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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

NORMAN HALL,

Appellant,

v.

YELM COMMUNITY SCHOOLS,

Respondent.

ERRATA BRIEF OF THE APPELLANT

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I. Introduction & Summary of the Case.

This appeal is brought by Norman Hall (Hall), a resident of Lacey, Washington and a school psychologist as certified by the Office of the Superintendent of Public Instruction (OSPI) for the State of Washington. Mr. Hall seeks to enforce a contract with the Yelm Community Schools (District) for the 2018-2019 which he executed on May 10, 2018. The superior court, Honorable Chris Lanese, granted summary judgment to the District on grounds that the executed contract was not valid because it had not been subsequently ratified by the District's Board of Directors.

Mr. Hall contends that under applicable principles of contract law, and the content of the Contract which he executed, he had a binding agreement of employment with the District and its termination of his employment constituted a breach of that contract.

The District sought summary judgment, which was granted by Judge Lanese. CP Index 41; Verbatim Report of Proceedings at 13:6-25.

II. Assignments of Error.

The appellant cites the following error in the disposition of Norman Hall's appeal before the Superior Court, Thurston County, Honorable Chris Lanese.

1. The superior court erred in granting summary judgment to the Yelm Community School District, thereby dismissing Mr. Hall's contract enforcement lawsuit on grounds that the contract was not effective under applicable law which required post-execution ratification by the District's Board of Directors.

A. The lower court erred as a matter of law by ignoring the objective principle that the parties contract was subject to good faith and fair dealing.

B. Under Applicable Law, the lower Court erred in not finding that Mr. Hall's Non-Renewal was for the Subsequent School Year, and not for the School Year for which he had Executed A Contract with the District; and

C. The lower court erred in failing to find that Genuine Issue of Material Fact Existed Concerning the District's Actions As they Impact the Effect of Ratification.

III. Statement of the Facts.

Norman Hall was first employed as a school psychologist by the Yelm Community School district ("District") in April 9, 2018 after being interviewed by District Special Education administrators on

March 14th or 16th, 2018. CP Index 21, Declaration of Norm Hall, ¶ 2.[1]

Mr. Hall was employed by the Yelm Community School District (District) in early April 2018 primarily evaluating middle school students for placement within the District's special education program.

Mr. Hall did not sign his mandated annual contract for the ongoing 2017-2018 School Year until May 10, 2018, which had already been signed by the District's superintendent on May 8th. CP Index 21, "Declaration of James Gasper," Exhibit 1.

The next day Mr. Hall was presented with an annual contract for the 2018-2019 School Year, which was signed by the superintendent on May 10, 2018, and by Mr. Hall on May 11th. *Id.*, Exhibit 2.

On May 15, 2018 Mr. Hall then received a Letter of Nonrenewal informing that he was being terminated in his employment as a school psychologist with the District. *Id.,* Exhibit 3.

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[1] The Complaint alleges April 4, 2018 as Mr. Hall's date of employment with the District. CP Index 3, "Complaint," p. 2 ¶3.

Mr. Hall first appealed his nonrenewal with the superintendent and then before the School Board as allowed by law for provisional certificated employees. *Id.*, Exhibits 4 and 5.

Mr. Hall and his union representative met with District representatives on June 1, 2018 to discuss the nonrenewal. CP Index 21. "Declaration of Elizabeth Collins,' ¶¶ 5 & 9. Despite making a demand that his contract be honored, Mr. Hall was informed that he would not be returning when the 2018-2019 School Year began. CP Index 21, "Gasper Decl.," Exhibit 7. Mr. Hall promptly filed suit in Thurston County Superior Court seeking enforcement of his contract. CP Index 3.

The Contracts that Mr. Hall signed for the remainder of the 2017-2018 School Year as well as the 2018-2019 School Year, both prepared and drafted by the District, contains the following provisions of significance. The opening paragraph of both states 'THIS CONTRACT IS MADE BY AND BETWEEN THE *BOARD OF DIRECTORS* OF YELM COMMUNITY SCHOOLS. . . (DISTRICT HEREIN) AND **NORMAN HALL** (EMPLOYEE HEREIN). (italics added; bold, underlined emphasis in original). CP Index 21, Declaration of James Gasper, Exhibit 1.

