NO. 45830-6-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

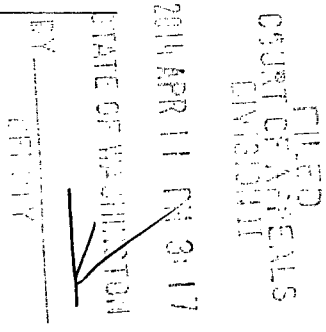
WANDA RILEY-HORDYK,

Petitioner/Appellant,

-vs-

BETHEL SCHOOL DISTRICT,

Respondent.



PETITIONER/APPELLANT'S OPENING BRIEF

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ORIGINAL

TABLE OF CONTENTS

STATEMENT OF AUTHORITIES

Washington Cases

Washington Statutes

Other

I. INTRODUCTION

Appellant Wanda Riley-Hordyk was employed by the Bethel School District (District) for twenty-two years. She taught Spanish for many years, became an assistant principal in 2002, and a full principal in 2004. She served with distinction, but in 2009 a dispute arose between Ms. Riley-Hordyk and the District over harassment by her supervisor. Ms. Riley-Hordyk and the District were able to settle this dispute, and pursuant to the settlement, Ms. Riley-Hordyk was transferred to the principal position at Bethel Online Academy.

Ms. Riley-Hordyk was successful at the Academy, but her tenure was cut short when Bethel School District terminated her employment because of a "reduction in force" at the end of the 2011/2012 school year. When Ms. Riley-Hordyk learned of her termination, she asked for transfer to open positions for which she was qualified, as provided by law and the Collective Bargaining Agreement (CBA). She was informed, however, that she could not request a transfer, and had to apply for all open positions just like any random applicant. The District even went as far as to hire a principal from another state rather than transfer Petitioner into an open position. No actual reduction in force occurred: Bethel School District began the 2012/2013 school year with the same number of principals as the previous year.

The hearing officer in this case upheld the District's unlawful decision. It was error for the hearing officer to find that Bethel School

District's termination of Ms. Riley-Hordyk was part of a reduction in force and supported by sufficient cause. It was error for the Hearing Officer to find that the District's failure to reassign Petitioner to an open position and its subsequent termination of her was lawful. This Court should remedy these errors and reverse the hearing officer's decision.

II. ASSIGNMENTS OF ERROR

1. It was error for the hearing officer to find that the District exercised good faith judgment when it decided to close the Bethel Online Academy.

2. It was error for the hearing officer to find that the District's termination of Ms. Riley-Hordyk based on the closure of the BOA constitutes a reduction of force.

3. It was error for the hearing officer to find that there was a reduction in force when there was none.

4. It was error for the hearing officer to find that *Peters v. South Kitsap School District* does not mandate that after terminating Riley-Hordyk as Principal of BOA the District was required to transfer her to any open Principal position.

5. It was error for the hearing officer to find that it was not a violation of the CBA for the District to fail to offer Ms. Riley-Hordyk open teaching positions.

6. It was error for the hearing officer to find that the termination of Riley-Hordyk sought by the District in the Probable Cause letter dated May 9, 2012 was supported by sufficient cause.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Was the District's decision to close Bethel Online Academy made in bad faith?

2. Did the District's termination of Ms. Riley-Hordyk pursuant to the closure of the Bethel Online Academy constitute a reduction in force

when there was no actual change in the number of principals employed by the District?

3. Does *Peters v. South Kitsap School District* mandate the transfer of Ms. Riley-Hordyk to an open principal position after the closure of the Bethel Online Academy?

4. Was it a violation of the Collective Bargaining Agreement for the District to fail to offer Ms. Riley-Hordyk an open teaching position?

5. Did the District lack sufficient cause to terminate Ms. Riley-Hordyk's employment on May 9, 2012?

IV. STATEMENT OF THE CASE

Petitioner Wanda Riley-Hordyk was first employed by the Bethel School District in 1990 as a Spanish teacher. CP 129:12-13. She served as Spanish teacher until 2002, when she elevated to the position of interim assistant principal. CP 130:2-6. She continued in her role as assistant principal until 2004. CP 130:6-8. In 2004, she applied for the position of principal at Bethel High School. *Id.* She was hired and served with distinction five and a half years. *Id.* In 2008, Ms. Riley-Hordyk was awarded an acknowledgment from the Superintendent based on her handling of a bomb threat. CP 130:20-22. That same year, she received a recognition award for her outstanding leadership during that bomb threat as well as her handling of racial and gang tensions at the school. CP 130:22-124:2.

