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**SUPREME COURT OF
THE STATE OF WASHINGTON**

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

MICHAEL F. CRONIN,

Plaintiff/Appellant

vs.

CENTRAL VALLEY SCHOOL DISTRICT,

Defendant/Respondent/Petitioner

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

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I. INTRODUCTION

Plaintiff/Appellant, Michael F. Cronin, hereinafter “Cronin”, was employed as a teacher at Central Valley School District, hereinafter “District”. He was terminated from employment while he was incarcerated for a DUI charge unrelated to his teaching activities. He filed a timely appeal to the termination, serving the District superintendent with a request for a statutory hearing as required by RCW 28A.405.300. The District did not respond and failed and refused to appoint a nominee for selection of a statutory hearing officer as required by RCW 28A.405.310(4).

The District claimed that the trial court lacked subject matter jurisdiction when Cronin failed to timely file a lawsuit within 30 days under RCW 28A.645.010, after the District failed to appoint a nominee within 15 days, as it was mandated to do under RCW 28A.405.310. The District then sent a letter to Cronin’s union representative stating that it would not be responding to Cronin’s request for a statutory hearing because the request was not signed by “*the employee who receives the notice*”. Within 30 days of receipt of the District’s letter, Cronin sued for declaratory relief to compel the District to select a nominee and to enforce his right to a statutory hearing as well his due process right to continued pay and benefits pending a hearing on the merits.

The trial court dismissed Cronin's action on summary judgment for lack of subject matter jurisdiction. The Court of Appeals reversed, holding that Cronin's declaratory judgment action was appropriate when the District refused to comply with the hearing procedure set forth in RCW 28A.405.310. Cronin's action was timely filed within 30 days under RCW 28A.645.010(2)(a) after the District chose not to respond, and the matter has now been remanded back to Superior Court for further proceedings on the merits.

II. ISSUES PRESENTED FOR REVIEW

The District misconstrues the issue in this case. The trial court dismissed Cronin's action on summary judgment under the mistaken belief that it lacked subject matter jurisdiction. The Court of Appeals reversed the trial court's dismissal on summary judgment and remanded the matter for further proceedings. This is what the District wants reviewed. The merits of any of Cronin's claims were never determined either by the trial court or by the Court of Appeals.

The bulk of the District's Petition For Discretionary Review challenges the Court of Appeals for not addressing the merits of the case. But as the Court of Appeals determined, the merits are best left to the trial court after proper hearing. The Court of Appeals did not fail to address

the plaintiff's second, third and fourth causes of action. Review by this Court would be premature until those issues are decided by a lower court.

As the Court of Appeals stated at page 7 of its opinion:

“...the decision appealed was the District’s decision asserting Mr. Cronin did not properly elect his remedy received on February 28, 2012. This letter is an unequivocal rejection of Mr. Cronin’s request for a hearing, and constituted a ‘decision or order’ within the meaning of RCW28A.645.010. Mr. Cronin’s remedy at that point was an action in the Superior Court, timely filed on March 23, 2012. Thus, we reason the trial court had subject matter jurisdiction to hear the matter and erred in concluding otherwise. Therefore, the court erred in granting the District’s request for summary judgment and not reaching the merits of Mr. Cronin’s declaratory suit.” (Decision, pp. 7-8)

“The parties briefed whether Ms. McNair was a proper representative of Mr. Cronin and whether the District improperly withheld wages from Mr. Cronin. Because we hold the summary dismissal of Mr. Cronin's request for declaratory relief was improper and remand for a determination on the merits, we leave these matters for trial court resolution.” (Decision, p. 8)

The Court of Appeals simply found that Cronin’s action to enforce his right to a statutory hearing was timely, thus triggering subject matter jurisdiction and not a dismissal. The only issue that can be presented for review is the one decided by the Court of Appeals, which is whether Cronin’s declaratory judgment action was timely filed.

III. STATEMENT OF THE CASE

This case involves a teacher’s timely request for a statutory hearing that was ignored by the District. Cronin timely served the District’s

Superintendent with a request for statutory hearing after he received a Notice of Probable Cause for Discharge and Nonrenewal. The District ignored this request.

Cronin's union representative identified herself to the District as Cronin's nominee for purposes of selecting a hearing officer, as required by RCW 28A.405.310. The District ignored this request.

The District then ignored its statutory mandate to identify a nominee for purposes of selecting a hearing officer, RCW 28A.405.310. Cronin's counsel then wrote the District's counsel inquiring about why Cronin's pay and benefits had been interrupted after a timely request for statutory hearing, considering due process required continued payment of wages and benefits pending a decision on the merits of the District's notice of discharge and non-renewal. The District's counsel responded that he would check into the matter and get back to the undersigned as soon as possible. The District's counsel never responded to the undersigned.

Then on February 28, 2012, Cronin's union representative received a letter from the District's Superintendent stating that since the union representative was not the District's employee, she had no authority to request a statutory hearing and, therefore, Cronin was deemed terminated.

Cronin timely filed his action for declaratory relief on March 23, 2012, within 30 days of receipt of the Superintendent's February 28, 2012, letter.