The last capitalized paragraph of each Contract places very specific conditions upon its effectiveness:

> THIS CONTRACT DOES NOT BECOME EFFECTIVE UNTIL:. . .(B) EMPLOYEE SIGNS AND RETURNS THIS CONTRACT TO THE HUMAN RESOURCES DEPARTMENT OFFICE WITHIN 10 DAYS OF THE ISSUE DATE BELOW [MAY 10, 2018]. FAILURE TO RETURN THIS CONTRACT WITHIN 10 DAYS OF THE ISSUE DATE BELOW SHALL CONSTITUTE A RESIGNATION OR NON-ACCEPTANCE OF EMPLOYMENT OR RE-EMPLOYMENT.
>
> . . .

Id.

Finally, each document, prepared and presented by the District to Mr. Hall, unequivocally informs above the signature line of the Superintendent that it has been issued 'BY ORDER OF THE BOARD OF DIRECTORS'. *Id.*[2]

Mr. Hall filed his Complaint to enforce the contract he and the District had executed on May 11th, 2018 for the 2018-2019 School

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[2] The first part of the contract's effectiveness clause is not in dispute, as it requires the type of proof that Mr. Hall had already submitted to the District presumably validating his original contract for the 2017-2018 school year.

Year in the superior court for Thurston County on August 18, 2018. Index 3.

The District sought and was granted summary judgment. Indices 17 and 41. This appeal follows.

IV. Standard of Review.

Summary judgment is appropriate if the facts are undisputed, and the moving party is entitled to judgment as a matter of law. CR 56(c). The pleadings, affidavits, depositions, and admissions on file must demonstrate the absence of any genuine issue of material fact. *Id.* The court must review all facts submitted and all reasonable inferences from them in the light that favors the nonmoving party. *Wilson v. Steinbach,* 98 Wash.2d 434, 437, 656 P.2d 1030 (1982). And while the nonmoving party may not rely on speculation or argumentative assertions that unresolved factual issues remain or have the court consider affidavits at face value, *Retired Pub. Employees Council of Wash. v. Charles,* 148 Wash.2d 602, 612, 62 P.3d 470 (2003), it remains the moving party's burden to demonstrate the lack of material issues of fact to make a prima facie case. *Michak v. Transnation Title Ins. Co.,* 148 Wash.2d 788, 795, 64 P.3d 22 (2003). Only then does the burden shift to the nonmoving party to set forth specific facts sufficiently rebutting the

moving party's contentions and disclosing the existence of a material issue of fact. *Id.* Only if it becomes apparent from the submitted materials that "reasonable minds could reach but one conclusion," questions of fact may be determined as a matter of law. *Owen v. Burlington N. & Santa Fe Ry.,* 153 Wash.2d 780, 788, 108 P.3d 1220 (2005) (quoting *Hartley v. State,* 103 Wash.2d 768, 775, 698 P.2d 77 (1985)).

The appellate court conducts a *de novo* review of a lower court's grant of summary judgment. *Washburn v. City of Federal Way,* 178 Wn.2d 732, 752, 310 P.3d 1275, 1286 (2013).

V. Argument on Appeal.

1. As a Matter of Law the Contractual Relationship Between School Districts and Their Employees Carries an Expectation that the Parties Act in Good Faith.

Washington law states that each school district's board of directors 'shall make with each employee employed by it a written contract, which shall be in conformity with the laws of this state, and except as otherwise provided by law, limited to a term of not more than one year.' RCW 28A.405.210 (¶ 2).

The same law further specifies that "In the event it is determined that there is probable cause or causes that the employment contract of an employee should not be renewed by the district for

the next ensuing term such employee shall be notified in writing on or before May 15th preceding the commencement of such term. . .." *Id.* (¶ 3).