In 2009, a dispute arose between Ms. Riley-Hordyk and the District concerning an issue of harassment Ms. Riley-Hordyk filed against a supervisory administrator. CP 139:14-24. Ms. Riley-Hordyk subsequently

accessed the court system and initiated a lawsuit against the District. CP 71:4-7. That lawsuit was eventually resolved to the satisfaction of both parties. CP 57:20-51:7; 482-86.

As part of the settlement of the lawsuit, Ms. Riley-Hordyk was placed into the position of principal of the Bethel Online Academy (BOA). CP 10523. Her tenure in that position was short yet successful. Further, when she went into the position as principal of BOA, she was specifically informed that her position was to be classified as being a high school principal. CP 10523. The superintendent has a duty to recommend principals that are candidates for transfer of position according to state law to the school board for decision, and has done so with other employees. CP 88:12-13; 110:15-111:3; 10483.

However, on May 9, 2012, the Superintendent of the Bethel School District issued a letter of non-renewal to Ms. Riley-Hordyk, explaining the reasons for the decision as:

> There is insufficient revenue to maintain the current level of programs and services in the District. The Board of Directors met and determined that certain programs needed to be modified or eliminated. One of the eliminated programs is the Bethel Online Academy. In reaching its decision, the Board of Directors considered the overall financial situation of the District, changes in the funding formula, student enrollment, and the overall needs of the District. As a result of the Board's action, your position was eliminated.

CP 10373. All other staff members of the BOA were accommodated with a job elsewhere in the District. CP 154:17-20. None of the retained individuals appear to have instituted a prior lawsuit against the District.

Despite the District's assertions, there was no reduction in force of principals. At the time the letter was issued, Ms. Riley-Hordyk was employed in the position of "principal." In 2011-2012, there were 27 principals in the District. CP 32:14-15. The following year, after her position was supposedly eliminated, there were still 27 principals. CP 32:21-26:1. Because no reduction in force actually occurred, the District Superintendent had a duty to recommend Ms. Riley-Hordyk for transfer. CP 10483.

The District contends that it reduced the number of assistant principal positions, while leaving the number of principals totals the same. CP 103:23-97:3. This is true; however, no assistant principal was displaced. CP 104:17-21. Three were hired as assistant principals in different schools, and three were offered other administrative positions. *Id.* At the same time the District hired a candidate from out of state to fill a purportedly vacant principal position. CP 87:17-23. Therefore, there were no necessary reductions by the time Riley's contract ended on July 1, 2012. Specifically, when Ms. Riley-Hordyk's contract ended on July 1, the District never reduced its staff of principals; it continued to maintain 27 principals in the district for the following school year just as it did in the previous year despite its claimed "reduction in force." CP 98:12-15.

The Bethel School District knew with certainty that it would be closing the BOA the following year by at least February of 2012. CP 62:20-22. The higher administrative staff of the District similarly had a keen sense

that they would be closing the BOA by December 2011, even if the Board had not officially voted on the matter. CP 34:6-23. By April, 2012 the decision to eliminate the BOA had already occurred, as it was not budgeted. CP 10458. Harvey Erickson, the administrator in charge of budgets for the District, testified that closure of the BOA was one of the likely options available to the Board as early as December 2011, and perhaps even earlier. CP 34:6-23.

On February 14, 2012, a public hearing on BOA concluded that it should be closed. CP 75:21-69:2. On February 28, 2012 the School Board met and voted to accept the Administration's recommendation to close BOA, which allowed the matter to go on to the required public hearings in order to formally close BOA. CP 10531. As of the 28th of February, at the latest, District administrators needed to give consideration to Riley's statutory continuing contract rights for continued employment in the Bethel School District in the 2012-2013 school year. They did not do so. Todd Mitchell, the District's Human Resources Director, testified that Ms. Riley-Hordyk was not considered for transfer to another position because the District had decided to label her termination as a reduction in force. CP 110:15-104:3.

Because this was inaccurate, on February 16, 2012, Ms. Riley-Hordyk began to request transfers to open principal positions. CP 10488. Mr. Mitchell discouraged Ms. Riley-Hordyk from actually applying for positions under the premise that her termination was not finalized. CP 158:18-21. On

March 1, 2012, Ms. Riley-Hordyk asked to be transferred into the open Spanaway Lake Principal position. CP 10492. On March 26, 2012, Ms. Riley-Hordyk requested a transfer to an open middle school principal position at Frontier. CP 10497. On April 27, 2012, well after the vote on the closure of the BOA, the District announced that it had hired Mark Barnes from Colorado to fill an open principal position in the District, the same position Ms. Riley-Hordyk had requested in March. CP 87:17-23; 10504.

