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Court of Appeals
Division III
State of Washington
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No. 366669-III

IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION III

MICHAEL F. CRONIN,

Respondent,

vs.

CENTRAL VALLEY SCHOOL DISTRICT,

Appellant.

RESPONDENT'S ANSWER TO APPELLANT'S OPENING BRIEF

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I. Statement of Relief Sought

Respondent Michael Cronin (“Cronin”) respectfully requests that this Court affirm both the Trial Court’s Order finding Appellant Central Valley School District (“District”) in contempt of court as well as the award by the Court of remedial sanctions for the substantial losses incurred by Cronin due to the District’s contempt. The District refused to comply with the clear language of the Trial Court’s June 29, 2018, Order to reinstate Cronin’s pay and benefits. The District blatantly ignored this order until it was impossible to comply with. The Trial Court fashioned a reasonable and appropriate remedy given the District’s contempt. Accordingly, Cronin respectfully requests this Court affirm the contempt finding and for remedial sanctions.

II. Facts Relevant to Motion

The District mischaracterizes the procedural history that precipitated the District’s contempt and misleads the Court regarding the timing of the specific motions for stay relevant to this appeal. The District is still in contempt of court and presently has neither purged nor cured the Trial Court’s finding of contempt. CP 241-246. It has failed and refused to pay Cronin the wages and benefits he should have received up until the decision

by the statutory hearing officer.

By way of background, Cronin was employed as a teacher with the District for seven years. He was terminated from his employment on January 5, 2012, after 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. *Cronin v. Central Valley School District*, Case No. 31360-3-III; *Cronin v. Central Valley School District*, 2016 WL 153377 (Div III, April 14, 2016).

The matter was assigned to the Honorable Judge John Cooney. The parties filed cross motions for summary judgment. Cronin renewed his request for a statutory hearing on the merits, back pay and benefits, double damages for the intentional withholding of wages, pre-judgment interest, attorney's fees and costs, along with reinstatement of pay and benefits pending the statutory hearing. *See* Appx. 2, Appx. 3. On remand, this Court ordered a statutory hearing on the merits and for the trial court to determine other issues. *Id.*

By oral ruling from the bench and pertinent to the contempt issue, on **April 27, 2018**, the District was ordered to participate in a statutory hearing and to reinstate Cronin's pay and benefits pending the hearing officer's written decision on the merits.

On **May 8, 2018**, the District moved the Trial Court for reconsideration of the oral ruling reinstating Cronin's pay and benefits pending a statutory hearing on the merits. That motion was denied by written decision on **June 1, 2018**¹. An order denying the District's motion for reconsideration was entered on **June 22, 2018**.

On **June 29, 2018**, the Trial Court entered an order on summary judgment, pursuant to its oral ruling from April 27, 2018. *Id.* Among other things, that order reconfirmed the Trial Court's clear and unequivocal intention of returning the parties to status quo by reinstating Cronin's pay and benefits pending the statutory hearing. Appx. 2. That order states in pertinent part:

- a. The Court grants Plaintiff's request to restore his employment...
- b. Plaintiff's wages and benefits shall be immediately reinstated effective the date of this order and shall continue until such time as a written decision by a statutory hearing officer determines after a hearing on the merits whether the Defendant has proved sufficient cause for either discharge or nonrenewal of Plaintiff from his employment with Defendant. *Id.*

The Trial Court also ordered the District to participate in a statutory hearing under RCW 28A.405.310. Additionally, Judge

¹ Judge Cooney stated in his written decision, "[R]ather than complying with the statutory time requirements for a hearing, here the District disregarded Mr. Cronin's request. As such, Mr. Cronin's statutory rights have, at worst, been completely ignored and, at best, delayed over six years." Appx. 1.

Cooney ordered the District to pay Cronin his back wages and benefits, pre-judgment interest, and attorney's fees for the District's failure to afford Cronin his due process rights and provide him a statutory hearing. *Id.* A subsequent hearing was set to determine the amounts of the award to Cronin. *Id.*

A little less than three weeks later, on **July 17, 2018**, the District filed a motion with the Trial Court for a limited stay of that portion of the June 29, 2018, Order that required immediate reinstatement of Cronin's pay and benefits pending a statutory hearing. Appx. 3. On **August 22, 2018**, the Trial Court entered an order denying the District's motion for limited stay, and entered judgment for Cronin in the amount of \$896,874.64 for back wages and benefits, pre-judgment interest, and attorney's fees.² Appx. 4.

Although it agreed to comply with the Trial Court's order to proceed to a statutory hearing, the District intentionally refused to comply and pay Cronin his wages and benefits pending the hearing, notwithstanding that its motion for limited stay was denied.

Six days later, on **August 28, 2018**, the District filed a notice of appeal to this Court, attaching only the August 22, 2018,

² The request for double damages on wages owed and for tax consequences was denied and is the subject of a cross appeal with this Court, No. 362915-III.

Order. *Court of Appeals Div. III*, Case No. 362915. It was unclear pursuant to the notice of appeal whether the June 29, 2018, Order was within the scope of review on appeal. VR 3:5-11, Sept. 21, 2018. No stay was requested in the District's notice of appeal.

On **September 7, 2018**, almost two months before the statutory hearing was set to commence and 70 days after the June 29, 2018, Order had been issued, Cronin still had not been paid. So a Motion for an Order Finding the District in Contempt of Court and for Remedial Sanctions was filed with Judge Cooney. CP 1-2, 5-11. The parties were conducting discovery and pre-hearing motions with the hearing officer, but in the meantime, the District made zero effort to comply with either the June 29, 2018, or August 22, 2018, Orders.

Cronin's contempt motion was noted for September 21, 2018. There was no motion to stay pending before the Court of Appeals when Cronin filed his motion. Subsequently, four days later on **September 11, 2018**, the District filed a Motion for Stay before this Court. The excuses by the District for not having filed a motion for stay prior to that have been plentiful and changing. Its excuse in the District's September 14, 2018, Response to Cronin's Motion on Contempt, for not having filed a motion for stay was because it "had to wait for the Court of Appeals to assign a case

number, which was not assigned until September 10, 2018.” CP 12-13. Of course that is inaccurate and makes no sense whatsoever as the District knows full well it has the ability to file a stay absent a case number, before or after acceptance of review pursuant to RAP 8.1(b)(3).

When that was pointed out, Counsel for the District then filed a self-serving and contradicting declaration in support of the District’s Motion to Stay under COA Case No. 366669-III, now claiming that the reason the District hadn’t filed a stay was because Mr. Beggs had just begun drafting the District’s motion to stay the Trial Court orders when Cronin’s Motion just happened to be filed. Beggs Decl. in Support of Motion to Stay, March 26, 2019, pgs. 2-4. The District then claimed that before Mr. Beggs could finish drafting and filing the motion for stay, Cronin had already filed his contempt motion. *Id.* So which is the real reason why the District filed its motion to stay only a few days after Cronin’s motion for contempt? Was it *because* the District was waiting on a case number? Was it *because* it was still drafting its motion to stay? Or was it filed *because of* Cronin’s motion for contempt? Will this Court accept the District’s premise that it would have moved to stay the order even if Cronin had not filed a contempt action given the contradictory excuses for not moving to

stay the trial court orders until *after* Cronin's motion for contempt? The District offers convenient excuses but the reality is that it waited and filed only after Cronin had moved for contempt.

Regardless, it begs the real issue which is that the District knowingly and willfully refused to comply with a valid court order since June 29, 2018. Neither excuse offered by the District is a rationale that justifies its intentional refusal to comply with that order. The District knew that when the Trial Court denied its motion for reconsideration and again denied its motion for a limited stay, that the Trial Court had ordered and intended Cronin to be on pay and benefits as of June 29, 2018. The District's Motion to Stay was filed 3 ½ months *after* the Trial Court entered its valid order reinstating Cronin's pay and benefits and two weeks *after* it filed its notice of appeal. The District had no legal basis to refuse to comply with Judge Cooney's lawful court order and did so at its own peril. VR 4:3-4, Feb. 15, 2019.

On **September 21, 2018**, oral argument took place on Cronin's contempt motion. The Trial Court reserved ruling on the motion as the District's **September 11, 2018**, motion to stay was pending before this Court. The Trial Court reasoned:

There's issues about whether or not the [District's] appeal was properly perfected or whether the June 29th Order was properly designated as an order that

was being appeal[ed]. I'm not in a position to decide those issues. That's up to the Court of Appeals to decide... If I find the District in contempt for failing to comply with this order, this order could be stayed at a later date and then we'd have a conflict between my order of contempt and the order staying the enforcement of this order, which is another problem. ... What I'm going to do at this point is reserve on this issue and ... if the Court of Appeals doesn't [stay] enforcement of that provision of the June 29th order, [Cronin is] welcome to come back in here on [his] motion for contempt, and I think at that point the court can impose remedial sanctions... VR 5:12-19, Sept. 21, 2018.

