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Court of Appeals  
Division II  
State of Washington  
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**No. 53665-0-II**

**IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II**

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**NORMAN HALL,**

**Appellant,**

**v.**

**YELM COMMUNITY SCHOOLS,**

**Respondent.**

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**REPLY BRIEF OF THE APPELLANT**

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## I. ARGUMENT

The appellant now responds to the factual and legal assertions of the Respondent, Yelm Community Schools ('District'). Principally the District contends that it was privileged to treat the Contract signed by appellant, Norman Hall, as a non-binding unratified document and could rescind that contract prior to the statutory deadline for effective nonrenewal (May 15<sup>th</sup>) prior to the ensuing School Year.

The District contends this is a relatively straightforward and simple matter of contract that under applicable law, the collective bargaining agreement between the District and the Yelm Education Association, and by virtue of the issuance of the District's May 15<sup>th</sup> nonrenewal letter to appellant, he had no contractual expectancy of renewal in his position for the 2018-2019 School Year. This position depends on a failure of ratification. The District cites RCW 28A.405.210, and caselaw in support of this proposition. However, the District's arguments ignore several important components of the present appeal, *viz.*, the Contract which it presented to Mr. Hall for the 2018-2019 School Year, and the May 15<sup>th</sup> Letter of Nonrenewal.

A. Authority Does Not Establish a Specific Practice that must be Followed Before Ratification Occurs.

While §.210 and the CBA both confirm that ratification must occur, neither establish the precise components of ratification. This court must look to the Contract itself signed by Mr. Hall, which proclaims, on its face, that it was issued by the School Board of Directors, and provides for signature by the Superintendent on behalf of that same Board.<sup>1</sup> And the Contract says nowhere within its contents that it only becomes effective upon ratification by the same body issuing the document. As appellant has already pointed out, the Contract specifically limits its effectiveness to criteria which must be met by an employee.

Therefore, a genuine factual issue exists concerning the District's adoption of the method of contracting with its employees. It is the District that issued the Contract as written, the District that decided the content of the Contract, and the District which identified the criteria for effectiveness. The District's method of doing business in this regard is clearly subject to factual inquiry, and the intent of the Board of Directors to delegate its contractual

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<sup>1</sup> The District contends there is no evidence that the School Board delegated its authority to the Superintendent, but the document plainly evinces an intent that the Superintendent act on behalf of the Board in these matters of hiring.

responsibilities to the Superintendent is certainly a significant issue that requires presentation before a trier of fact.

Another noteworthy omission is that the Superintendent's letter of May 15<sup>th</sup> to Mr. Hall nowhere mentions that the contract executed for the 2018-2019 School Year would not be submitted to the Board for ratification. In fact, it says nothing about the ratification process. And though Mr. Hall followed the appeal process imposed on provisional certificated employees, he had every expectation that by doing so he was addressing the matter consistent with that limited statutory method of appeal.

The District's claim that certain decisional authority supports its version of the post-execution ratification 'mandate' is not supported by a careful reading of the facts of each case, and the analysis contributing to the ultimate holdings.

In *Meyer v. Newport Consol. Jnt. Schl. Dist.*, 31 Wn.App. 145, 639 P.2d 853 (1982), involved a non-renewed provisional teacher who challenged the basis for nonrenewal, i.e., his failure to maintain residency within the district where he worked in accordance with Board policy. The concomitant fact that the teacher was provisional, and there was no constitutional infirmity in the residency law, operated to defeat the teacher's court challenge.

However, nothing about that case is comparable to the present litigation. *Meyers* stands for an attack on the applicable residency law itself, and not the substance of the independent contractual relationship with the school district that excused him from complying with its residency provisions that were inconsistent with District policy.

