Management Relations Act . . ."

Davis is a special case, because, as indicated by the court at note 6 "Chapter 47.64 RCW clearly shows that the 'Washington Legislature has authorized the MEC to intercede in labor negotiations between WSF on the one hand, and, on the other hand, ferry employees and a ferry employee organization.'" Here, there is no specialized MEC

to address specialized claims of deputy sheriffs akin to the unique maritime claims of ferry employees.[4]

Davis stands for the proposition that a *statute* can modify another statute, in the sense that the old Ch. 47.64 modified the more general Ch. 49.52. *Davis* does not support the proposition that the protections of Ch. 49.52 can be bargained away by *contract*.

Under the county's very broad interpretation of "grievance," were the county to simply refuse arbitrarily to issue a paycheck at all, the employee's sole remedy would be to file a grievance within 10 days; failing that, the county's obligation to pay would be entirely extinguished. That can't possibly be an accurate recitation of the law.

If a simple refusal to pay constitutes just another "grievance," and if the contract actually provides only a ten day window to process a claim for unpaid wages, then such a contractual restriction is void as violating public policy and therefore unenforceable.

Various court opinions describe Washington as a "pioneer" in assuring payment of wages due an employee. *See* e.g. *Int'l Ass'n of Fire Fighters, Local 46 v. City of*

[4] The provisions of Chapter 47.64 on which the *Davis* case turned seem to have been repealed and replaced after the decision by RCW 47.64.170(4) which now allows disputes to be resolved by the Thurston County Superior Court.

Everett, 146 Wash.2d 29, 35, 42 P.3d 1265 (2002) (quoting *Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wash.2d 291, 300, 996 P.2d 582 (2000)). Toward that end, three wage statutes penalize an employer who willfully withholds wages (WRA), fails to pay the statutory minimum wage (MWA), or fails to pay wages due upon termination of employment (WPA). The court is tasked with construing these laws "liberally" in light of the strong public policy to protect workers' rights. Id. at 35, 42 P.3d 1265 (quoting *Ellerman v. Centerpoint Prepress, Inc.*, 143 Wash.2d 514, 520, 22 P.3d 795 (2001)).

If this case proceeds, it may be determined that the county did pay the wages due under the contract, or it might be found that the county did not pay the wages due, but none of that requires some oversight or review of the county's "Management interpretation" of any wage, hour or condition of employment provision. There is no dispute here about what hours were worked, the nature of the work performed, or whether the hours worked are compensable under the contract. The dispute is over whether that contract rate was actually paid. Management doesn't get to "interpret" those things and therefore this dispute is not subject to the contractual provisions that apply to a "grievance."

RCW 49.52.050 provides an independent statutory remedy in addition to the grievance process.

Regardless of whether there are grievance procedures in the contract, RCW 49.52.010(2) provides that it is illegal for any employer to "Willfully and with intent to deprive the employee of any part of his or her wages, shall pay any employee a lower wage than the wage such employer is obligated to pay such employee by any statute, ordinance, or contract." RCW 49.52.170 grants employees a specific civil action to recover the wages wrongfully unpaid.

Neither Pierce County nor the bargaining representative can contract away an employee's ***statutory*** right to recover in a civil action.

RCW 49.44.160 provides that: "The legislature intends that public employers be prohibited from misclassifying employees, or taking other action to avoid providing or continuing to provide employment-based benefits to which employees are entitled under state law or employer policies or collective bargaining agreements applicable to the employee's correct classification." Again,

this statutory statement of intent can't be contracted away by an employee's collective bargaining unit.

If the County was violating minimum wage laws, then the minimum wage statute gives an independent civil cause of action that can't be contracted away in a collective bargaining agreement. But, it's not just minimum wages that cannot be contracted away. RCW 49.52.170 provides a specific civil action to remedy violations of RCW 49.52.050 – including its subpart 2 – which makes it unlawful for an employer to pay a lower wage than the wage the employee is entitled to receive.

Champagne v. Thurston County, 163 Wn.2d 69, 72, 178 P.3d 936 (2008) involved a dispute about whether the Thurston County Sheriff's office could lawfully pay overtime in the month following that in which it was earned. The trial court dismissed the case without prejudice for failure to follow the claims filing statute. The appellate court side-stepped that issue, but affirmed on the alternate basis that the practice simply did not violate Washington's wage and hour law. The Supreme Court affirmed on the alternative basis that the pay policy was consistent with the plaintiff's collective bargaining agreement. What's important about the case is that if the question of compliance with Washington's

policy of assuring employees are paid what's owed was exclusively the subject of grievance procedures, then it's odd that neither the trial court, nor Division II, nor the Supreme Court ever even suggested that to be a grounds for lack of jurisdiction in *Champagne*.