The Trial Court reserved its ruling on contempt while the District's motion to stay before the Appellate Court was pending. CP 69-70. Cronin was invited to re-note his motion if the stay was denied. *Id.* And that is exactly what happened.³ There was no ruling by the Trial Court while a motion to stay before the Appellate Court was pending.

On **October 24, 2018**, oral Argument was heard before Commissioner Wasson on the District's Motion to Stay and on the scope of the appeal. The Commissioner reserved ruling on both issues.

³ The District's Opening Brief states it relied on the Trial Court's reserved ruling to continue to not pay Cronin his wages and benefits "while it awaited the final outcome of this motion." (App. Brief, pg. 3). It is unclear what the District relied upon to justify continuing to ignore a valid court order. There is nothing in the Judge's Oral Ruling or Order that the District could have relied upon to continue to violate the clear language of the order to immediately reinstate Cronin so his wages and benefits could be paid until a decision in the statutory hearing was made.

Meanwhile, although no wages or benefits were paid, the statutory hearing proceeded and commenced on **November 1, 2018**. It lasted sixteen days. Testimony finished on December 7, 2018.

On **November 30, 2018**, Commissioner Wasson denied the District's Motion to Stay. But still the District paid nothing to Cronin as ordered.

The statutory hearing concluded on **December 11, 2018**, with closing arguments. On **December 21, 2018**, the statutory hearing officer upheld Cronin's termination finding sufficient cause existed to terminate Cronin's employment.⁴

On **December 28, 2018**, Cronin renoted his motion for contempt with Judge Cooney. At the same time, on **December 28, 2018**, the District moved to modify Commissioner Wasson's ruling denying the stay.

On **January 10, 2018**, the Trial Court heard oral argument on Cronin's renoted contempt motion. The Trial Court found the District in contempt of the June 29, 2018, Order. Judge Cooney stated:

Here, the order entered on June 29th was extremely clear. The order indicates that the plaintiff's wages and

⁴ The statutory hearing officer's decision has been appealed by Cronin to Superior Court pursuant to RCW 28A.405.320; 330; 340 and is presently pending.

benefits shall be immediately reinstated, effective the date of this order, which was June 29th, and shall continue until such time as a written decision by a statutory hearing officer... That was extremely clear. He was to be immediately reinstated effective June 29. As of this date, now January 10th of 2019, he still hasn't been reinstated to employment, and at this point it's impossible to have him reinstated because the hearing officer has made a decision terminating his employment. The Court can't enforce the order that was previously entered because the clock has run out.... Here, the District is never going to be able to comply with that portion of the order. VR 4:10-5:8, Jan. 10, 2019.

So by the time a hearing was held, the equitable relief as ordered by the Trial Court on June 29, 2018, was no longer available. The District had by now successfully circumvented what Judge Cooney had clearly ordered. So at this point, it was impossible for the District to comply since a "decision" by the Hearing Officer had been made and Cronin was effectively terminated. Despite this, the Trial Court recognized that it had the authority and discretion under the law to "do what's necessary to gain compliance with the court order." *Id.* at 5:3-4.

Accordingly, the Court determined that the District was in contempt, finding that the District had knowledge of and willfully violated the Court's order by failing to immediately reinstate Cronin as ordered. CP 241-46; VR 5:17-25. As Judge Cooney noted, "There doesn't appear to be a reasonable excuse, other than

‘we’re trying to get a stay,’ which isn’t a valid reason for not complying with a court order.” VR 6:1-3, Jan. 10, 2019.

The Court ordered the District to pay the wages and benefits it should have paid but never did, from the date of the June 29, 2018, Order, until the Hearing Officer’s decision on December 21, 2018. CP 241-46, 284-91. This included double damages for the intentional withholding of wages along with attorney’s fees. RCW 49.52.070; *Id.* An order was entered on **February 1, 2019**, to this affect and a subsequent hearing was set to determine the amount of the remedial sanctions. CP 241-46. This action was taken by the trial court based upon its inherent contempt power to fashion a remedy as well as the remedial powers under the contempt statute, RCW 7.21 et. seq.; *Id.*

On **February 15, 2019**, the parties argued the specific amounts due for the back wages, double damages, benefits, pre-judgment interest, attorney’s fees, and a per diem amount that should accrue until the remedial sanctions were paid in full. *See* VR Feb. 15, 2019. The Court used its powers under RCW 7.21.030 to fashion a remedy for Cronin and a contempt order to ensure the District’s compliance. *Id.* Judge Cooney took what was previously his attempt to provide Cronin with equitable relief, and turned it into legal relief as the District could no long specifically

perform under the June 29, 2018, Order. At no point has the District been found to have cured or purged its finding of contempt. It is still in contempt.

The per diem amount was awarded based on the District's contempt of the June 29, 2018, Order, and designed to compel payment of the amounts owed from June 29, 2018, through December 21, 2018, which the District should have paid Cronin, but did not. Judge Cooney ordered a per diem amount of \$100 per day under the February 27, 2019, order and gave the District a 30 day grace period before the per diem would commence in order to afford the District an opportunity to pay the judgment and purge its contempt finding. An order was entered on **February 28, 2019**, regarding the amounts owed pursuant to the Court's findings of fact and conclusions of law related to the request for remedial sanctions. CP 284-91

The District implies that the per diem amount is owed for failing to comply with the February 28, 2019, Order. That is not accurate. The per diem amount is owed pursuant to the finding of contempt on January 10, 2019, and the February 1, 2019, Order. The District attempted to evade payment to Cronin pending the statutory hearing, and the Hearing Officer's decision has now made it impossible for the District to comply with the June 29,

2018, Order. The District was therefore found in contempt of the June 29, 2018, Order and currently remains in contempt. And it will continue to remain in contempt until it pays the remedial sanctions and judgment pursuant to the February 28, 2019, Order.

The District argues that there must be a subsequent finding of contempt *after* the February 28, 2019, Order before any per diem can be assessed. App. Brief, pg. 11-13. The District offers no support for that proposition, and it is factually inaccurate. The District was already found in contempt. See VR 5:20-25, Jan. 10, 2019. It could purge that contempt without incurring any per diem amount if it paid the judgment for Cronin's losses within 30 days. CP 284-91. Whether to pay was and remains in the complete control of the District. It has made the conscious and repeated choice not to pay and to appeal instead. That is the District's choice. But there was already a finding of contempt upon which the per diem order was based. As the Trial Court explained:

There was a valid court order that was supposed to restore Mr. Cronin to employment effective June 29th. The District chose not to restore him to employment in the hopes that the Court of Appeals would grant it a stay... It turned out the District's motion was denied and the order was not stayed.

Mr. Cronin was deprived his return to employment between June 29 and December 21st when he was

formally terminated. That was a gamble the District took. That was the basis for contempt. ...

Mr. Cronin was supposed to be restored to his employment. He wasn't restored to his employment. As a result, he lost pay and benefits for a substantial period of time.

What I'm going to do is indicate that the District has 30 days to pay the judgment. And after 30 days, there will be a per diem of \$100 per day until that judgment is paid. VR 3:19-25; 4:1-4; 5:22-25; 6:1-5 (emphasis added).

Meanwhile, the District's Motion to Modify the Commissioner's ruling denying the stay was likewise denied on **February 22, 2019**, by this Court under COA No. 369214-III, *before* the Trial Court's final order was entered on contempt. The Trial Court's **February 28, 2019**, order was appealed by the District on March 11, 2019.

The District still refuses to pay claiming now that since the "legal relief" has been reduced to a judgment, any judgment is stayed pending the appeal. That is in part correct. While collection on the underlying judgment amount is stayed, the per diem amount and interest on the judgment is not stayed and continues to accrue. The District can purge the contempt finding by payment in full of the judgment, interest and per diem amounts owed, or if not, face the risk of this Court affirming the Trial Court's determination including the per diem assessment

which continues to accrue. It is the District's choice, but their strategy has been all along to ignore the lawful Court orders and hope for a better result on appeal.