However, this Notice requirement, which is tied to and triggers a continuing contract teacher's right to request a hearing, '[S]hall not be applicable to "provisional employees" as so designated in RCW 28A.405.220. . .' *Id.* (¶ 4).

The effect of this statutory scheme is that provisional certificated employees do not have a right to challenge their nonrenewal under Section .210 by seeking review before an independent hearing officer. *See,* 28A.405.300 & .310.

Mr. Hall, as a school psychologist, is a certificated employee of a District under applicable law.[3] Under Washington law there are two types of certificated school employees: those who are 'provisional,' i.e., probationary, *see,* RCW 28A.405.210 and .220,

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[3] The definition section within Title 28A, governing Washington State public schools, distinguishes 'certificated employee[s],' RCW 28A.150.205(3) from 'certificated instructional staff,' §205(4), and 'classroom teacher,' §205(7), all of whom must be certificated under regulations adopted by the Professional educator standards board.

'School psychologists' are within the class of educational staff associates (ESAs) who hold specific certificates in their job titles. *See,* RCW 28A.415.060; WAC 181-179A.150 (general certification requirements for ESAs), and 181-79A-2512 (school psychologist renewal and reinstatement).

and those who enjoy 'continuing contract' status. *Compare, Petroni v. Bd. of Directors,* 127 Wn.App. 722, 113 P.3d 10 (2005) (lack of rights held by provisional teachers under applicable law), and *Federal Way Schl. Dist. v. Vinson,* 172 Wn.2d 756, 760, 261 P.3d 145 (2011) (discussing appeal process available to continuing contract certificated school employee).

Norman Hall did not dispute that he was hired as a provisional school psychologist during School Year 2017-2018, nor that he would only be entitled to a provisional contract during School Year 2018-2019. What Mr. Hall does dispute is the District's attempt to use the restrictions in the law governing his employment as a provisional certificated employee its unilateral revocation and breach of his lawfully executed contract.

The court must understand that provisional employees are subject to tenuous expectancies where continued employment with any public school district is concerned. Section 220(2) of RCW 28.405. provides for the nonrenewal of a provisional certificated employee of a public school district: 'In the event the superintendent of the school district determines that the employment contract of any provisional employee should not be renewed by the district for the next ensuing term such provisional

employee shall be notified thereof in writing on or before May 15th preceding the commencement of such school term. . ..' The foregoing law clearly empowers the superintendent with a right to determine nonrenewal in the first instance.

Thereafter, the nonrenewed provisional employee is limited to a meeting with the Superintendent within ten (10) days of notice, and should the Superintendent uphold his initial decision after that meeting, the provisional teacher may further appeal an adverse ruling to a School District's board of directors. RCW 28.405.220(3) & (4). Although the statute expressly prohibits further appeal of an adverse School Board decision under §220(5), which Mr. Hall received, Mr. Hall's lawsuit focused upon the effect of the execution of his Contract for the subsequent school year which should have precluded an effective nonrenewal by the District as a matter of law for 2018-2019.

2. <u>If Mr. Hall was Nonrenewed, that Event Would Occur at the End of the 2018-2019 School Year</u>.

It is Mr. Hall's contention that the Superintendent's attempt to nonrenew his 2018-2019 contract by the Superintendent's Letter of May 15, 2018 was without immediate legal effect. RCW 28A.405.220(2), by its express language and context contemplates

that a timely, written nonrenewal is effective for the subsequent year. By implication, the District's renewal of Mr. Hall's contract is effectively a continuation of his provisional status as a school district employee for another year. This continuation achieves greater legal effect where Mr. Hall, an acknowledged provisional employee, in good faith executes a contract for the following year *before* he received the nonrenewal notice. This argument is supported by decisional law discussing the legal nature of that relationship.

In *Barendregt v. Walla Walla Schl. Dist. #140,* 87 Wn.2d 154, 550 P.2d 525 (1976), our Supreme Court reaffirmed precedent to the effect that 'the general relationship. . .between the school authorities and teachers in the public schools of our state is created by contract and *governed by general principles of contract law.'* 87 Wn. at 158, citing, *Kirk v. Miller,* 83 Wn.2d 777, 781 (1974) (emphasis added).