In every instance that Ms. Riley-Hordyk requested consideration for transfer to a principal position for which she was imminently qualified, however, the District denied the request because it incorrectly believed that she had to apply to the positions "like anybody else," current employee or not. CP 59:8-15; 77:23-78:1. When Ms. Riley-Hordyk did apply for a principal position, however, the District scheduled the estimated three-hour interview at the same time as her son's graduation, and would not move it. CP 163:18-20; 162:2-11. She also applied for multiple administrator positions, but was never interviewed. CP 183:9-184:6.

The District's actions in terminating Ms. Riley-Hordyk's employment were not taken in good faith. Superintendent Siegel testified regarding Ms. Riley-Hordyk's continued employment with the District:

> Q: Was there any discussion between you and [Human Resources Director] Mitchell at any time officially or unofficially that you did not want Ms. Riley to return to the district if there was anything you could do to avoid it?

A: I was not overly enthusiastic about that possibility. I was open to it.

Q: You made this position known to Mr. Mitchell; is that correct?

A: I believe I probably did.

CP 84:9-17. Mr. Mitchell further admitted that, in the absence of a reduction in force designation, Ms. Riley-Hordyk would have been entitled to transfer to an open teaching position for which she was qualified. CP 98:19-99:19.

The hearing officer found sufficient cause to uphold Bethel School District's termination of Ms. Riley-Hordyk as part of a reduction in force, despite the fact that there were no administrators displaced from the Bethel School District after the 2012 school year other than Petitioner, the only administrator to have previously filed a lawsuit against the District. CP 9. Petitioner appealed to superior court, which upheld the hearing officer's decision on all grounds. Petitioner now timely appeals to this Court.

V. ARGUMENT

This appeal seeks to address the question of whether a school district employee, in this case a principal, may be terminated pursuant to a reduction of force when no actual reduction in force occurred. It then discusses the law and precedent requiring that a District offer open positions to a principal it just terminated in these circumstances. The hearing officer here erroneously found that Ms. Riley-Hordyk's termination was due to a reduction in force despite the fact that the same number of principals were employed by the

District before and after the alleged reduction occurred, and further found that the District had no obligation to transfer Ms. Riley-Hordyk to open positions within the District. This Court should reverse the hearing officer's erroneous decision.

A. Standard of Review

A court reviewing the factual determinations of a hearing officer considers whether those determinations are clearly erroneous. *Clarke v. Shoreline Sch. Dist. No. 412*, 106 Wn.2d 102, 109, 720 P.2d 793 (1986). When reviewing the application of the law to the facts, a reviewing court makes a de novo determination of the applicable law, but gives deference to the hearing officer's factual determinations. *Id.* When an appellate court reviews the findings and conclusions of the hearing officer, it owes no deference to the superior court's decision. *See, e.g., Clarke*, 106 Wn.2d at 110–11. Courts recognize that when a mixed question of law and fact is involved in a case, however, the review should be de novo. *Sargent v. Selah School Dist.* 119, 23 Wn. App. 916, 599 P.2d 25 (1979). In this case, the question of whether the supposed reduction in force triggered Ms. Riley-Hordyk's transfer rights is a mixed question of law and fact that should be reviewed de novo.

B. No reduction in force excused the District from transferring Ms. Riley-Hordyk to an open position.

It was error for the hearing officer to find that the District's nonrenewal of Ms. Riley-Hordyk's employment contract was due to a reduction in force rather than pretext to remove an employee that had previously filed suit against the District. Certificated employees of a school district typically work on a continuing contract. Continuing contracts are a form of tenure. Unless the certificated employee is terminated for sufficient cause (RCW 28A.405.300), or non-renewed at the end of the contract year (RCW 28A.405.210), then the Employer must issue a new contract for the following year.

In this case the Superintendent of the Bethel School District issued a letter of non-renewal to Ms. Riley-Hordyk explaining the reasons for his decision:

> There is insufficient revenue to maintain the current level of programs and services in the District. The Board of Directors met and determined that certain programs needed to be modified or eliminated. One of the eliminated programs is the Bethel Online Academy. In reaching its decision, the Board of Directors considered the overall financial situation of the District, changes in the funding formula, student enrollment, and the overall needs of the District. As a result of the Board's action, your position was eliminated.