III. Grounds for Relief and Argument

A. The District Was Not Found In Contempt While Seeking a Stay.

1. There Was No Pending Motion to Stay When the District Was Found in Contempt.

When the Trial Court found the District in contempt on January 10, 2019, it was clear that there was no pending motion before the Court of Appeals to stay the June 29, 2018, Order. The District's Section "A" of its opening brief is neither founded in law or fact. The District's Motion to Stay was denied. It is true that a motion to modify the Commissioner's ruling denying the stay was pending, but there was no motion to stay that was pending when the Trial Court found the District in contempt. What the District appears to contend is that its motion to modify the Commissioner's ruling denying the stay somehow automatically creates a stay that has never been granted. The problem with the logic of that argument is that as far as the status quo between the parties is concerned, no stay has ever existed. A stay has never been granted by either the Trial Court or this Court where a stay could be considered the status quo that should remain in effect

pending an appeal. To the contrary: no stay was pending and a motion to modify the Commissioner's ruling does not result in a stay being implemented pending the motion to modify. There is no support for the contention that appealing the Commissioner's ruling somehow creates a stay where none existed before. A motion to modify and a motion to stay are distinct procedures and cannot be considered to be one of the same. See RAP 8.3 and RAP 17.7.

2. Unless a Stay is Issued, Parties Must Comply With Valid Court Orders.

In general, even if an order is believed to be erroneous, it must still be obeyed. *In re Estate of Smaldino*, 151 Wn. App. 356, 366 (2009). There is no law that supports the District's argument that while a motion to stay is *pending* a party is excused from complying with a valid court order. The law is explicit and clear: when a motion to stay is *issued*, compliance is excused pending a ruling on the merits. RAP 8.1(b). In fact, all of the law, statutes, and case law cited and relied upon by the District supports this conclusion.

The District relies upon *In re Marriage of Matthews*, arguing that an attempt to secure a stay protects a party from a finding of contempt. 70 Wn. App. 116, 126 (1993). That is not what that

case stands for. Rather, the appellant in *Matthews* intentionally ignored a trial court's order and did not attempt to secure a stay pending appeal under RAP 8.1. *Id.* So the Appellant was properly found in contempt. *Id.* That is the entirety of the *Matthews* Court's "analysis" on contempt. There was no *pending* motion. Nor did the Court state that an "attempt to secure a stay" would protect a party from a finding of contempt. *See Id.* The Court simply stated that the appellant did not attempt to secure a stay. *Id.* That is the *entirety* of the Court's discussion on the issue. The *Matthews* decision has no application in this case. Unlike *Matthews*, the District attempted to secure a stay that was denied. The District was found in contempt only *after* its attempt for stay pursuant to RAP 8.1 and 8.3 was *denied*, not before.

In fact, Washington's Supreme Court recently affirmed a Division I opinion holding that a stay must be *obtained* in order to avoid a contempt finding. *In re Det. of Herrick*, 198 Wn. App. 1029 (2017), *review granted*, 189 Wn. 2d 1002 (2017), and *aff'd* 190 Wn. 2d 236 (2018). In *In re Det. of Herrick*, the appellant, Herrick, challenged a contempt order for failing to submit to PPG testing as part of his treatment following a rape conviction. 198 Wn. App. 1029, 2017 WL 1314217 (2018). Herrick argued that "[b]ecause the trial court *order [compelling PPG testing] is stayed* pending

review” he should not have been found in contempt. *Id.* at *3 (emphasis in original). The Court held that a party cannot elude a contempt finding “without obtaining a stay of the order compelling conduct before being found in contempt of court for refusing to comply with the order.” *Id.* at *4 (emphasis added). The Court continued, “Upon unsuccessfully seeking a stay from the trial court, such an individual can seek direct, immediate relief from this court... RAP 8.3 authorizes this court ‘to issue orders, before ... acceptance of review ... to insure effective and equitable review.” *Id.* at FN 21; *see also U.S. v. Carter*, 17 F.3d 396 (9th Cir. 1994) (absent a stay, trial courts have authority to enforce their orders including holding parties in contempt while an appeal of the underlying order is pending; the basic proposition is that all court orders must be complied with promptly, and absent a stay, a party must comply promptly with an order pending appeal).

The Trial Court even stated from the bench on January 10, 2019, “There was a motion for a stay, which doesn’t stop anything.” VR 5:15-16, Jan. 10, 2019. “There doesn’t appear to be a reasonable excuse, other than ‘we’re trying to get a stay,’ which isn’t a valid reason for not complying with a court order.” *Id.* at 6:1-3. The Trial Court reserved finding the District in contempt in September not because it couldn’t while a motion to stay was

pending, but out of respect for the appellate proceedings and to avoid a conflicting order. VR 5:1-5, Sept. 21, 2018. Further, it was not until *after* the District's Motion to Stay was denied that the District was found in contempt. VR 3:4-6, Jan. 10, 2019.

If the District wanted to avoid being found in contempt, it should have complied with the Trial Court's order until and unless a stay was issued. If the District wanted to avoid being found in contempt, it could have and should have moved for a stay immediately upon seeking review and not have waited until *after* Cronin filed a contempt motion against the District.

B. The District Cannot Collaterally Attack the Underlying Contempt Order.

1. The District's Collateral Attack on the Underlying Contempt Order is Barred.

Parties that are held in contempt are barred from collaterally attacking the underlying order. *State v. Noah*, 103 Wn. App. 29, 45-46 (2000). Generally, under the collateral bar rule "a court order cannot be collaterally attacked in contempt proceedings arising from its violation, since a contempt judgment will normally stand even if the order violated was erroneous or was later ruled invalid." *Det. of Broer v. State*, 93 Wn. App. 852, 858 (1998) (internal citations and quotations omitted). The only exception to this rule is when a court lacks jurisdiction to enter the underlying

order. *Id.* The test for “jurisdiction” measures whether the court was performing the kind of function consistent with its vested judicial powers. Therefore, a court order that is “merely erroneous” must be obeyed and may not be collaterally attacked in a contempt proceeding. *Smaldino*, 151 Wn. App. at 366.

The District is attempting to collaterally attack the underlying June 29, 2018, Order in its appeal to this Court. (App. Brief, Section “B”, pgs. 9-10). It attempts to argue the “jurisdictional” exception by stating that only the hearing officer, not the Trial Court, had the authority to reinstate Cronin to employment so that his wages and benefits could be paid pending a decision in the statutory hearing. That is a collateral attack that lacks any merit as the Trial Court was performing exactly the sort of function for which its judicial powers were vested. As a result, the District is barred from avoiding a finding of contempt, remedial sanctions, and the per diem amount assessed by attacking the June 29, 2018, Order. Even if the June 29, 2018, Order is overturned on appeal, the finding of contempt, remedial sanctions, and per diem amount assessed survive as the District intentionally refused to comply with a valid court order.

2. The District's Argument that the Trial Court Did Not Have Authority to Reinstate Cronin Lacks Merit as the District Ignored Cronin's Request for a Statutory Hearing and the Court Ordered the District to Provide a Statutory Hearing Pursuant to RCW 28A.405.310 on June 29, 2018.

The District yet again raises the same argument that it waived before, that the Trial Court did not have “authority” to restore Cronin to his employment so that his pay and benefits could be paid to him pending a statutory hearing. The District has referenced this argument in several appellate motions, but then waived the argument when it failed to argue the Trial Court’s authority in its opening brief in COA No. 362914-III. See App. Brief, Jan. 14, 2019.

The District attempts to “flush out” this argument, but it is wholly without merit. It argues that under RCW 28A.405 *et. al.* the only authority the legislature gave the Superior Court was limited to the reinstatement of a teacher under RCW 28A.405.350, and .380, and only after a teacher prevailed in his/her statutory hearing. The District argues that under RCW 28A.405.310, the statutory hearing officer, not Superior Court, is the *only one* with the exclusive authority provided by the legislature, to reinstate a teacher after a statutory hearing. (App. Brief, pgs. 9-11). The District concludes that this statutory scheme removes any authority from a Trial Court to reinstate a teacher unless it occurs

post statutory hearing and only after the teacher has prevailed on appeal. The District then makes the quantum leap that given this statutory scheme, the Trial Court could not reinstate Cronin to his employment without first making a sufficient cause finding. *Id.* at 10. Then the District concludes that the Trial Court could not make a sufficient cause determination because no statutory hearing on the merits by a hearing officer had ever occurred. And without a hearing officer's sufficient cause determination first, there is nothing for a Trial Court to review and therefore, no authority by the Trial Court to reinstate Cronin. *Id.* at 10-11.

The District's argument first of all begs the issue. At the time the Trial Court ordered Cronin's employment restored and his pay and benefits reinstated, *no statutory hearing was even pending.* So there is no argument that the superior court somehow either lost jurisdiction or usurped the function of the hearing officer since the statutory scheme of RCW 28A.405 was not even a consideration at that point.

The Trial Court exercised its authority and jurisdiction under the declaratory judgment action originally filed by Cronin, to award back wages and benefits and place the parties back in status quo, with payment of current wages and benefits pending the statutory hearing. The Trial Court had authority and

jurisdiction because Cronin was never afforded a statutory hearing prior to the Court compelling the District to do so in the order of June 29, 2018.