General principles of contract law hold that a party which has reached a contractual agreement with another may not breach that agreement absent mutual consent. *Woodruff v. McClellan,* 95 Wn.2d 394, 397, 622 P.2d 1268 (1980). A contract claim arises where 3 factors are met: an agreement between the parties, a

parties' duty under the agreement, and a breach of that duty. *Lehrer v. Dept. of Social & Health Svcs.,* 101 Wn.App. 514, 516, 5 P.3d 722 (2000).

Mr. Hall reasonably believed he had an agreement with the District to perform as a school psychologist during the 2018-2019 school year. The duty of the parties to each comply with the executed contract is clearly established by its terms.

3. There are Genuine Issues of Material Fact Whether Mr. Hall had every Reasonable Expectation that his 2018-2019 Contract With the District was Ratified upon His Signature and Submission of that Document to the District.

The superior court held that Mr. Hall's 2018-2019 Renewed Contract was not effective because it wasn't ratified by the school Board. But this ruling in and of itself raises but does not dispose of the issue of how teacher contract ratification in the Yelm Community Schools would occur. Ratification does not require some specific formality which must conclusively be met before a contract comes into existence. Instead, the behavior of the parties in establishing the relationship is a significant factual determinant of the rights of affected parties.

The concept of 'implied ratification' raises an issue of fact which may create a reasonable expectancy in an individual who

seeks contractual enforcement. *Cf., Barnes v. Treece,* 15 Wn.App. 437, 443-44, 549 P.2d 1152 (1976) (an implied ratification is to be decided by the trier of fact) (citation omitted). Whether the District superintendent's signature on a Contract issued under the express authority of the School's Board of Directors was of sufficient binding nature without some later formal ratification event is an 'objective manifestation' also to be decided by the trier of fact. *See, Smith v. Hansen, Hansen & Johnson,* 63 Wn.App. 355, 362-63, 818 P.2d 1127 (1991).

In determining objectiveness, the Contract which Mr. Hall signed for 2018-2019 School Year does not inform him – or any other similarly situated individual signer - that a later ratification act by the Board is a prerequisite to full effectiveness. Instead, the contract only contains express completion limitations which, if not met, renders it null and void. In that Mr. Hall immediately signed and returned the contract, that limitation did not become operative.

Judge Lanese's reliance upon ratification by the School Board of Directors as the deciding moment in the creation of Mr. Hall's contractual relationship raises a conclusive genuine issue of material fact. This genuine issue is two-fold: was it reasonable for Mr. Hall to rely on the contract on its face which was purportedly

issued by the School Board of Directors. Secondly, did the absence of a ratification notice confer Mr. Hall with an objective expectation that the contract was good upon his execution and submission within the required timeframes.

The impact of executing such a Contract has greater consequences for someone like Mr. Hall than it would for the District as this case was decided. As with any such agreement, the mutual execution of a contract between a school district and its employee benefits each party, and also has related consequences. For someone like Mr. Hall, certificated public school employees has express statutory limitations on their power to contract with School Districts, *viz.,* a teacher may not sign a contract with another district subsequent to having an active contractual relationship with a current district for the law specifies that such teacher is bound 'unless released from his or her obligations under such previous contract by the board of directors of the school district to which he or she was obligated. . ..' RCW 28A.405.210 (¶2).

