WASHINGTON STATE SUPREME COURT
NO. 918406

COURT OF APPEALS (DIV. II) NO. 45830-6-II

WANDA RILEY-HORDYK,

Petitioner/Appellant,

-vs-

BETHEL SCHOOL DISTRICT,

Respondent.

PETITIONER/APPELLANT'S REPLY BRIEF RE: PETITION FOR REVIEW TO THE WASHINGTON STATE SUPREME COURT

VAN SICLEN, STOCKS, & FIRKINS
Tyler K. Firkins
Attorneys for Appellants
Address:
721 45th St NE
Auburn, WA 98002-1381
(253) 859-8899
e-mail: tfirkins@vansiclen.com

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I. INTRODUCTION

Petitioner Wanda Riley-Hordyk submits this reply in support of her petitioner for review, pursuant to RAP 13.4(d), to address new issues raised by Bethel School District in its response. In its response, the District asserts that this matter should be reviewed under an arbitrary and capricious standard. The District's assertion is unsupported by law and should not be a basis for this Court to deny Ms. Riley-Hordyk's petition for review.

II. ARGUMENT

A. Determinations on sufficient cause for nonrenewal are reviewed de novo.

In this case, the Court of Appeals held that "the question of whether specific conditions constitute sufficient cause is a mixed question of law and fact that is subject to de novo review." Opinion at 5. The District nonetheless contends that the proper standard of review is arbitrary and capriciousness.

The Court of Appeal's articulation of the standard of review is drawn directly from *Clarke v. Shoreline Sch. Dist. No. 412, King Cnty.*, 106 Wn.2d 102, 720 P.2d 793 (1986). In that case, this Court stated,

> The question of whether specific conduct, practices or methods constitute sufficient cause for discharge is one of mixed law and fact, *i.e.,* there is a question as to the propriety of the inferences drawn by the hearing officer

> from the raw facts, and as to the meaning of the statutory term. [*Franklin Cnty. Sheriff's Office v.*] *Sellers,* [97 Wn.2d 317,] 330, 646 P.2d 113 [(1982)]. A court reviews such issues de novo, meaning the reviewing court determines the correct law and applies it to the facts as found by the hearing officer. *Sellers,* at 330, 646 P.2d 113.

Clarke, 106 Wn.2d at 110. Petitioner does not challenge the hearing officer's factual finding that the District was justified in closing the Bethel Online Academy. However, the hearing officer also found that the District had the same number of principals during the 2013-2014 school year as it did during the 2012-2013 school year. Opinion, at 4. Petitioner's challenge is directed to the hearing officer's conclusion that despite there being no change in the number of administrators, Ms. Riley-Hordyk could legally be nonrenewed due to a "reduction in force." This conclusion of law is reviewable de novo, as the Court of Appeals correctly noted.

The de novo standard of review is also utilized whenever the meaning of a statute is at issue. *Bostain v. Food Exp., Inc.*, 159 Wn.2d 700, 708, 153 P.3d 846 (2007). Under the continuing contract statute, a school principal may only be nonrenewed for sufficient cause. RCW 28A.405.210. Sufficient cause is not defined in the statute. It is therefore up to the courts to determine what the legislature intended by use of this phrase. This Court is not bound by the Court of Appeals' or the hearing

examiner's inadequate consideration of the meaning of RCW 28A.405.210. As with all questions of statutory interpretation and legislative intent, this Court should review the question of sufficient cause on a de novo basis.

B. This Court must reach the issue of nonwaivability to correct the Court of Appeals' decision.

This Court has the discretion to waive any and all of the Rules of Appellate Practice in order to "service the ends of justice." *Tuerk v. Dep't of Licensing*, 123 Wn.2d 120, 124, 864 P.2d 1382 (1994). Accordingly, this Court has the inherent authority to address any issue necessary for decision. *Blaney v. Int'l Ass'n of Machinists & Aerospace Workers, Dist. No. 160*, 151 Wn.2d 203, 213, 87 P.3d 757 (2004).

The Court of Appeals held in its decision that any right Ms. Riley-Hordyk had to transfer to another principal position within the District had been waived via the CBA. Though neither party had ever discussed the possibility of waiver, the Court of Appeals believed the issue to be relevant and raised it on its own accord. The Court then found this issue to be dispositive, and affirmed the hearing examiner and superior court on that basis. This Court cannot review the decision of the Court of Appeals without addressing this central issue.

The Court of Appeals can, of course, decide a case on an issue not raised by the parties. However, in doing so, the Court should follow existing law. Here, the Court held that Ms. Riley-Hordyk had waived a right that RCW 41.59.080 declares to be unwaivable. The Court of Appeals does not have the discretion to ignore a mandate of the legislature. This Court should exercise its discretion to correct this clear error.

III. CONCLUSION

Respondent fails to address the factors for review under RAP 13.4(b), instead advocating for a standard of review not applicable to this matter and asking this Court to ignore an issue that the Court of Appeals found determinative. Neither contention has merit and should not be considered by this Court on its determination on review. For the reasons herein and previously articulated, this Court should grant Ms. Riley-Hordyk's petition for review.

DATED this the 29th day of July, 2015.

VAN SICLEN, STOCKS & FIRKINS

Tyler K. Firkins, WSBA 20964
Attorney for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby declares under penalty of perjury under the laws of the State of Washington that on July 30, 2015, she caused the foregoing *Reply Brief to Petition for Review* to be served on the following parties of record and/or interested parties by hand delivery and email transmission the same day:

William Coats
Daniel Montopoli
Vandeberg Johnson Gandara
1201 Pacific Ave., Ste. 1900
Tacoma, WA 98402-4315

Dated this 30st day of July, 2015 Auburn, Washington.

Diana Butler