Cronin was not reinstated by the Trial Court under RCW 28A.405. Cronin was reinstated in equity because the District violated his due process rights by refusing to accept his timely filed request for a statutory hearing. The reinstatement coupled with the order compelling a statutory hearing placed the parties back in status quo, back to January 16, 2012, when Cronin requested a hearing. The June 29, 2018, Order put the parties back in the position they should have been in had the District not violated Cronin's due process rights by refusing to participate in a statutory hearing. At the time Judge Cooney's Order of June 29, 2018, was issued, no statutory hearing had even taken place nor been ordered prior to that time.

If we take the District's argument to its logical conclusion, then the Trial Court loses jurisdiction to do anything once a statutory hearing officer is assigned or agreed by the parties to hear a matter. The District offers no authority in support of this proposition or that only the hearing officer has the exclusive authority and jurisdiction to reinstate a teacher under RCW 28A.405. There is no evidence that the legislature intended to *limit*

the Trial Court's jurisdiction or authority in any way. In fact, the superior court has express oversight of a statutory hearing. This statutory scheme demonstrates that the legislature did not intend to limit any of the superior court's jurisdictional authority as it expressly allows a party to initiate superior court intervention. The statutes provide that the superior court has oversight and intervention authority for the appointment of a hearing officer should the parties not agree, to provide the superior court with the ability to enforce subpoenas, and pre-hearing discovery issues during the hearing process. RCW 28A.405.310(4) and (9). This scheme does not limit the superior court's authority in any fashion, and in fact, is dependent upon the superior court should a dispute in the process arise.

Nor does the District even discuss or mention the principle of concurrent jurisdiction. The Appellant in *State ex rel. Roseburg v. Mohar*, made a similar "authority" argument which the Washington Supreme Court rejected. 169 Wn. 368 (1932). The Appellant in that case contended that the court did not have jurisdiction to enter a judgment in the original cause of action arguing that when the Legislature enacted the 'Water Code' it withdrew jurisdiction from the superior court, except as provided, when it created an administrative officer. *Id.* at 371. The *Mohar*

Court rejected the argument and held the superior court had jurisdiction and authority over the original case before it despite the legislature creating a hearing officer. *Id.* at 375-76. The Court reasoned:

The Constitution of this state has clothed the superior court with original jurisdiction in all cases in equity... The court has plenary power to settle such disputes, and their power may be invoked to give redress in proper cases where there has not been a previous adjudication either by an administrative board of the state or by the court having concurrent jurisdiction. *Id.* at 375.

In Washington, the superior courts are courts of general jurisdiction and have authority to hear and decide cases in equity for “which jurisdiction has not been vested by law *exclusively* in some other court[.]” Wash. Const. Art. IV, § 6 (emphasis added). The superior courts are literally courts of universal jurisdiction and have unlimited subject matter jurisdiction in civil cases. 14 Wash. Prac., Civil Procedure § 3:3 (3d ed.). The language of the Constitution gives the superior court universal original jurisdiction, leaving the legislature to carve out from that jurisdiction. *Moore v. Perrot*, 2 Wn. 1, (1891).

The Legislature cannot take upon itself the functions of the judiciary, nor can the judiciary take upon itself the functions of the legislature. *Blanchard v. Golden Age Brewing Co.*, 188 Wn.

396, 414 (1936). “Thus, by the Constitution, and independently of any legislative enactment, the judicial power over cases in equity has been vested in the courts, and, in the absence of any constitutional provisions to the contrary, such power may not be abrogated or restricted by the legislative department.” *Id.* 415. The District’s argument that the Legislature intended to divest the superior court of its jurisdiction and authority granted to it under the Constitution is not only legally unsupported, but prohibited by the Constitution. “Any legislation, therefore, the purpose or effect of which is to divest, in whole or in part, a constitutional court of its constitutional powers, is void as being an encroachment by the legislative department upon the judicial department.” *Id.* The superior court, under the Constitution, has at a minimum concurrent jurisdiction with the hearing officer under RCW 28A.405. The District’s “authority” argument is wholly without merit and legal support.

The June 29, 2018, Order compelled the District to engage in a statutory hearing pursuant to RCW 28A.405.310. For over seven years, the District refused to provide Cronin with a statutory hearing. The District unlawfully terminated Cronin and violated his due process rights by not affording him a statutory hearing. The Trial Court had authority and jurisdiction to issue the June

29, 2018, Order. It is a valid court order and the District cannot use this contempt proceeding to collaterally attack it.

C. The District's Actions Made it Impossible for It to Comply with the June 29th, 2018, Order and The Court has Broad Discretion and Authority to Fashion Remedial Sanctions on Contempt to Ensure Compliance with Valid Court Orders.

A finding of contempt is reviewed under the abuse of discretion standard. *In re Marriage of James*, 79 Wn. App. 436, 440 (1995). It will be upheld on review if the appellate court finds that the order is supported by a proper basis. *State v. Boatman*, 104 Wn.2d 44, 45-46 (1985)(Court upheld finding of contempt even though the trial court did not rely on any particular theory, based in either statute or the Court's inherent authority, but the contempt finding was supported by sufficient evidence).

The superior court has the power to fashion an appropriate remedy for noncompliance with its order. *In re Silva*, 166 Wn.2d 133, 140-41 (2009)(Courts are vested with an inherent contempt authority as contempt of court is disruptive to court proceedings and undermines the Court's authority). When the hearing officer's decision to affirm Cronin's termination was rendered on December 21, 2018, the District's actions made compliance with the Court's June 29, 2018, Order impossible. The Court did not, however, lose the ability to fashion remedial sanctions that were

appropriate under the facts and circumstances of the case. The District appears to argue that the hearing officer's decision to affirm Cronin's termination wholly justified their intentional refusal to abide by the Court's Order and the failure to obtain a stay was now moot and irrelevant. Such logic would allow a party to ignore any court order under the belief that the end justifies the means. The District argues that the Trial Court found that its prior contempt ended with the December 21, 2018, decision.

(App. Brief, p.12, fn 1) The Trial Court in no way found or stated that. First of all, the District acknowledges in that argument that it was in contempt for failing to pay Cronin; otherwise there could be no "prior contempt."

Second, having found it to be in contempt, although the Court could not enforce pay pending the decision, it could still force the District to pay Cronin as a remedial amount the same wages and benefits it should have paid him had the District not been in contempt. And the Court could further enforce that payment under its contempt authority with a per diem amount due until the payment was made. RCW 7.21.030. Our system of justice relies on respect of the Court and the rule of law; it is predicated on the notion that no individual or entity is above the law. *U.S. v. Lee*, 106 U.S. 196, 220, 1 S.Ct. 240 (1882). Here, the District has

demonstrated respect for neither.

A court has the power to award money damages instead of specific performance where specific performance is not feasible. *Crafts v. Pitts*, 161 Wn.2d 16, 27 (2007) citing *Zastrow v. W.G. Platts, Inc.*, 57 Wn.2d 347, 357 (1960). The Court has authority over a controversy to grant “whatever relief the facts warrant, including the granting of legal remedies.” *Zastrow*, 57 Wn.2d at 350. This is especially true when a party’s own action makes an award in equity impractical. *Id.*; see also *King Aircraft Sales, Inc. v. Lane*, 68 Wn. App. 706, 715 (1993)(noting the *Zastrow* Court found it “significant” that the appellant’s own acts resulted in an award of specific performance being impractical). In *Morgan v. Bell*, the court stated that if a party incapacitates themselves from performance, an award for monetary damages is an appropriate remedy. 3 Wn. 554, 556 (1892). The trial court has broad discretionary authority to fashion remedies appropriate under the facts and circumstances, including granting a combination of specific performance and damages where appropriate. *Empire Health Found. V. CHS/Cnty. Health Sys. Inc.*, 370 F. Supp. 3d 1252, 1264 (E.D. Wash. 2019).

Further, the defense of impossibility for a contempt finding is invalid when the impossibility was self-created. *In re Lawrence*,

279 F.3d 1294, 1300 (11th Cir. 2002). A self-created impossibility is not a defense to contempt. *Id.* Here, the District created the circumstances for which it now complains should not result in contempt. They intentionally refused to comply, waited for the hearing officer's decision, and then argued that their conduct resulted in no contempt because the hearing officer's decision to affirm termination justified their refusal to pay wages and benefits before the decision was made. This is precisely the kind of circumstance that justifies the imposition of contempt and remedial action by the Court.

Finally, "the failure to refuse to comply with an order of the court or purge the contempt, *is a continuing contempt*, and the court may base judgment thereon." *Rainier Nat. Bank. v. McCracken*, 26 Wn. App. 498, 515 (1980) *citing State ex rel. Ewing v. Morris*, 120 Wn. 146, 154 (1922)(emphasis added).