This issue has essentially been resolved by the appellate courts in *Wingert v. Yellow Freight Sys., Inc.*, 146 Wash.2d 841, 847, 50 P.3d 256 (2002). That case involved whether Yellow Freight was violating Washington law respecting work rest-periods. Yellow Freight responded in part that the entire issue was subject to and restricted by provisions in the collective bargaining agreement. The *Wingert* court dispensed with that holding that "Washington's manifest policy of protecting the health and welfare of its employees by requiring periodic rest periods may not be abrogated by collective bargaining agreements." Similarly, Washington's public policy of assuring that employees are paid the wages owed by providing for civil redress in the courts, cannot be abrogated by collective bargaining agreements.

The grievance process is contrary to public policy if applied in this case.

The grievance process in this case involves presentation of a grievance to the county for resolution and such grievances move "up the chain of command," all the way to Step 4 – presentation to the County Executive or Labor Relations Designee. Because at all steps there is just a right to present a grievance to the county, that entire process can never afford an employee a truly independent review of county decisions.

An independent review occurs only at Step 5 where arbitration occurs. Importantly, however, "Only signatories to this agreement may advance a grievance to arbitration." CP 335. (Article 18, Section 2, Step 5.)[5] So, an employee who is just not paid the contract wage can't even apply for arbitration. None of the plaintiffs here could refer this to arbitration. This means that the county ultimately gets to decide whether it wants to pay the wages due, and plaintiffs don't have a remedy under the grievance process for any independent review.

[5]The electronic record seems to have a garbled version of this page of the contract and so a clean copy is appended as Exhibit 1 to the brief.

Because it is the "strong public policy" of Washington to protect worker's right and to assure payment of wages earned, the grievance procedure which leaves a worker with no independent forum to actually resolve this dispute would violate public policy if it applied in these kinds of cases.

Moreover, as indicated by plaintiff Drew Ota, a request was made for the union to refer the case to arbitration which was declined (CP343) and in part that's because the AFL-CIO affiliate signing the 2007-09 contract starting the problems was thereafter replaced with a Guild.

Accordingly, the court can see that in this case employees tried, but could not, get the matter to arbitration. If, as is apparent, that fairly exhausts the grievance process, then as applied it violates Washington State's public policy of assuring that workers are fairly paid their wags.

Substantial compliance with the Grievance process occurred and further application for relief through that process would be useless.

Although plaintiff believes that the statutory right to seek redress in the courts for underpayment of wages is not contingent on having pursued the grievance procedures in the contract, it is also worth observing that Mr. Ota has twice

pushed this issue through "the channels" and tried to obtain extra-judicial relief. CP 342-53. (Ota declaration.)

There is also, of course, the fact that Mr. Ota has submitted a pre-litigation claim to the county pursuant to chapter 4.92 RCW. It's not like there hasn't been a fair effort to resolve this through alternatives to litigation.

Washington courts have recognized exceptions to the general principal requiring litigants to seek administrative remedies and alternative dispute processes where that principal is outweighed by consideration of fairness or practicality. For example, if resort to an administrative procedures would be futile, exhaustion is not required. *Zylstra v. Piva*, 85 Wn.2d 743, 539 P.2d 823 (1975); *South Hollywood Hills Citizens Ass'n v. King Cty.*, 101 Wash.2d 68, 74, 677 P.2d 114 (1984).

Certainly, the idea that everyone involved be required to submit sequential grievances as each inadequate paycheck arrives makes no sense. Similarly, what's apparent from Mr. Ota's prior activity, as outlined in his declaration, is that it would be futile to seek redress outside of the courts. resort to the administrative procedures would be futile and vain. *Cf. Zylstra v. Piva*, 85 Wash.2d 743, 539 P.2d 823 (1975).

To the extent the law requires Mr. Ota to use the grievance process, his previous efforts should be deemed substantial compliance and the court should conclude that further efforts to obtain relief in that forum would be futile.

CONCLUSION

The Superior is the proper forum for litigating the issues in this case because the dispute is not a "grievance" as defined in the Collective Bargaining Agreement. The county can't affect the wages, hours, or conditions of employment by simply deciding not to pay the wages stated in the contract.