Nor does the holding within *Lake Washington Schl. Dist. v. Lake Washington Educ. Assn*, 109 Wn.2d 427, 745, 745 P.2d 504 (1987), support the District's position. While our Supreme Court acknowledged something called the Board's 'non-delegable employment power,' further discussion within the opinion merely reveals that the statute requiring the Board to enter into contracts with teachers was significant only to the extent it impacted educational policy directly. 109 Wn.2d at 434. The Court concluded that 'management['s] responsibility' in matters concerning the 'employment of teachers' was not impermissibly compromised by language within a collective bargaining agreement placed certain conditions on the exercise of Board of Director's authority as it related to teacher transfers. *Id.* at 435. The Court was further persuaded that the absence of any statute with language that

'explicitly stated that the decision to transfer. . .is a nondelegable power' did not compromise the Board's powers.

The scope of the majority's holding is clarified by a sole Justice's dissent. He argued that the 'clear and exclusive right of the board to make employment decisions [supported] the legislative intent that a decision to hire a full-time teacher must be made by the board.' *Id.* at 437. In that the dissent's position was rejected by the majority contravenes the dissent's assertion that the law should operate in a manner asserted by the District, based on this ruling. Furthermore, the position within the dissent has not been adopted by any other appellate court ruling since it issued.

The District's invocation of the Supreme Court's delegation holding in *Noe v. Edmonds Schl. Dist. No. 15*, 83 Wn.2d 97, 515 P.2d 977 (1973), must also be carefully examined not as a blanket statement of applicable law, but on its facts and as applied to the legal matter subject to interpretation.

A teacher was placed on probation by the superintendent in conformity with district policy whereby the Board authorized the superintendent to take such action. However, the Board's policy contravened the specifics of a statute that prescribed in the precise detail the how's and when's of teacher relegation to probationary

status. The superintendent's actions constitute a direct 'adverse affect' upon the teacher's ongoing employment status, most significantly a reduction in compensation. Under the law in existence at that time, the foregoing act of the Superintendent could only occur where the decision to impose such a consequence was first subject to appeal and hearing before the school board before it could be implemented. 83 Wn.2d at 99. As this had not occurred, the Court held that the Superintendent's actions were *ultra vires*.

The *Noe* Court first recognized that School Boards were conferred with significant authority to delegate their responsibilities and that prerogative was not undermined by the Court's ruling. What rendered the delegation unlawful was the School Board's contravening an express state statutory protection through the Superintendent, who had no direct role in the process. The Court simply held that School Board could not avoid the requirements of the statute by adopting a policy violated the law, and its ordinary powers of delegation could not be used to empower the superintendent of the District to take the same illegal action.

Nowhere did the *Noe* Court state that in an appropriate case a School Board of Directors could adopt an automatic ratification

process of contract renewal with existing employees of the type that occurred with Mr. Hall.

If the District is implying that the superintendent's actions were unlawful under *Noe's* holding, then a genuine material fact – and a consequent admission by the District – exists that all such contracts between its employees and the District are without effect until presented to and ratified by the School Board of Directors. The District has not advanced that position directly, but it could be clearly inferred from their argument. And the timeliness penalty on the face of the Contract form would be a pointless expression that requires some explanation before a trier of fact otherwise the appeal rights of continuing contract certificated employees could be ignored.

The entirety of the *Noe* Court's analysis reveals that its disposition of the School Board's statutorily-conferred personnel management authority as delegated to the superintendent was principally a launching point to its further conclusion that the School Board's authority could not be improperly conferred on the superintendent when the Board itself did not possess such authority. Thus, the baldly pronounced anti-delegation holding must

be examined in that context, and not given blanket application to every hiring event that occurs within the public schools.

Similarly, the holding of the Court of Appeals in *McCormick v. Lake Washington Schl. Dist.*, 99 Wn.App. 107, 992 P.2d 511 (2000), is also not susceptible to the effect the District attributes. The issue in dispute was whether the coordinator of special services had apparent authority to make an offer of permanent employment to a teacher. The Appeals Court held that the employee could not reasonably rely upon such a representation where the prefatory language appearing within RCW 28A.405.210, stated that 'no teacher. . . shall be employed except by written order of a majority of the directors of the district at a regular or special meeting thereof. . . .' The court continued with the remainder of that statute citing language which requires that 'The [B]oard shall make with each employee employed by it a written contract, which shall be in conformity with the laws of the state, and except as otherwise provided by law, limited to a term of not more than one year. . . .'