The District attempts to characterize the current finding of contempt and basis for per diem remedial sanctions for failing to pay the judgment amount entered on February 28, 2019. This is incorrect.

There is no dispute that the District was found in contempt and that contempt is ongoing. The point was for the District to pay Cronin pending the decision. It did not. It was found in

contempt for failing to pay him, ordered to pay him under the February 27, 2019, Order, and pay a per diem for each day it failed to pay. The daily per diem is a forfeiture for each day the contempt continues for the District's failure to pay Cronin what it should have paid him. Cronin was entitled to those funds no matter the outcome of the statutory hearing. The decision by the hearing officer did not change the fact that the District still owed Cronin his pay and benefits until the decision was made. Cronin's entitlement to those funds was not contingent on the hearing officer reversing the District's termination of him. It was to place the parties back in status quo as they would have been had the hearing occurred in 2012 rather than 2018.

The per diem are designed to compel payment of the amounts owed under the prior June 29, 2018, Order (reduced to judgment under the February 27, 2019, Order) which obligated the District to pay Cronin while going through the hearing process. The Court found contempt and was not required to make another finding of contempt when it issued its February 27, 2019, Order. The District was given 30 days to comply and pay Cronin that which it should have paid all along. If it didn't, then the per diem sanction would apply and start accruing. This matter doesn't necessitate another hearing for the Trial Court to make a finding that the

District didn't pay anything after 30 days and therefore is in contempt. The District has it backwards. They were already found in contempt and given 30 days to cure before any daily penalty would apply. The District had a choice to pay or not pay. It was totally within its control. The per diem was contingent and only went into effect if the District chose not to pay after 30 days. Having not paid, contempt is continuing and the daily penalty is appropriate until the District pays the February 27, 2019, judgment. As the Trial Court stated:

Here, we're talking about a remedial action. Mr. Cronin was supposed to be restored to his employment. He wasn't restored to his employment. As a result, he lost pay and benefits for a substantial period.

What I'm going to do is indicate that the District has 30 days to pay the judgment [for remedial sanctions]. And after the 30 days, there will be a per diem of \$100 per day *until that judgment is paid*. VR 5:22-6:4, Feb. 15, 2019.

The Trial Court's ruling and intentions were clear: the District was in contempt until it paid the judgment for the remedial sanctions. Again, the remedial sanctions are for the amount of loss incurred *due to the District's contempt* and included: 1) the lost wages and benefits Cronin was entitled to between June 29, 2018, and December 21, 2018, the date the statutory hearing officer issued a written decision; 2) double damages for the wages

withheld; 3) pre-judgment interest; and 4) attorney's fees and costs. No such further hearing or finding of contempt was necessary or required before the per diem penalty assessment was made or went into effect. *See* VR 5:2-4, Jan. 10, 2019.

The Court fashioned an equitable and legal remedy by way of remedial sanctions after finding the District in contempt, which was appropriate given the facts and circumstances of this case. This was neither an error nor abuse of the Court's discretion. Because the District willfully refused to comply with a court order and it did so until it was impossible to comply with the Order, the Trial Court's judgment for remedial sanctions and a per diem amounts are not an abuse of discretion. The finding of contempt and award for remedial sanctions are supported by sufficient and substantial evidence. The remedial sanctions were fashioned within the Trial Court's broad discretionary powers under the contempt statutes.

D. The District's Willful Withholding of Wages Ordered by the Court Entitled Cronin to Double Damages.

Wages are compensation owed an employee. RCW 49.46.010(7). The June 29, 2018, Order entitled Cronin to wages between June 29, 2018, and December 21, 2018. Those wages were intentionally, knowingly, and willfully withheld from Cronin

by the District. The District willfully failed to pay Cronin in violation of RCW 49.52.050(2) and in violation of the valid and lawful June 29, 2018, court order. Accordingly, the District is liable for double damages to Cronin under RCW 49.52.070.

There was no bona fide dispute that these wages were owed to Cronin. The Trial Court held that the June 29, 2018, Order was “extremely clear. He was to be immediately reinstated effective June 29.” VR 4:18-19, Jan. 10, 2019. “There isn’t any willful justification for withholding his payment during that time.” *Id.* at 6:21-22. This is the basis for the award of double damages. There was no bona fide dispute these were wage owed to Cronin.

Further, the state of mind of the District that it “...genuinely believed that Mr. Cronin was not entitled to be reinstated with pay and benefits while the School District sought a stay from this Court” is an insufficient defense to the assessment of double damages. (App. Brief, p.15). Both an objective and subjective component is required to evidence a bona fide dispute. *Hill v. Garda CL Northwest, Inc.*, 191 Wn. 553, 561-62 (2018).

The issue is whether a “bonafide dispute” exists that is “fairly debatable” as to whether wages are owed or not. *Id.* With a valid court order requiring the payment of wages pending the hearing decision, there is little doubt much less a bonafide dispute that

the District was obligated to pay those wages. The District can't create a subjective "genuine belief" in an effort to justify its conduct and eliminate the risk of double damages. Whether it genuinely believed it "...could follow the procedures provided for in the law without the risk of being held in contempt or being found liable under RCW 49.52.050" is not supported in the law or a basis to avoid liability for double damages. (App. Brief, p.15). The fact that wages were owed to Cronin by the District under the June 29, 2018, Order is not "fairly debatable" and is not a bona fide dispute.

The District poses, "Once again, why would the School District have had to reinstate Mr. Cronin with pay and benefits while it was seeking a stay of the order that required the School District to do so? If it would have had to do that, there would have been no point in seeking the stay, vitiating the reason from having RAP 8.1(b)(3) and RAP 8.3." *Id.* at 15-16. Again, the District ignores the fact that it cannot disobey a lawful court order without a stay of that order being issued. It tried and was unsuccessful in seeking a stay both with this Court and the Trial Court. The fact that it filed for a stay does not create an interim automatic stay pending a decision by either the trial court or court of appeals.

The District was not without recourse if it complied with the

Order. If the District obtained a stay, or if they failed to obtain a stay and prevailed on appeal, the District's remedy was to seek reimbursement from Cronin for any amounts paid. The choice was the District's to either comply with the court order and seek reimbursement from Cronin if successful in arguing for a stay, or intentionally ignore the court order. The District took the calculated risk of not complying with the court order and relied on its assumption that a stay would be issued. It was wrong. The District is not relieved from complying with a court order simply because it requests a stay.

There was no bonafide dispute that the Court ordered the District to pay those wages which they all along have refused to pay. The refusal was volitional. The District chose to ignore the valid court order and withhold wages from Cronin. An award of double damages was not an err, but was mandatory under RCW 49.52.070.

IV. ATTORNEY'S FEES

Pursuant to RAP 18.1, this Court should award Cronin attorney's fees and costs under both the contempt statute and the wage statute. Under the contempt statute, the court may, in addition to the remedial sanctions, order a person or party found in contempt to pay reasonable attorney's fees and costs. RCW

7.21.030(3).

Likewise, Cronin requests fees and costs under RCW 49.48.030 and RCW 49.52.070, for the intentional withholding of wages owed. Cronin requests and should be awarded his attorney fees and costs before this Court.

V. CONCLUSION

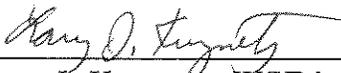
This proceeding is the direct result of the District's decision in 2012 to completely ignore Cronin's due process rights and a valid court order. The District knowingly took the risk that if they ignored Judge Cooney's June 29, 2018, August 22, 2018 and February 27, 2019, Orders long enough, they might avoid ever complying. The District's actions over the last seven years demonstrate an "above the law" mentality. Yet now the relief the District is seeking from this Court is to be excused from complying with valid court orders. The District is asking this Court to carve out an exception that is not rooted in law or equity, which allows it to ignore valid and lawful Court orders that were never stayed by the Trial or Appellate Courts. The District wants all the benefits of the law, but none of the accountability or consequences of failing to follow the law or comply with clear and unequivocal court orders.

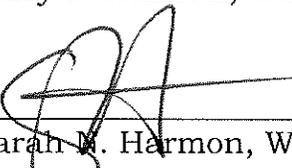
This Court should affirm the Trial Court's finding of

contempt, the award and amounts for remedial sanctions, and the per diem award amount that was ordered. The Trial Court has broad discretion in contempt proceedings to fashion appropriate remedies when a party fails to comply with its orders. The Trial Court did not abuse its discretion and its orders on contempt should be affirmed. Lastly, Cronin should be awarded his attorney's fees and costs before this Court based on any of the statutory provisions cited above.

Respectfully submitted this 27th day of June, 2019.

POWELL, KUZNETZ & PARKER, P.S.