A certificated public school employee who attempts to enter into multiple contracts with different school Districts is not only expressly prohibited by the foregoing statute, but could be deemed to have 'abandon[ed] [a] contract for professional services' which

exposes them to investigation and possible penalty for engaging in unprofessional conduct, WAC 181-87-065(1), which could lead to adverse professional consequences against the license of the certificated person.[4]

Districts are not only entitled to enforce a signed contract to their advantage, they may insist that a contract issued to an employee for a subsequent year be completed and submitted by the District's deadline before the end of a current school year, otherwise the employee has waived his/her right to insist on continuing employment, even if the District missed the statutory May 15th Notice deadline. This was the situation in *Corcoran v. Lyle Schl. Dist. No. 406,* 20 Wn.App. 621, 581 P.2d 185 (1978), wherein the Court of Appeals, citing the general contract principles of *Kirk v. Miller, supra.,* held that a teacher's failure to return a signed annual contract by the stated deadline effectively terminated his entitlement to continuing employment in the subsequent school year. 20 Wn.App. at 623. The employee's status as a continuing contract teacher under the law did not create any special rights

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[4] Among the consequences which can be imposed by the Office of the Superintendent of Public Instruction for acts of unprofessional conduct committed by a certificated school employee are a reprimand (WAC 181-86-030 & 065), suspension (WAC 181-86-035 & 070), or revocation (WAC 181-86-040 & 075).

allowing him to disregard the District-imposed completion deadline, nor was it effectively a termination that allowed him to challenge his nonrenewal through the statutory appeal process.[5]

On its face, the Contract clearly and unmistakably informs anyone who objectively reviews its contents that approval by the Board of Directors has occurred, and if the Superintendent is authorized to fully and finally execute such a contract in good faith as required by law. *See, generally, Rekhter v. State, Dept. of Health & Soc. Svcs.,* 180 Wn.2d 102, 323 P.3d. 1036 (2014).

Mr. Hall, in good faith, complied with the conditions of the contract. And he had every reason to expect the District would likewise honor the Contract. In her April 18, 2018 email, Kari Polzin, Assistant Human Resource Coordinator for the District, informed Mr. Hall that 'You will receive a base contract for 18-19 school year in May. . ..' CP Index 21, "Gasper Decl.," Exh. 8 at p.2. Shortly thereafter, consistent with that representation, Mr. Hall did receive such a Contract.

Was Ms. Polzin qualified to make such a representation? It seems that if there was a limitation on that authority, the extent of

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[5] Teachers who have successfully completed their period as a provisional employee have a right to a hearing if nonrenewed or terminated for cause. RCW 28A.405.210 and .300 - .310.

Ms. Polzin communicating with Mr. Hall in such manner not only raises a genuine issue of material fact but raises an issue of fact for trial whether Ms. Polzin sent such notices to all District certificated employees. This was not presented to the court at the time of oral argument.

The 'Certificated Employee Contract' signed by both the Superintendent and Mr. Hall also was on a form prepared by the District, and was not only binding at law on Mr. Hall, but had been signed by the Superintendent under the express representation that it was done so with the authority of the Board of Directors. Nothing in the Contract would have alerted Mr. Hall, or any reasonably objective person, that the Contract was not in effect until some future, formal moment of ratification by the Board. Nor could it where the 'Effectiveness' clause is expressly to the contrary, and sets limiting conditions attributable solely to its drafting.

The perception that the Contract was pre-approved by the School Board is consistent with the assignment of such responsibilities by the School Board of Directors to the Superintendent under applicable law. The School Board of Directors selection of employees is subject to the Board's discretionary policies and practices as authorized by State law.

RCW 28A.330.020 provides that the '[S]election of other certificated and classified personnel shall be made in such manner *as the board shall determine*.' Here the Yelm School Board has apparently authorized as matter of regular business practice that any Contract issued to any certificated employee that was signed by the superintendent on its behalf would be an acceptable method of entering and/or continuing an employment relationship.