IV. WHY THE DISTRICT'S PETITION FOR REVIEW SHOULD NOT BE GRANTED.

The District claims the Court of Appeals decision merits review by the Supreme Court because if left intact, it will force the school districts throughout the state to address and *"make countless decisions and to respond to virtually innumerable requests for action"*. (Petition, p. 1) The District contends that being confronted by so many different stake holders in so many different directions may risk a school district's operational capability as it cannot possibly respond to every single request. The District argues that frequently, a school district must *"deliberately refuse or fail to respond for a variety of reasons, such as a determination that the request is baseless, untimely, or simply unimportant"*. They conclude that such is their *"life as educators if they wish to be effective in discharging our State's paramount duty of educating our school children"*. (Petition, p. 1)

I'm not sure whether I want to applaud or wipe the tear from my eye and donate to the cause. The claim that a school must deliberately refuse to respond to a teacher's request for a statutory termination because the request may be "baseless, untimely or unimportant" is absurd. This

was a timely request for hearing that the District ignored. The District was served by the union representative within ten days of Cronin's receipt of the Notice of Discharge and Non-renewal. RCW 28A.405.300. This is not a vendor or a committee or a parent expressing a concern that the District wants to ignore. This is a teacher with due process rights that the District fails to consider or even recognize.

This district chose to ignore this teacher, and then claim he should have filed a lawsuit to force them to name a nominee to select a hearing officer. The District did not "fail to act". That suggests it took some action or processed the matter in some way. It didn't; it simply ignored the teacher and now attempts to hide behind the argument that the districts of our state are so inundated with requests for action that many apparently have to be deliberately ignored. Under the District's reasoning, if a vendor sends a bill to a school district for computer services performed and the bill is ignored, the vendor only has 30 days to file a lawsuit from the date services were performed in order to recoup payment on that bill. And if the vendor gave the District 30 days grace on the bill before payment was due, then the school district has effectively avoided payment on a valid claim. That would be an absurd result, yet that is what the District now contends.

So to be clear, the District wrongfully and deliberately chose to ignore the teacher's request for a statutory hearing, because it subjectively decided the teacher's request was improper, i.e. the union representative was not an employee of the District so could not author the request for hearing on behalf of her member. The problem with that argument is that the subjective decision was not the District's to make. Once the appeal was timely made, the trial court had jurisdiction and it was for the trial court to determine whether the District's claims had any validity. In this instance, the Court of Appeals determined that the District's claim that the trial court lacked jurisdiction was without merit. The District cannot ignore a teacher's request for hearing with impunity, under the guise that it subjectively decided the appeal was improper. That determination is for a court after a hearing on the merits. At this point, some two and one-half years after his termination, Cronin now has a right to argue the merits.

Once Cronin timely appealed the decision to terminate, the merits of the discharge should be determined by a statutory hearing officer. Instead, the District takes the position that they can simply ignore Cronin's appeal, and claim that ignoring the appeal is a "failure to act" that triggers the 30 day requirement to appeal to Superior Court. RCW 28A.645.010. If that were the case, then the District would simply ignore any appeal and hope the teacher didn't file an action in Superior Court within 30 days.

Cronin perfected his appeal by filing his request for hearing with the Superintendent within 10 days of receiving the Notice of Discharge and Non-renewal. The District now claims that its failure to act to identify a nominee divested the trial court of subject matter jurisdiction because Cronin failed to file a lawsuit within 30 days. The fact remains that the District's decision to terminate on January 5, 2012, was a decision that was timely appealed. The Court isn't divested of subject matter jurisdiction because the District failed to name a nominee. It was plaintiff's timely request for hearing that triggered the District's statutory obligation to name a nominee. There was nothing Cronin "properly presented" or requested that the District do or act upon. A failure to act under the statute can only occur after a matter has been "properly presented" to the District. RCW 28A.645.010.

The District claims that even an unpublished opinion has a significant potential for proliferation to virtually 80,000 employees who are members of the Washington Education Association, who will likely come out of the woodwork to file all kinds of claims against districts throughout the state. By this decision, all the Court of Appeals is doing is telling the District that ignoring a request for statutory hearing is not a "failure to act after properly presented". Once the District responded to Cronin by its letter of February 28, 2012, the Court of Appeals found that

action was “*an unequivocal rejection of Mr. Cronin’s request for a hearing and constituted a decision or order within the meaning of RCW 28A.645.010.*” The Court agreed that Cronin’s remedy was to file a declaratory judgment action to enforce his right to a statutory hearing.

The Court of Appeals decision is not a “*brazen abrogation of the legislature’s insistence on a 30 day time line for challenging school district decisions*”. (Petition, p. 12) There was no decision in this case until the District determined it was not going to act upon Cronin’s request for a statutory hearing.

The Court of Appeals cited *Derry v. Toppenish School District No. 202*, 69 Wn.App. 610, 613, 849 P.2d 699 (1993), which is similar on its facts. There, the school district’s letter denying liability for how the Department of Retirement Systems calculated the teacher’s pension benefit was unequivocal and a “decision” within the meaning of former RCW 28A.645.010. The decision by the Court of Appeals is consistent with existing law. The District does not request that *Derry* be overruled.

V. CONCLUSION

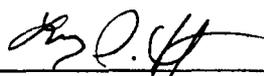
The District improperly asks this Court to decide issues that have not been addressed by either the trial court or the Court of Appeals. This

Court reviews lower court decisions, and not undecided issues. The District's Petition for Discretionary Review should be denied.

DATED this 30^t day of May, 2014.

Respectfully submitted:

POWELL, KUZNETZ & PARKER, P.S.

By 

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Attorney for Plaintiff/Appellant

Certificate of Service

I HEREBY CERTIFY that on the 30th day of May, 2014, I caused a true and correct copy of Michael F. Cronin's Answer to Central Valley School District's Petition For Discretionary Review, to be sent by the method indicated below to:

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DATED at Spokane, WA this 30th day of May, 2014.



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Sent: Friday, May 30, 2014 3:19 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Larry Kuznetz
Subject: No. 90256-9

Attached for filing is Michael F. Cronin's Answer to CVSD's Petition for Discretionary Review.

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