At the time the letter was issued, Ms. Riley-Hordyk was employed in the position of "principal." In 2011-2012, there were 27 principals in the District. The following year, after her "position" was supposedly eliminated,

there were 27 principals in the District. There was no actual reduction in force, merely a reorganization.

RCW 28A.405.210 is the non-renewal statute relied upon by the District. It states in relevant part:

> That any employee receiving notice of nonrenewal of contract due to an enrollment decline or loss of revenue may, in his or her request for a hearing, stipulate that initiation of the arrangements for a hearing officer as provided for by RCW 28A.405.310(4) shall occur within ten days following July 15 rather than the day that the employee submits the request for a hearing.

RCW 28A.405.210 (emphasis added). It is important to note that District administrators could not have known whether there would be an enrollment decline by May when the non-renewal letter was issued because this can only be determined when the next ensuing school year begins and the students then enroll and attend school in the district. CP 18:15-18.

In this case, the District argued that the non-renewal of Ms. Riley-Hordyk was "due to loss of revenue." Yet, loss of revenue did not cause the District to reduce the number of principals. It is thus unreasonable to believe that loss of revenue caused it to non-renew Petitioner. Even if the District had less revenue than it had the prior year, that loss of revenue did not cause it to reduce the number of principals it employed beyond the 27 that existed the prior year. There were multiple open principal positions into which the District could have transferred Ms. Riley-Hordyk. It did not do so.

The District argued at the hearing that the number of assistant principal positions was reduced, while leaving the principal totals static. While true, no assistant principal was displaced. All were offered administrative positions in the District. The District hired a candidate from out of state to fill a purportedly vacant position, while at the same time refusing to allow Ms. Riley-Hordyk to transfer into a variety of open positions for which she was qualified. Therefore, there were no necessary reductions by the time Riley's contract ended on July 1, 2012. It was error for the hearing officer to find that the District's reason for terminating Ms. Riley-Hordyk was based on a reduction in force rather than pretext to get rid of an employee it considered troublesome.

C. The District was required to offer open positions to Ms. Riley-Hordyk.

Even assuming the District did reduce the number of principals due to a loss of revenue, pursuant to the Continuing Contract Law and the holding of *Peters v. South Kitsap School District No. 402*, 8 Wn. App. 809, 509 P.2d 67 (1973), it was required to offer the job to internal candidates before opening the positions to the general public. As stated by the *Peters* court:

> "We turn now to the central question with which we are concerned. Once a contract is properly nonrenewed because of a financial reduction in personnel, what duty does the district owe to the nonrenewed employee with respect to vacancies which might occur prior to the expiration of his existing contract . . . .?

> The continuing contract statute has as one of its central purposes the elimination of uncertainty in the employment plans of both the teacher and the district. [Case cited.]
>
> Even though the financial requirements of the district may require reduction in staff, individual teachers who have been properly nonrenewed solely for that reason do not lose their statutory right to reemployment until their contract is actually terminated. Thus, the district may not approach the task of selecting personnel to fill vacancies that occur after some teachers have been nonrenewed without first giving effect to the continuing contract rights of those nonrenewed teachers. . . ."
>
> . . .When the school board turns to this task [determining the educational needs, curricula and resources for the ensuing school year], it must continue the contracts of those teachers who have qualifications that satisfy its needs. Thus, even though a teacher is properly notified and nonrenewed on the grounds of financial necessity, a change in the needs of the district before actual termination of the teacher's contract compels a reconsideration of the nonrenewal."

Peters, 8 Wn. App. at 815-6. [Emphasis added.]

This principal was later confirmed by the Washington State Supreme Court, which held:

> In *Peters*, the Court of Appeals, Division Two, said that where a teacher is nonrenewed for financial reasons, he must be offered any job for which he is qualified, which becomes available before 'termination of his contract.'

Johnson v. Central Valley School Dist. No. 356, 97 Wn.2d 419, 434, 645 P.2d 1088 (1982) (citing *Peters*, 8 Wn. App. 809). *Peters* imposes an affirmative duty on the District to "offer" open positions to Ms. Riley-Hordyk, and then transfer her to one of the open positions. To read the opinion otherwise gives

the provision no force: the District could simply state that it considered nonrenewed employees for a job, and then chose in each instance to offer the job to someone else. It was error for the Hearing Officer to adopt such an argument.

Except for the formality of completing the requisite public hearings, the Bethel School District knew with certainty that it would be closing the BOA the following year by at least February 28, 2012. The District's senior administrators similarly had a keen sense that it would be closing the BOA in December 2011, even if the public hearings had not by then been completed. By April 2012 the decision to eliminate the BOA had already occurred. Administrators were aware that closure was one of the likely options available to the Board as early as December 2011, and perhaps even earlier.