By 
Larry J. Kuznetz, WSBA #8697

By 
Sarah M. Harmon, WSBA #46493
Attorneys for Respondent

Certificate of Service

I HEREBY CERTIFY that on the 27TH day of June, 2019, I caused a true and correct copy of Respondent's Answer to Appellant's Opening Brief, to be sent by the method indicated below to:

Paul E. Clay
Stevens Clay, P.S.
421 W. Riverside Ave., Ste. 1575
Spokane, WA 99201-0409

XX Attorney Services
 Hand Delivery
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XX Attorney Services
 Hand Delivery
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XX E-file/E-mail

DATED at Spokane, WA this 27TH day of June, 2019.

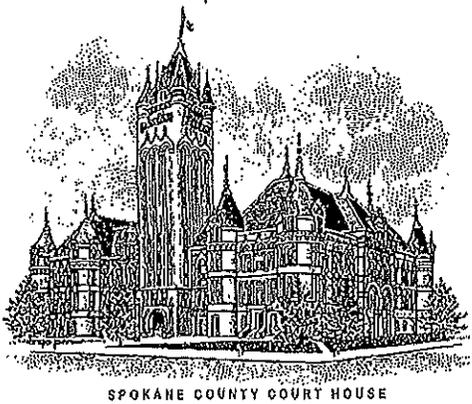


Ashley Sandaine

APPENDIX

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Superior Court of the State of Washington
for the County of Spokane

Department No. 9

John D. Cooney

Judge

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JUN -4 2018

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& PARKER, P.S.

June 1, 2018

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Larry Kuzentz
Powell, Kuznetz & Parker
316 W. Boone Ave., Ste. 380
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*Re: Cronin v. Central Valley School Dist.
Case No. 12-2-01155-3*

Dear Counsel,

On May 8, 2018, Defendant Central Valley School District moved for reconsideration of the Court's order granting Plaintiff Michael Cronin's motion for summary judgment, entered by oral decision on Friday, April 27, 2018. The District's motion for reconsideration is brought pursuant to CR 59. CR 59 provides that upon the motion of an aggrieved party the court can vacate an interlocutory order and grant reconsideration. Davies v. Holy Family Hosp., 144 Wn.App. 483, 497, 183 P.3d 283, 290 (2008). Until a final judgment is entered, a trial court has the discretion to change its mind and amend or reverse its rulings. Seidler v. Hansen, 14 Wn.App. 915, 917, 547 P.2d 917, 919 (1976).

In response to the District's motion for reconsideration, the Plaintiff moves to strike the motion, arguing that the motion is untimely and raises new issues. The Court denies Plaintiff's motion to strike the District's motion for reconsideration as untimely. "Although a court's oral opinion or written memorandum of opinion may be considered in interpreting the court's findings of fact and conclusions of law and amounts to an informal expression

of opinion when rendered, the oral or written opinions have no final and binding effect unless formally incorporated into the findings, conclusions and judgment." Tahat v. Tahat, 182 Wn.App. 655, 672, 334 P.3d 1131, 1140 (2014) (citing State v. Wilks, 70 Wn.2d 626, 629, 424 P.2d 663, 665 (1967)). However, the Court will grant Plaintiff's motion to strike issues not raised at the hearing on the motion for summary judgment (i.e. mitigation of damages). CR 59 should not be used to raise new arguments that were not brought in the original motion.

This Court acknowledges a certificated employee of a school district does not have a property interest in having their contract renewed. Schlosser v. Bethel Sch. Dist., 183 Wn.App. 280, 291, 333 P.3d 475, 482 (2014). Therefore, a post-deprivation hearing does not deny a certificated employee their due process rights. Id. However, in Schlosser the plaintiff did "not dispute that the District 'follow[ed] the procedures outlined for teacher evaluation and contract nonrenewal' under chapter 28A.405 RCW." Id. at 288. After finding that post-deprivation hearings do not deny certificated employees of their due process rights, the second question posed in Schlosser was "whether the District's following the statutory procedures accorded Schlosser due process." Id. at 291.

The Court of Appeals ruled that Mr. Cronin, upon receipt of the notice of nonrenewal, complied with the requirements of RCW 28A.405.210 in requesting a hearing. Cronin v. Central Valley School Dist., 193 Wn.App. 1022 (2016). Therefore, the District was required to comply with the timeliness provisions of RCW 28A.405.310(4), (5), and (7). Unlike in Schlosser, rather than complying with the statutory time requirements for a hearing, here the District disregarded Mr. Cronin's request. As such, Mr. Cronin's statutory rights have, at worst, been completely ignored and, at best, delayed over six years. Had a hearing been timely held and Mr. Cronin prevailed, he would have "been restored to his...employment position and...awarded reasonable attorneys' fees." RCW 28A.405.310. Since the District failed to comply with Mr. Cronin's statutory right to a hearing, the Court granted his request to restore his employment.

For all the forgoing reasons, the District's motion for reconsideration is denied. Counsel for Mr. Cronin is directed to prepare an order reflecting this letter decision. A presentment date is scheduled for Friday, June 22, 2018, at 8:30 a.m.

Sincerely,



John O. Cooney

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TIMOTHY W. FITZGERALD
SPOKANE COUNTY CLERK

DEPT. #9

SUPERIOR COURT OF WASHINGTON COUNTY OF SPOKANE

MICHAEL F. CRONIN,

Plaintiff,

and

CENTRAL VALLEY SCHOOL
DISTRICT,

Defendant.

NO. 12-2-01155-3

ORDER: 1) GRANTING
PLAINTIFF PARTIAL SUMMARY
JUDGMENT; 2) DENYING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT; 3)
APPOINTING STATUTORY
HEARING OFFICER; 4) SETTING
SCHEDULE FOR PRESENTMENT
OF JUDGMENTS AND MOTION
FOR TAX CONSEQUENCES

This matter came on for hearing before the court on April 27, 2018, on Cross-Motions for Summary Judgment. The Plaintiff was represented by Larry J. Kuznetz of Powell, Kuznetz & Parker, P.S. The Defendant was represented by Paul Clay of Stevens Clay and Breean Beggs of Paukert and Troppman, PLLC. The court reviewed the records and files herein and specifically considered the following submissions by the parties:

ORDER GRANTING PLAINTIFF PARTIAL SUMMARY
JUDGMENT; DENYING DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT; APPOINTING A HEARING
OFFICER; AND SCHEDULING OTHER MATTERS - 1

LAW OFFICE OF
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- District's Motion for Summary Judgment
- District's Memorandum of Authorities in Support of its Motion for Summary Judgment
- Declaration of Paul Clay with attachments
- Declaration of Jay Rowell with attachments
- Plaintiff's Motion for Summary Judgment
- Memorandum of Authorities in Support of Plaintiff's Motion for Summary Judgment
- Declaration of Larry J. Kuznetz with attachments
- District's Response to Plaintiff's Motion for Summary Judgment
- Second Declaration of Jay Rowell
- Plaintiff's Response Memorandum to District's Motion for Summary Judgment
- Memorandum in Support of Plaintiff's Motion to Strike Portions of Declaration of Jay Rowell
- Plaintiff's Motion to Strike Portions of Jay Rowell Declaration
- Declaration of Teresa Anderson 7.12.17
- Declaration of Sally McNair 7.12.17
- Declaration of Michael Cronin 7.12.17 with attachments
- District's Opposition to Plaintiff's Motion to Strike Portions of Jay Rowell's Declaration
- District's Reply to Plaintiff's Response to District's Motion for Summary Judgment
- Second Declaration of Paul Clay with attachments
- Plaintiff's Reply Memorandum to District's Response to Plaintiff's Motion for Summary Judgment
- Second Declaration of Michel Cronin 7.21.17
- Plaintiff's Reply Memorandum to District's Opposition to Plaintiff's Motion to Strike Portions of Jay Rowell's Declaration

ORDER GRANTING PLAINTIFF PARTIAL SUMMARY JUDGMENT; DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; APPOINTING A HEARING OFFICER; AND SCHEDULING OTHER MATTERS - 2

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After having reviewed the records and files herein including the above documents, and after hearing argument of counsel, and having issued its letter opinion on June 1, 2018,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiff's Motion for Summary Judgment be, and the same is hereby partially granted as follows:

a. The Court grants Plaintiff's request to restore his employment. Judgment shall be entered against Defendant for back wages and benefits owed Plaintiff from September 1, 2012, to the date of this order. The issue of the amount of pre-judgment interest, if any, shall be determined at the hearing on August 3, 2018 as identified in paragraph 4 below.

b. Plaintiff's wages and benefits shall be immediately reinstated effective the date of this order and shall continue until such time as a written decision by a statutory hearing officer determines after a hearing on the merits whether the Defendant has proved sufficient cause for either discharge or nonrenewal of Plaintiff from his employment with Defendant.

c. Plaintiff shall be entitled to judgment against Defendant for attorney's fees and costs under RCW 49.48.030 as he prevailed on his claim for wages owed after August 31, 2012.

d. Plaintiff's request for attorney's fees under RCW 28A.405.350 is denied.

e. Plaintiff shall be entitled to present by motion a request for an additional award to him for damages for tax consequences resulting from the back pay, benefits and attorney's fees and costs judgment.

f. Plaintiff's request for double damages for wages owed is denied.