*McCormick's* ruling is simply rendered inapplicable to this litigation by the fact that the District administrator promising permanent employment to the teacher and did so orally, and as an administrator subordinate to the Superintendent. And while the

court of appeals correctly cited applicable law, there is an interpretational component to the present appeal that wasn't addressed in *McCormick*. Here Mr. Hall was given a contract for 2018-2019 that was signed by the superintendent, the highest level administrator for the District, who also did so on a document that on its face suggested that it was done with the authority and approval of the Board of Directors. These facts were not present in *McCormick* and the Court's holding in that case do not have the same application here as they did under the facts of that ruling.

Our Supreme Court's ruling in *Hearst Communications v. Seattle Times*, 154 Wn.2d 493, 115 P.3d. 262 (2005), appears to support Mr. Hall's position in this appeal. An analysis of existing law was first performed with the Court reasserting the 'objective manifestation theory of contracts' in any review of agreements. 154 Wn.2d at 503. In finding 'subjective intent. . . irrelevant if intent can be determined from the actual words used,' the Court concluded by stating that 'We do not interpret what was intended to be written but what was written.' *Id.* at 504.

In light of the foregoing, the 2018-2019 Contract between the District and Mr. Hall is plain on its face, and other than its express incorporation of the Collective Bargaining Agreement into the

employment relationship created by the Contract,<sup>2</sup> creates an 'objective manifestation' of continuing employment into the following School Year. External evidence, including the District's attempt to impute an impermissible exercise of authority by subordinate administrators, would be the type of external evidence that the *Hearst Communications* Court would have found not for consideration.

Based on that the holding, the District's citation to *Amy v. Kmart of Washington*, 153 Wn.App. 846, 223 P.3d 1247 (2009), and *Barnes v. Treece*, 15 Wn.App. 437, 549 P.2d 1152 (1976),<sup>3</sup> do not support any different outcome.

The *Amy* decision concerned an oral promise that the trial court objectively manifested an intent to reach a Contract. The Appeals Court concluded that the person making the oral contract had no authority to bind his principal by the governing corporate

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<sup>2</sup> The CBA is not simply limited in its effect to the District's ratification of each certificated employee's annual Contract. The Contract recognizes the CBA's numerous provisions governing a myriad of workplace 'terms and conditions' that are nowhere spelled out with any comparable degree of specificity within the annual Contract.

<sup>3</sup> *Treece* is cited for the proposition that the Court can reach an outcome upon any argument asserted in support of summary judgment, and not merely that which the lower court relief in reaching a decision. Mr. Hall does not disagree that *Treece* expresses an understood approach to appellate review but has separately argued in the body of this Reply that the District's attempt to justify its rescission is otherwise permitted at law.

body. 153 Wn.App. at 442. While the court also recognized that post-promise ratification of an unauthorized contract could valid the agreement, the critical distinction is that the outcome in the *Amy* appeal proceeds on the effectiveness of an oral contract. There was never a written agreement between the parties, nor was there a written Agreement ostensibly issued by the Chief Executive of the corporation on behalf of and by signature for the governing corporate Board.

B. The Superintendent's Nonrenewal Letter of May 15, 2018 Could Not Rescind Mr. Hall's Contract for 2018-2019.

The District argues that RCW 28A.405.220 conferred it with the unqualified right to terminate Mr. Hall's employment status, even after he had signed a Contract for the upcoming year. The factual importance of imputed ratification is critical in deciding this issue. While Mr. Hall accepts that he might have been effectively terminated for the 2019-2020 School Year by the May 15<sup>th</sup> Letter, he rejects the argument that the cited statute permits the District's unrestricted capacity to effect a breach of his contract for the 2018-2019 School Year.