On February 14, 2012, the School Board met and discussed the possibility of ending the BOA, and two weeks later on the 28th of February, voted to end the program subject to completing the necessary public hearings. For all intents and purposes, the decision was made by the 28th of February to end the BOA program and transfer the BOA students into other programs and schools. Ms. Hordyk was nonetheless told by Mr. Mitchell that she should not apply for positions because the final administrative process had not yet occurred.

Here even assuming the District's theory is accurate, that Ms. Riley-Hordyk's position was reduced and eliminated, under *Peters* the District was

not permitted to eliminate her continuing contract rights without first offering her any open positions that might have been available. The District, rather than offering her the various open positions, falsely claimed she had to apply for open positions in violation of the *Peters* holding. Indeed, the District went so far as to hire a principal from out of the state rather than to offer Ms. Riley-Hordyk a position that she clearly was qualified to hold. As a consequence the only principal or assistant principal that lost her job and was not offered a new position was Ms. Riley-Hordyk. As the *Peters* court explained:

> Filling the needs so established is another question. When the school board turns to this task, it must continue the contracts of those teachers who have qualifications that satisfy its needs. Thus, even though a teacher is properly notified and nonrenewed on the grounds of financial necessity, a change in the needs of the district before actual termination of the teacher's contract compels a reconsideration of the nonrenewal...
>
> Moreover, when it becomes apparent that vacancies will occur following a personnel reduction, we think due process principles require that the district promulgate specific criteria to apply in satisfying its needs. Such criteria should clearly reflect the district's program requirements, set forth the requisite qualifications, and announce guidelines by which length of service will be considered.

Peters, 8 Wn. App. at 813-817.

That did not occur here. Despite Ms. Riley-Hordyk's repeated efforts to claim open principal positions for which she was imminently qualified to hold, her requests were refused, over and over again. Instead, less senior, less

qualified, less experienced administrators were moved into the District's open positions. Finally, despite an open position, the District again ignored Ms. Riley-Hordyk's continuing contract rights and hired a new principal from out of the state of Washington, and terminated the rights of Ms. Riley-Hordyk to her continuing contract. No relevant explanation was given.

In summary, the District did not reduce its force of principals—they remained static in number from the 2011-2012 school year through the 2012-2013 school year. A single administrator was let go from the District: Ms. Riley-Hordyk. All other principals and assistant principals were placed in positions in the District. The District went so far as to hire a new principal from outside the District rather than honor the continuing contract rights of Ms. Riley-Hordyk. Thus, even assuming that there was a financial need to eliminate Ms. Riley-Hordyk, a fact the District did not prove, it was still compelled to honor her continuing contract rights, consider her qualifications for open positions, and permit her to fill those open positions. The District instead non-renewed Ms. Riley-Hordyk, and hired an outsider to fill an open principal position.

Further, the Collective Bargaining Agreement in force in this case is not an instrument capable of supplanting the law of the State of Washington. The language of the agreement requires the District to have offered open positions to Ms. Riley-Hordyk. Because *Peters* is controlling, the District

was required to transfer her under the terms of the CBA and the laws of this state.

D. No subsequent legislative act abrogated *Peters v. South Kitsap School District.*

The hearing officer found, and it is anticipated that the District will argue, that subsequent legislative acts have abrogated *Peters v. South Kitsap School District.* This is inaccurate. There is no authority for the proposition that any subsequent legislative act or case holding abrogated *Peters.*

The Washington State legislature purposely included principals in the continuing contract statute along with certificated teachers to protect from improvident dismissals. *See generally* RCW 28A.405.210, 28A.405.230. One of the primary purposes of Washington's continuing contract law is to "eliminate uncertainty in the employment plans of both the teacher and the school district." *Robel v. Highline Public Sch. Dist. No. 401*, 65 Wn.2d 477, 483, 398 P.2d 1 (1965). Examining the debate on the 1976 version of RCW 28A.405.230, it was evident that the legislature intended to provide principals with the protection of the continuing contract law against the whims of a superintendent. During a Point of Inquiry, Senator Gould states the following:

> We are talking only about principals and assistant principals and we are extending this particular provision of the continuing contract to principals for a specific reason and not to other administrators. First of all, may I back up to say this, it was originally suggested in the House on the

> floor, and it got lost on a technicality, but the reason for this is that principals themselves often have to go out on point. They are the ones that are responsive to the students. They have to work with the parents in the area and they have to work with their own teachers in their buildings and sometimes they go out and point for those teachers. Sometimes they have to say to the rest of the administration, "No. I think you are wrong." In order to have the protection to be able to do that, we felt it was necessary to give them the protection of the continuing contract law when, as principals they have those protections now.