2. Defendant's Motion for Summary Judgment be, and the same is hereby denied.

ORDER GRANTING PLAINTIFF PARTIAL SUMMARY JUDGMENT; DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; APPOINTING A HEARING OFFICER; AND SCHEDULING OTHER MATTERS - 3

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3. The court understands that the parties have agreed and the court hereby appoints attorney Dave Kulisch as the statutory hearing officer to hear the merits of the District's claim for discharge and non-renewal.
4. The court shall set a notice of presentment on August 3, 2018 at 2:00PM for entry of judgment referenced in paragraphs 1(a) and (c) above, and for Plaintiff's motion for tax consequences referenced in paragraph 1(e) above. Plaintiff shall provide documentation of back wages and benefits owed, attorney's fees and costs, pre-judgment interest and tax consequences to the Defendant and filed with the court by June 22, 2018. The Defendant shall file any response by July 17, Plaintiff shall file any reply by July 27.

DATED this 29th day of June, 2018.

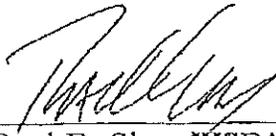
JOHN O. COONEY

Judge John O. Cooney

Presented by:
POWELL, KUZNETZ & PARKER, P.S.

Approved as to Content:
STEVENS CLAY, P.S.

By: 
Larry J. Kuznetz, WSBA 8697
Attorney for Plaintiff

By: 
Paul E. Clay, WSBA #17106
Attorney for Defendant

PAUKERT & TROPPMANN, PLLC

Did not appear at the
By: 6/22/18 presentment
Breean Beggs, WSBA #20795
Attorney for Defendant

ORDER GRANTING PLAINTIFF PARTIAL SUMMARY JUDGMENT; DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; APPOINTING A HEARING OFFICER; AND SCHEDULING OTHER MATTERS - 4

LAW OFFICE OF
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FILED
JUL 17 2018
POWELL, KUZNETZ
& PARKER, P.S.

SUPERIOR COURT OF WASHINGTON
IN AND FOR SPOKANE COUNTY

MICHAEL F. CRONIN,

No. 2012-02-01155-3

Plaintiff,

**MOTION AND MEMORANDUM IN
SUPPORT OF A LIMITED STAY**

vs.

CENTRAL VALLEY
SCHOOL DISTRICT,

Defendant.

I. MOTION

Central Valley School District moves this Court for a limited stay of the portion of its Order restoring Plaintiff to his employment and reinstating current wages and benefits until the decision from the September 24, 2018 hearing on non-renewal is issued.

II. AUTHORITY TO ISSUE A STAY

“The Court has inherent power to stay its proceedings where the interest of justice so requires.” *King v. Olympic Pipeline Co.*, 104 Wn.App. 338, 350, 16 P.3d 45, 51 (2000), as amended on reconsideration (Feb. 14, 2001). Quoting from Justice Cardozo, *Olympic Pipeline* holds that “the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this

1 can best be done calls for the exercise of judgment, which must weigh competing interests and maintain
2 an even balance.” *Id.* (quoting *Landis v. North American Co.*, 299 U.S. 248 (1936))

3 III. THE INTEREST OF JUSTICE REQUIRES A STAY

4 There are several reasons why a limited stay serves the interest of justice.

5 1. Inconsistent Results Absent a Stay

6 First, absent a stay, the potential exists for the parties to be subjected to inconsistent results (that
7 cannot be undone) due to decisions by the Court of Appeals and the statutory hearing officer. As the
8 Court understands (based on the representation of counsel during the presentment hearing), the Court’s
9 Order restoring employment and awarding back pay will be appealed. At that point, the Court’s Order
10 as it relates to back wages will be stayed as a matter of right. *See* RAP 8.1(a) (“Any party to a review
11 proceeding has the right to stay enforcement of a money judgment . . . pending review.”).¹

12 If the School District prevails on appeal, it would mean that the School District was not required
13 to pay Plaintiff beyond August 31, 2012. Meanwhile, the parties are scheduled to have a statutory
14 hearing beginning September 24, 2018. Absent a stay by this Court, the School District would be
15 required to pay plaintiff for at least a month of current pay until the statutory hearing is held. However,
16 if the School District prevails at the statutory hearing and if the Court of Appeals upholds the School
17 District’s position, the School District will have paid Plaintiff despite Plaintiff having no right to any
18 such pay.

19 Viewed differently, the Court’s Order contains two components that impact payments to
20 Plaintiff: (1) back pay; and (2) what amounts to the equivalent of future pay. Both components of pay
21 are based on the same exact legal ruling by this Court. Upon appeal, the back-pay component will be
22

23 ¹ Because the School District is a local government entity, all it has to do to stay enforcement of the Court’s Order, as it relates to back wages and benefits, is file a notice with the Court that its order is superseded without bond. *See* RAP 8.1(f).

1 stayed; however, the future pay component will not. Until final disposition is made by the Court of
2 Appeals, it would create an anomaly for one component of the Court's Order to be stayed, but not the
3 other—especially given that both components are based on the exact same legal ruling and both will be
4 subjected to the exact same legal review by the Court of Appeals. A stay preserves the status quo on the
5 dispositive legal issue until final disposition by the Court of Appeals.

6 **2. Weighing of Interests.**

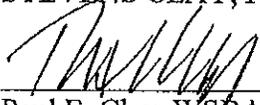
7 A weighing of interests supports a limited stay. If the Court of Appeals determines that Plaintiff
8 was not entitled to receive wages until the sufficient cause hearing and this Court does not stay its order,
9 then Plaintiff will have received wages to which he was not entitled. Likewise, the School District would
10 have no way to recoup its loss. Moreover, the School District would have to engage in the complex task
11 of unraveling payments made to the state retirement authority, to the IRS, and to health benefit providers.
12 Indeed, the School District would have to re-enroll Plaintiff in benefit programs, only to undo them in a
13 few months were it to prevail at hearing. On the other hand, if the Court of Appeals upholds this Court's
14 decision or if plaintiff prevails at the hearing, Plaintiff will be entitled to receive his back wages. He
15 will have suffered no financial harm. The results of at least the hearing on the merits will be known in
16 a few weeks, at which time the Court could revisit this issue if needed.

17 **IV. CONCLUSION**

18 A limited stay is in the interest of justice. A stay preserves the status quo on legal issues pending
19 final disposition by the Court of Appeals. Absent a stay, the parties could be subjected to inconsistent
20 results, with significant harm to the School District.

1 DATED this 17th day of July 2018.

2 STEVENS CLAY, P.S.

3 
4 _____
5 Paul E. Clay, WSBA No. 17106
6 Attorneys for Central Valley School District
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MOTION AND MEMORANDUM
IN SUPPORT OF A LIMITED STAY – 4

STEVENS CLAY
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CERTIFICATE OF SERVICE

I do certify that on July 17, 2018, I served true and correct copies of the above and foregoing MOTION AND MEMORANDUM IN SUPPORT OF LIMITED STAY on the following, in the method indicated:

Mr. Larry Kuznetz
Powell, Kuznetz & Parker, P.S.
316 W. Boone, Rock Pointe Tower, Suite 380
Spokane, WA 99201

- U.S. mail
- Overnight mail
- Hand-delivery
- Facsimile transmission
- Email


KIMBERLY N. REBER

COPY
Original Filed
AUG 23 2018
Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

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SUPERIOR COURT OF WASHINGTON COUNTY OF SPOKANE

MICHAEL F. CRONIN,

Plaintiff,

and

CENTRAL VALLEY SCHOOL
DISTRICT,

Defendant.