Mr. Hall does not disagree that provisional employees have very limited expectations of continued employment, subject to certain

procedural guidelines and deadlines. But §.220 does not confer the District with authority to breach successor Contracts into which it has entered with individuals who are otherwise subject to the scope of the law. By its terms, and in every case cited by the parties before this court, the provisional certificated employee was given Notice of he or she would not receive a successor contract based upon the nonrenewal *of an existing contract*, and not on a future contract. See, e.g., *Petroni v. Bd. Of Directors*, 127 Wn.App. 722, 113 P.3d 10 (2005); *Hopp, infra.*; *Noe, supra.*

If Mr. Hall's Contract for 2018-2019 was effectively a renewal of his employment, as he contends it is, then any Nonrenewal Notice from the Superintendent is prospective in its effect to the conclusion of that School Year. The law has never been interpreted to provide any other outcome, and the District cites nothing in support of its argument from caselaw.

Instead the District cites to unspecified content within an extraneous resource, i.e., "Basics of School Law: A Guide for School Directors (2010)," and *Hopp v. Oroville Schl Dist.*, 31 Wn.App. 184, 639 P.2d 872. The "Guide" however contains nothing that contemplates, let alone addresses, the practice that occurred here. And certainly the "Guide" not only lacks, but does not contain,

authority that could show the District reasonably relied upon that source in its interpretation of the applicable law.<sup>4</sup>

In *Hopp v. Oroville Schl. Dist.*, 31 Wn.App. 184, 639 P.2d 872 (1982), the provisional teacher was given notice of nonrenewal based on a poor evaluation. Mr. Hopp availed himself of the limited review process, and his nonrenewal was upheld. Hopp filed a constitutional writ challenging the provisional review statute on due process and equal protection grounds. 31 Wn.App. at 189. Notably absent from the factual discussion of the court's opinion is that Mr. Hopp, unlike Mr. Hall, was seeking to enforce a contract he had timely signed for the subsequent year. Again, the facts do not support the cited rule of law in the present appeal.

Thus, while the District does not have a process under statute in dealing with provisional certificated employee's continuing employment, that process does not attend these proceedings. The exercise of the Superintendent's nonrenewal authority is therefore a nullity that should not be given effect by this honorable court.

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<sup>4</sup> The WSSDA Guide has no comment on the particulars of the District's actions in this appeal and has offered no citation to its contents which would be helpful toward understanding these circumstances from the perspective of the Superintendent or the Board of Directors.

## II. Conclusion

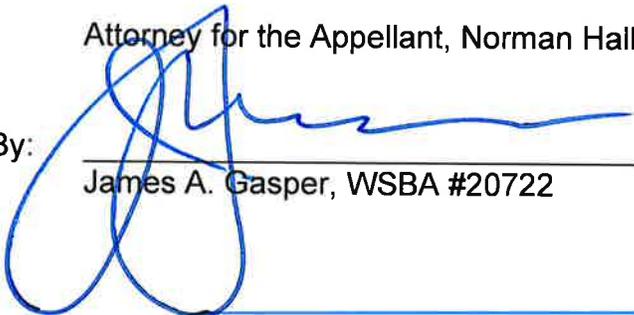
The District's arguments in support of the contention that ratification is required before a Contract becomes effective ignores the content of the Agreement signed by Mr. Hall and the District's representative, Superintendent Warden, and whether his signature on the document is binding on the District by imputing ratification to the Board by its use of the form Agreement it issued to Mr. Hall and many others of its employees. To hold otherwise would confer the District with a power under law that it does not otherwise possess absent a clearly stated reservation that does not exist here.

Mr. Hall renews his request that this honorable Court find in his favor and grant him at least a right to further proceedings on the facts before the Superior Court, or in the alternative to find that there existed a Contract between Mr. Hall and the District which confers him with all rights and benefits he would have enjoyed but for the District's unlawful breach.

Dated this 2<sup>nd</sup> day of December 2019 in Federal Way, Washington.

Attorney for the Appellant, Norman Hall

By:

  
James A. Gasper, WSBA #20722

IN THE COURT OF APPEALS OF  
THE STATE OF WASHINGTON, DIVISION II

NORMAN HALL,

Appellant,

vs.

YELM COMMUNITY SCHOOLS,

Respondent.

Pierce County No.  
18-2-03835-34

Case No. 53665-0-II

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Reply Brief of  
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# WASHINGTON EDUCATION ASSOCIATION

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