Wash. Senate Journal, 52nd Day, February 26, 1976 at 624-25; Attached hereto as Appendix A.

The three year provisional period in RCW 28A.405.230 allows a district to determine if a principal is adequately performing his or her job during that period of time, and if not, the district may move them to a subordinate position, with a lower salary, if the superintendent chooses. Once that three year period has elapsed, however, this flexibility is no longer given to a superintendent. This protects against a new superintendent coming into a district and removing well-performing principals for no cause. During debate in the house, the bill sponsor clarified the intent of the three year provision in the bill as follows:

> Mr. Bauer yielded to a question by Mr. Hendricks.
>
> Mr. Hendricks: "I don't know whether I have the accurate interpretation or the accurate bill that just passed the Senate yesterday, but one proviso was put in and this is in reference to a transfer of administrators, and I'm thinking now of principals, to subordinate certificate positions and

> the proviso reads as follows: "PROVIDED, That in the case of principals such transfer shall be made at the expiration of the contract year and only during the first three consecutive school years of employment..." A reasonable interpretation would be that after three years then that state protection in the interest of the certificated employee is under the continuing contract law, but for the record could I ask you does that mean that principals do have tenure after three years probationary period?"
>
> Mr. Bauer: "That's correct they do have full tenure after that three years, but for the purpose of transfer for the first three years, they have no tenure."
>
> Mr. Hendricks: "The word transfer refers to a change in status to a subordinate certificate position and not to transfer between schools or between districts? Is that correct?"
>
> Mr. Bauer: "Any change of status that adversely affects the condition of the contract would be excluded for a three-year period. In other words, they get transferred anywhere within that district or transferred up or down in terms of salary and they would not have to show sufficient cause as they do now under the current law."

Journal of the House, 54th Day, February 27, 1976 at 637; Attached hereto as Appendix B.

It is clear from this discussion that the intent of the legislature was not to abrogate the requirement that nonrenewed principals be offered open positions. This conclusion is borne out by subsequent court decisions. "Although not a true tenure law, the continuing contract law is similar to tenure laws." *Moldt v. Tacoma School Dist. No. 10*, 103 Wn. App. 472, 12 P.3d 1042 (2000) (citing *Peters*, 8 Wash.App. at 813-14);

see also *Arnim v. Shoreline Sch. Dist. No. 412*, 23 Wn.App. 150, 154, 594 P.2d 1380 (1979). "[*Peters*] affords reemployment rights to all covered employees." *Arnim*, 23 Wash.App. at 154 (citing to *Peters*, 8 Wash.App. at 813). Notably, these cases were decided well after the legislative enactments of 1976, and dealt with factual situations that arose after those enactments were in effect. Similarly, *Johnson v. Central Valley School District* deals with events that occurred in 1978-1979. *Johnson*, 97 Wn.2d at 420-21. In *Johnson*, the Washington Supreme Court expressly demonstrated that *Peters* remained good law subsequent to the legislature's 1976 changes to the statutes. *Id.* at 434. It was error for the hearing officer to not apply the *Peters* principal to this case and find that the District had a duty to transfer Ms. Riley-Hordyk to an open position.

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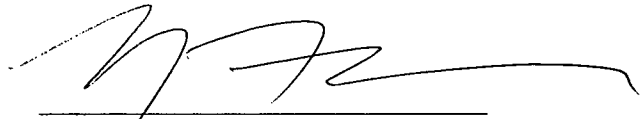
VI. CONCLUSION

Because there was no change in the number of principals employed by Bethel School District before and after the supposed "reduction in force," this Court should reverse the hearing officer's ruling and find that Ms. Riley-Hordyk's termination was not the result of a reduction in force. In so finding, this Court should further reverse the hearing officer and find that Ms. Riley-Hordyk should have been transferred to an open position pursuant to *Peters v. South Kitsap School District*.

DATED this the 11th day of April, 2014.

VAN SICLEN, STOCKS & FIRKINS



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CERTIFICATE OF SERVICE

I certify that I caused one copy of the foregoing Petitioner/Appellant's Opening Brief to be served on the following parties of record and/or interested parties by delivering it via ABC Legal Messsenger, to the below named attorneys:

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Tacoma, WA 98402-4315

DATED this 11th day April, 2014, at Auburn, Washington.