The co-existent legal relationship between a public school Superintendent and the Board of Directors finds support in other relevant laws. While the superintendent's responsibilities are 'subject to law,' the law itself places no specific limitations upon the exercise of that authority. *See,* RCW 28A.400.010 ('[T]he superintendent shall have supervision over the several departments of the schools thereof and carry out such other powers and duties as prescribed by law.').[6]

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[6] The 'Superintendent's duties' are enumerated in part at RCW 28A.400.030, and among its provisions nothing places restrictions upon the Superintendent's authority to hire employees within that statutory section.
In addition to such other duties as a district school board shall prescribe the school district superintendent shall:
(1) Attend all meetings of the board of directors and cause to have made a record as to the proceedings thereof.
(2) Keep such records and reports and in such form as the district board of directors require or as otherwise required by law or rule or regulation of

The lower court's holding that some future ratification need occur before the Contract signed by Mr. Hall became effective is belied by the fact that the District's own Minutes of Meetings for the School Board show that Mr. Hall's contract was in fact 'approved' by the School Board before he even started working, and well before he had signed his mandatory employment contract. *See,* CP Index 21, 'Declaration of Robbye Sanchez,' *March 22nd Minutes of Yelm Community Schools,* Exhibit 1, p. 2. This practice by the Board raises a genuine issue of material fact whether the District's ratification process is of such casual effect that the expected rigidity asserted by the District, and affirmed by the Superior Court, contravenes the perception that the Contract signed by Mr. Hall for the 2018-2019 School Year was pre-authorized.

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higher administrative agencies and turn the same over to his or her successor.
(3) Keep accurate and detailed accounts of all receipts and expenditures of school money. At each annual school meeting the superintendent must present his or her record book of board proceedings for public inspection, and shall make a statement of the financial condition of the district and such record book must always be open for public inspection.
(4) Give such notice of all annual or special elections as otherwise required by law; also give notice of the regular and special meetings of the board of directors.
(5) Sign all orders for warrants ordered to be issued by the board of directors.
(6) Carry out all orders of the board of directors made at any regular or special meeting.

Informality in the contractual process was further established by the submitted representations of teachers' union representatives Doug Petro and Dan Cuomo, UniServ Directors for the Washington Education Association, who over many years' experience representing members of the Yelm education Association in its past dealings with the District, stated that it is almost universal practice in public school districts that the hiring, resignation, termination and retirement of district employees is presented to the Board as part of a 'consent agenda' where the Superintendent submits, *pro forma,* various hiring submissions that are simply accepted by the Board without deliberation or the slightest inquiry. CP Index 21, "Declaration of Doug Petro"; "Declaration of Dan Cuomo."

The Minutes of the Yelm School Board further reveal such a casual practice, creating the obvious inference that it would be impossible to individually review every hiring decision of the District with anything other than an oblique awareness of these submissions based on the amount of time the Board's meetings consume. *Id.,* "Sanchez Decl.," Exhibits 3-6.

These facts raise a strong inference that the District's claim that formal ratification is required before any signed contract becomes enforceable is refuted by these undisputed facts, and as

they are decisive of the ratification issue, would not preclude a trial to determine the true legal effect of the District's applicable processes.

CONCLUSION

During oral argument, the following colloquy between the court and the District's attorney occurred:

> Court: What happened here was unfortunate, and I trust that within. . .the Yelm schools it's never going to happen again.
>
> Counsel: We hope so. . ..

VRP at 13:2-5.

The court's concluding prologue to his contrary ruling reveals an equivocal outcome which, on the record, strongly supports a finding that the District's actions are not excusable but constitute a violation of the law.

Mr. Hall brings this lawsuit to enforce a validly signed and submitted Contract for a position as a certificated school psychologist with the District during the School Year 2018-2019. He does not seek anything other than that to which he would be entitled, but for the District's unauthorized unilateral breach.

The facts required further inquiry under a fair application of the summary judgment principle. To apply them otherwise deprives

Mr. Hall of the opportunity to continue his employment with the reasonable expectation that he will perform in conformity with his Contract.

For all the foregoing reasons, Mr. Hall respectfully requests that this honorable Court reverse the superior court's summary judgment ruling and remand the case for trial consistent with the allegations raised by the Complaint.

Dated this 28th day of October 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 Errata Brief of Appellant was served by email upon the following:

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DATED this 28th day of October, 2019 in Federal Way, Washington.

Robbye Sanchez
Paralegal to James A. Gasper

WASHINGTON EDUCATION ASSOCIATION

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