NO. 12-2-01155-3

FINDINGS OF FACT,
CONCLUSIONS OF LAW, ORDER
AND JUDGMENT ON
REASONABLENESS OF
ATTORNEY'S FEES, SETTING OF
BACK WAGES, BENEFITS, PRE-
JUDGMENT INTEREST AND
DENIAL OF LIMITED STAY

THIS MATTER came before the Court for hearing on August 3, 2018, on plaintiff Michael Cronin's Motion for Reasonable Attorney's Fees pursuant to RCW 49.48.030 and setting damages for back wages, benefits, pre-judgment interest, and tax consequences. Defendant also brought on for hearing its Motion For Limited Stay. In addition to the records and files herein, the Court reviewed the following submissions by the parties:

1. Motion And Affidavit to Set Award For Back Pay, Benefits, Interest, Attorney's Fees And Costs;

FINDINGS OF FACT AND
CONCLUSIONS OF LAW, ORDER
AND JUDGMENT - 1

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- 1 2. Motion And Affidavit For Tax Consequence Adjustment;
- 2 3. Plaintiff's Memorandum of Authorities In Support Of Back Wages And
- 3 Benefits, Attorney's fees, Costs, Pre-Judgment Interest and Tax Consequence
- 4 Adjustment;
- 5 4. Declaration of Marie T. Canas Re Calculation of Back Wages, Benefits
- 6 and Pre-Judgment Interest;
- 7 5. Declaration of William M. Symmes re Attorney's Fees;
- 8 6. Declaration of Keller W. Allen re Attorney's Fees;
- 9 7. Declaration of Larry J. Kuznetz re Attorney's Fees;
- 10 8. Declaration of Michael J. Hines re Attorney's Fees And Costs;
- 11 9. Declaration of William Simer, CPA re An Adjustment For Tax
- 12 Consequences;
- 13 10. Response to Plaintiff's Memorandum in Support of Back Wages And
- 14 Benefits, Attorney's Fees, Costs, Prejudgment Interest and Tax Consequence
- 15 Adjustments;
- 16 11. Declaration of Paul Clay;
- 17 12. Declaration of Jan Hutton;
- 18 13. Declaration of Erick West;
- 19 14. Motion And Memorandum In Support of Limited Stay;
- 20 15. Plaintiff's Reply Memorandum To Defendant's Response To Motion To
- 21 Set Damages And For Tax Consequences;
- 22 16. Second Declaration Of William Simer, CPA In Reply To School District's
- 23 Calculations;
- 24 17. Second Declaration of Marie T. Canas in Reply to School District's
- 25 Calculations;
- 26 18. Supplemental Declaration of Larry J. Kuznetz re Attorney's Fees And In
- 27 Support Of Motion To Set Damages And For Tax Consequences;
- 28 19. Plaintiff's Response Memorandum to District's Motion For Limited Stay;
- 29
- 30

31 FINDINGS OF FACT AND
32 CONCLUSIONS OF LAW, ORDER
AND JUDGMENT - 2

1 from August 31, 2012, to the date of the order plus reasonable attorney's fees
2 and costs. The Court granted Plaintiff's request to restore his employment as of
3 August 31, 2012 and ordered Plaintiff's wages and benefits be reinstated
4 pending a statutory hearing determining the merits of the District's claim for
5 discharge and non-renewal. The Court reserved ruling on any award for tax
6 consequences and pre-judgment interest and calendared the matter for hearing
7 on August 3, 2018, to set the amount of damages, attorney's fees and costs, and
8 to consider an award for prejudgment interest and tax consequences.
9

10 5. Defendant brought its Motion For Limited Stay before the court
11 seeking a limited stay of the Court's order of June 29, 2018, restoring Plaintiff's
12 employment, reinstating pay and benefits pending a statutory hearing, and a
13 limited stay to conduct discovery on mitigation by Plaintiff.

14 6. The financial analysts for both parties determined damages to the end
15 of the current contract, August 31, 2018. Any payments made to Plaintiff
16 between June 29, 2018, when his pay and benefits are reinstated pending a
17 statutory hearing, and August 31, 2018, can be credited if payment is made
18 under this judgment. The intent is that Plaintiff would not double recover for
19 payments made after pay and benefits are reinstated pending the statutory
20 hearing, and damages received and paid from this judgment.
21

22 7. The Court having considered the submissions and argument of the
23 parties regarding back pay and benefits, finds that the amount of \$552,211 to
24 be an accurate calculation of the lost back pay and benefits accrued to Plaintiff
25 since August 31, 2012 to August 31, 2018, based upon the following:

26	a. Back wages owed*	\$429,710.00
27	b. Retirement benefits owed.....	51,312.00
28	c. Retirement investment earning owed..	7,497.00
29	d. Sick leave benefits owed	1,563.00

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31 FINDINGS OF FACT AND
32 CONCLUSIONS OF LAW, ORDER
AND JUDGMENT - 4

e. Personal leave benefits owed*.....	1,901.00
f. Health benefits owed	<u>60,228.00</u>
Total.....	\$552,211.00

(*If awarded by the court, the parties had agreed on the correctness of these calculations.)

8. When the Court made its determination for pay and benefits in the April 27, 2018 decision, it was based upon the belief that all pay and benefits had been paid to Mr. Cronin through August 31, 2012. To the extent he has not received benefits under his 2011-2012 teaching contract, the parties may stipulate to such amount or counsel for Plaintiff may file a motion to set those amounts as additional damages.

9. The Court also finds based on the submissions and argument of the parties that the back pay and benefit amounts are liquidated and that sovereign immunity has been waived as to the judgment amount for back pay and benefits so that it is subject to pre-judgment interest at the rate of 12% per annum. The amount of \$182,865 as pre-judgment interest is reasonable.

10. The court declines to make an additional award for tax consequences as there is no statutory or other equitable basis for such an award. RCW 49.48.010 does not authorize the court to impose tax consequences or equitable relief.

11. As for attorney's fees, the court has taken into consideration the following factors:

a. Plaintiff's counsel has a reduced hourly rate for his work for the union and the matter was not handled on a contingent basis.

b. Plaintiff's counsel is an experienced trial attorney who has an excellent reputation.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW, ORDER
AND JUDGMENT - 5

1 c. Plaintiff's counsel is one of the few attorneys in Spokane who
2 practices in this area involving the representation of teacher's in terminations
3 from employment.

4 d. Plaintiff's counsel brought claims under circumstances that were
5 factually undesirable and two trial judges ruled against him. Nonetheless he
6 pursued appeals and prevailed.

7 e. Since there has been no trial in this matter, trial days and time in
8 trial to the exclusion of other matters did not occur.

9 f. Plaintiff's time on any unsuccessful claim hasn't been segregated
10 although litigation has stretched over 6.5 years.

11 g. The Defendant agrees that the amount of hours spent was
12 reasonable for the experience levels of the attorneys involved. Defendant does
13 not object to the number of hours spent in this matter so the Court finds that
14 the number of hours spent is reasonable.

15 h. Plaintiff's counsel charged a range of rates over the past 6.5 years
16 for time spent in this matter. The hourly rate for Plaintiff's counsel is low given
17 his experience.

18 i. Plaintiff has presented detailed time records that were recorded
19 concurrently with the work being performed. The records include itemized
20 details of the work performed, the attorney performing the work, the date, and
21 the number of hours.

22 j. Plaintiff's counsel has excluded duplication, non-productive time,
23 and redundant and non-compensable work.

24 k. After considering the above factors and the totality of the
25 circumstances of this case, the Court will set an hourly rate of \$250 as a
26 reasonable hourly rate for work performed in this matter. The total attorney fee
27 then would be \$152,820.

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31 FINDINGS OF FACT AND
32 CONCLUSIONS OF LAW, ORDER
AND JUDGMENT - 6

1 received benefits under his 2011-2012 teaching contract, the parties may
2 stipulate to such amount or counsel for Plaintiff may file a motion to set those
3 amounts as additional damages.

4 7. All stays requested by the Defendant are denied.

5 8. The Court shall sign a separate judgment summary in this matter.

6
7
8 DONE IN OPEN COURT THIS 22nd day of August, 2018.

9
10 JOHN O. COONEY

11 JUDGE JOHN O. COONEY

12 Presented by:

13
14 POWELL, KUZNETZ & PARKER, P.S.

15
16 By: 
17 Larry J. Kuznetz, WSBA No. 8697
18 Attorney for Plaintiff

19 Approved:

20 STEVENS - CLAY, P.S.

21
22 By: Approved via email 8/22/18
23 Paul E. Clay, WSBA No. 17106
24 Attorney for Defendant

25 PAUKERT & TROPPEMAN, PLLC

26
27 By: Approved via email 8/22/18
28 Breann L. Beggs, WSBA No. 20795
29 Attorney for Defendant

30
31 FINDINGS OF FACT AND
32 CONCLUSIONS OF LAW, ORDER
AND JUDGMENT - 9

POWELL, KUZNETZ, AND PARKER, PS

June 27, 2019 - 3:41 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36666-9
Appellate Court Case Title: Michael F. Cronin v. Central Valley School District
Superior Court Case Number: 12-2-01155-3

The following documents have been uploaded:

- 366669_Briefs_20190627153746D3278216_7456.pdf
This File Contains:
Briefs - Respondents
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Comments:

Respondent's Answer to Appellant's Opening Brief

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