Diana Butler
Diana M. Butler

Appendix A

President Pro Tempore Henry declared the question before the Senate to be the roll call on the amendments by Senator Walgren to the committee amendment.

ROLL CALL

The Secretary called the roll and the amendments to the committee amendment were not adopted by the following vote: Yeas, 18; nays, 29; excused, 2.

Voting yea: Senators Beck, Bottiger, Fleming, Francis, Goltz, Grant, Herr, Knoblauch, McDermott, Odegaard, Peterson, Rasmussen, Ridder, Talley, Van Hollebeke, von Reichbauer, Walgren, Washington—18.

Voting nay: Senators Bailey, Benitz, Bluechel, Buffington, Clarke, Cunningham, Day, Donohue, Gould, Guess, Henry, Jolly, Jones, Lewis (Harry), Lewis (R. H. "Bob"), Mardesich, Marsh, Matson, Morrison, Murray, Newschwander, North, Pullen, Sandison, Scott, Sellar, Stortini, Wanamaker, Wilson—29.

Excused: Senators Keefe, Woody—2.

There being no objection, the amendments by Senator Walgren to page 14, line 27; page 15, beginning on line 23 and page 15, line 27 to the committee amendment, on the Secretary's desk, were withdrawn.

Senator Rasmussen moved adoption of the following amendment to the committee amendment:

On page 17, section 9, line 5 after "administrator" and before the period insert ": PROVIDED, That the transfer of an administrator to a subordinate position shall not result in the transfer, nonrenewal or discharge of a teacher"

Debate ensued.

The motion by Senator Rasmussen failed and the amendment to the committee amendment was not adopted.

Senator Gould moved adoption of the following amendment by Senators Stortini and Gould to the committee amendment:

On page 18, line 26, after "amended" insert ": PROVIDED, That following that period of employment during which this section is applicable to principals and assistant principals, transfers of principals and assistant principals to subordinate certificated positions shall be governed by the provisions of RCW 28A.58.450 and/or RCW 28A.67.070 as now or hereafter amended"

POINT OF INQUIRY

Senator Bailey: "Will Senator Gould yield? Do you mean that principals and vice principals will be frozen into the position after three years so that they cannot be removed by the superintendent?"

Senator Gould: "The intention of this section was that principals and vice principals would have the same protection after the three-year provisionary period as teachers would have, and I will be glad to respond to . . . ."

Senator Bailey: "Senator Gould, then, in case that you have a modification of your administration, you have a new superintendent coming into your school and he happens to fall into a group of principals that will not cooperate that have been there more than three years, he then is stuck in the same position he is now. He cannot remove them without going to court and really getting into trouble. Is that right?"

Senator Gould: "Yes. He will have to go through the same process for the principals as he will have to go through for the teachers and I will be glad to explain the rationale behind it."

Senator Bailey: "In other words, the rationale given us the last time was that you are providing the administrators with the right to organize their administrations. Now you are saying that under this bill they would not have it again after three years."

Senator Gould: "We are talking only about principals and assistant principals and we are extending this particular provision of the continuing contract to principals for a specific reason and not to other administrators. First of all, may I back up to say this, it was originally suggested in the House on the floor, and it got lost on a technicality, but the reason for this is that principals themselves often have to go out on point. They are the ones that are responsive to the students. They have to work with the parents in the

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area and they have to work with their own teachers in their buildings and sometimes they go out and point for those teachers. Sometimes they have to say to the rest of the administration, 'No. I think you are wrong.' In order to have the protection to be able to do that, we felt it was necessary to give them the protection of the continuing contract law when, as principals they have those protections now. With the bill as it is, they will have less protection because also the teachers will have less protection."

Debate ensued.

POINT OF INQUIRY

Senator Bailey: "I have another question of Senator Gould. Senator Gould, would you yield? Yes, or no, probably, but is this not a change of position from the original 3002?"

Senator Gould: "Yes, it is. A lot of this bill is different than 3002. It was the provision that was written into the bill that the Senate education committee made as an amendment."

Senator Bailey: "Mr. President, another question. I really think — and this does not have a question mark on the end of it. This is a complete subject that was not discussed in caucus nor even brought up in caucus. It is a change in the original content of the bill and I think it is subject to either further discussion or further amendment. I can see protecting a principal and giving him his job back but I cannot see freezing a principal into the position that he has over and above the protests of a new administrator."

Further debate ensued.

MOTION

With the permission of Senator Gould, the amendment by Senators Stortini and Gould to the committee amendment was withdrawn.