In all events, Washington's wage-hour statutes provide an independent basis granting employees the right to prosecute a civil action in Superior Court. That right, granted employees by the legislature cannot be destroyed by contract.

Although many core facts are not subject to dispute, what the parties intended by the 2007-09 contract – particularly the county's assertion that the contracts contemplated an ability to re-set, "re-designate" or otherwise change an employee's true years of service – has not been shown to be conclusively resolved in favor of the county as a

matter of law. Accordingly, interpretation of the dismissal by summary judgment should be reversed and the case remanded for trial or other appropriate proceedings.

DATED this 4th day of January, 2016.

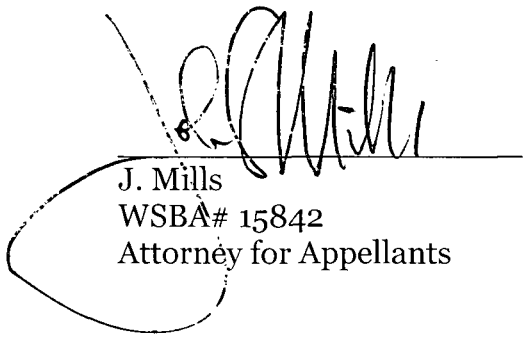

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EXHIBIT 1
(Page from CBA)

Within ten (10) working days thereafter, a written decision shall be given to the grievant or representative.

Step 3. If the grievance is not settled at Step 2, it may be presented to the Sheriff or designee. The grievance shall be submitted within ten (10) working days after receipt of the decision at Step 2 or the expiration of the time limits, whichever is earlier. Such appeal shall be written on a standard County grievance form, shall set forth the specific contract provision alleged to have been violated, the reason for dissatisfaction and include the proposed remedy. Within ten (10) working days of receipt of the written grievance, the Sheriff or designee, shall meet with the employee and/or representative. Within ten (10) working days thereafter, a written decision shall be given to the grievant or representative.

Step 4. If the grievance is not settled at Step 3, it may be presented to the County Executive or Labor Relations Designee. The grievance shall be submitted within ten (10) working days after receipt of the decision at Step 3 or the expiration of the time limits, whichever is earlier. Such appeal shall be written on a standard County grievance form, shall set forth the specific contract provision alleged to have been violated, the reason for dissatisfaction and include the proposed remedy. Within ten (10) working days of receipt of the written grievance, the County Executive or Labor Relations Designee, shall meet with the employee and/or representative. Within ten (10) working days thereafter, a written decision shall be given to the grievant or representative.

Step 5. If a grievance is not resolved under Step 4, an arbitration request may be submitted by the Union Designee. Only signatories to this agreement may advance a grievance to arbitration. A request for arbitration shall be presented in writing to the County Executive or Labor Relations Designee within thirty (30) working days from the date the decision was rendered at Step 4. As soon as practicable thereafter, or as otherwise agreed to by the parties, an arbitrator shall hear the grievance. In the event the parties cannot agree on a selection of an arbitrator within ten (10) working days from the receipt of the request for arbitration, the Federal Mediation and Conciliation Service, the American Arbitration Association or some other agreed upon source shall be requested to submit a list of eleven (11) arbitrators from which the arbitrator shall be selected by alternately striking one (1) name from the list until only one (1) name shall remain. The decision of the arbitrator shall be rendered as expeditiously as possible and shall be final and binding upon both parties. Any decision rendered shall be within the scope of this Agreement and shall not add to or subtract from any of the terms of the Agreement. The arbitrator shall confine himself/herself to the precise issue(s) submitted for arbitration and shall have no authority to determine other issues not so submitted.

Section 3. The cost and expense of the employment of the impartial arbitrator mentioned above shall be borne equally by the parties hereto. Each side shall bear its own expenses and fees incumbent in presenting their respective case to the arbitrator, including attorney's fees.

Thu 1/7/2016 10:23

SUPERIOR COURT OF WASHINGTON
COUNTY OF THURSTON

Drew Ota, Craig Gardner, Robert Desmond, Robert Brink, Alec Williams, Plaintiffs, Vs. Pierce County, a political subdivision of the State of Washington, Defendant.	**COA No. 47812-9-II** SERVICE DECLARATION (OPENING BRIEF)

THE UNDERSIGNED declares under penalty of perjury of the State of Washington that on Monday, January 4, 2016, I served a true copy of appellant's opening brief on counsel for the appellee by delivering a copy in .pdf format by email to Mr. Scott, counsel for Pierce County. See attached email.

DATED this 7th day of January, 2015.

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