POINT OF INQUIRY

Senator Bailey: "Senator Gould mentioned another part of the bill, though, that this was buried into. I would like to know where that is so by withdrawing this one, we haven't left the other objectionable part in the bill."

Senator Gould: "Senator, I am not sure I mentioned there was another part of the . . . ."

Senator Bailey: "I thought you said this was to doubly enforce another part of the bill. Is there someplace else we are giving protection to these people?"

Senator Gould: "No — it . . . ."

Further debate ensued.

POINT OF INQUIRY

Senator Bottiger: "Will Senator Gould yield to a question, please? Senator Gould, now, with the withdrawal of this amendment, I understand that a new superintendent coming into a school district could simply wipe out all of the principals and administrators, send them all back to being school teachers, bump the school teachers that are there. That would be the price of bringing a new administrator in. You wouldn't have to have any reason. He could just say, 'I have my own boys and I am going to have my own principals and my own assistant principals and my own administrators'."

Senator Gould: "You are the lawyer, Senator, but I would say it would remove the protection of the continuing contract but they would still be under regular contract law. So they would have to have the due process that regular contract laws . . . ."

Senator Bottiger: "Isn't it correct that as to principals and assistant principals, we don't have all of this. They are the people who are doing the evaluations. There isn't anybody evaluating them so they don't have all this protection and without this amendment that you just withdrew, now the superintendent just got a free hand. He cleans house right at assistant principals on up."

President Pro Tempore Henry declared the question before the Senate to be adoption of the committee amendment as amended.

Senator Walgren demanded a roll call and the demand was sustained by Senators Bailey, Marsh, Matson, Donohue, Scott, Stortini, Goltz, Ridder and Newschwander.

Appendix B

The Speaker Pro Tem: "I would hope you would all be ladies and gentlemen and carry your discussions on a high level."

Mr. Chandler continued his remarks in favor of the motion to concur.

POINT OF INQUIRY

Mr. Bauer yielded to question by Mr. Hendricks.

Mr. Hendricks: "I don't know whether I have the accurate interpretation or the accurate bill that just passed the Senate yesterday, but one proviso was put in and this is in reference to a transfer of administrators, and I'm thinking now of principals, to subordinate certificated positions and the proviso reads as follows: 'PROVIDED, That in the case of principals such transfer shall be made at the expiration of the contract year and only during the first three consecutive school years of employment...' A reasonable interpretation would be that after three years then that state protection in the interest of the certificated employee is under the continuing contract law, but for the record could I ask you does that mean that principals do have tenure after three years probationary period?"

Mr. Bauer: "That's correct, they do have full tenure after that three years, but for the purpose of transfer for the first three years, they have no tenure."

Mr. Hendricks: "The word transfer refers to a change in status to a subordinate certificated position and not to transfer between schools or between districts? Is that correct?"

Mr. Bauer: "Any change of status that adversely affects the condition of his contract would be excluded for a three-year period. In other words, they get transferred anywhere within that district or transferred up or down in terms of salary and they would not have to show sufficient cause as they do now under the current law."

Mr. Hendricks spoke in favor of the motion to concur in the Senate amendments.

Mr. Pardini demanded an oral roll call in accordance with House Rule 69.

POINT OF ORDER

Mr. Thompson: "May a member demand an oral roll call when an electric roll call has been demanded and the requirement has been met?"

Mr. Bender demanded a Call of the House and the demand was sustained.

CALL OF THE HOUSE

The Sergeant at Arms was instructed to lock the doors.

The Clerk called the roll and all members were present except Representatives McCormick, Moreau, North and Smith (Rick).

MOTION

Mr. Thompson moved that the absent members be excused, and the House proceed with business under the Call of the House.

POINT OF PARLIAMENTARY INQUIRY

Mr. Hansey: "According to Rule 42, could you interpret that, that if eight members demand the absent members attend, they could so demand and if that is the case, would you give me the proper motion?"

The Speaker Pro Tem: "Why are you referring to Rule 42?"

Mr. Hansey: "The motion before us is to excuse the absent members and I'm asking under Point of Parliamentary Inquiry if eight members of this body may compel the attendance of the absent members?"

The Speaker Pro Tem: "In this case, this rule wouldn't apply because we have a quorum."

The motion to excuse the absent members was carried.

With the consent of the House, Mr. Pardini withdrew his demand for an oral roll call.

With the consent of the House, Mr. Bender withrew his demand for an electric roll call.

Mr. Thompson demanded an oral roll call and the demand was sustained.