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No. 998299
Court of Appeals Cause No. 80211-9-I

SUPREME COURT
OF THE STATE OF WASHINGTON

TIMOTHY LUNDQUIST, and a certified
class of similarly situated individuals,

Plaintiffs/Petitioner,

v.

SEATTLE SCHOOL DISTRICT NO. 1,

Defendant/Respondent.

SEATTLE SCHOOL DISTRICT NO. 1's ANSWER TO PLAINTIFF'S PETITION FOR REVIEW

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I. INTRODUCTION

Timothy Lundquist petitions this Court to review the Court of Appeals' unpublished decision (Op.) that properly required him to comply with the mandatory grievance process in his union's collective bargaining agreement (CBA) with Seattle School District No. 1 (the District). Because the appellate court based its narrow decision on the plain language of the CBA and established precedent, Mr. Lundquist's petition does not satisfy RAP 13.4(b).

The Court of Appeals determined that the CBA's grievance provision encompassed Mr. Lundquist's dispute because he was an employee who alleged that the District failed to provide him certain employment benefits. Mr. Lundquist tries to avoid this result by incorrectly claiming that the Court of Appeals departed from Washington authority. But the authority that Mr. Lundquist relies on is fully consistent with the appellate court's decision. The undisputed record – largely ignored by Mr. Lundquist – is that (1) the District never promised to pay long-term disability benefits; rather, it promised to contribute (and did contribute) toward insurance premiums to the third-party group insurer, who would pay the benefits, and (2) Mr. Lundquist was a dues-paying union member at the time his claim against the District arose.

Taking the undisputed record and the CBA's plain language, the

Court of Appeals made the narrow (and expected) determination that Mr. Lundquist was required to grieve his claim with the District before pursuing this lawsuit. The Court should deny review.

II. STATEMENT OF THE CASE

A. A Collective Bargaining Agreement with a Mandatory Grievance Process Governs Mr. Lundquist's Employment with the District

The District employed Mr. Lundquist as a teacher from 1999 to 2018. CP 1033; Op. at 2. Throughout, Mr. Lundquist was a dues-paying member of the Seattle Education Association (SEA), which represents educators and is authorized to bargain on their behalf based on chapter 41.59 RCW. CP 1150-54; Op. at 2.

The District engaged in a collective bargaining process with the SEA and entered a CBA. CP 822, 831; Op. at 2. The CBA is a 202-page agreement which is "complete in and of itself and sets forth all terms and conditions of all the agreements between [the District] and the SEA pursuant to Chapter 41.59 RCW." CP 832. The CBA obligates the District to make "individual contracts for employees" that do not "conflict with the provisions of" the CBA. CP 831; Op. at 2; *see also* RCW 41.59.910 ("terms of the [CBA] shall prevail" over conflicting terms in other documents).

Based on the CBA, the District entered into two "individual

contracts" with Mr. Lundquist: a Certified Non-supervisory Employee Contract—Continuing (the Basic Contract) and a Time Responsibility Incentive Contract (the TRI Contract). As the Court of Appeals correctly noted, the contracts refer to and incorporate the CBA by reference. CP 1040, 1042; Op. at 3. Mr. Lundquist's Basic Contract states that he "shall receive compensation and employee benefits from and shall be subject to terms of the" CBA and his TRI Contract states that he shall perform his TRI responsibilities "as specified in the" CBA. CP 1040, 1042. The CBA details the duties covered under both the Basic and TRI Contracts. CP 1040, 1042; Op. at 3.

The CBA governs the District's duties regarding employee benefits, including payment of premiums for long-term disability insurance. Op. at 3. A section entitled "Group Insurance Provisions" states that "[the District] shall make funds available to contribute towards premiums of SPS-approved group insurance programs," including long-term disability insurance and bases the District's contribution "on the full State monthly allocation figure for insurance benefits." CP 898; Op. at 4. The CBA also contains a "pooling" provision, CP 898, which allows the District to redistribute available funds from employees who waive coverage or choose less expensive benefits to employees with out-of-paycheck premium costs, CP 634-35 ¶ 5; Op. at 4. When pooling does not

cover an employee's premiums, that employee pays the remainder. CP 634-35 ¶ 5; Op at 4.

The CBA further outlines a process that employees must use to resolve any "grievance" with the District. CP 934-37; Op. at 7. It broadly defines grievance as "a claim based upon an event or condition which affects the conditions or circumstances under which an employee works, allegedly caused by misinterpretation or inequitable application of written SPS regulations, rules, procedures, or SPS practices and/or the provisions of the Agreement." CP 934; Op. at 8. In turn, the CBA defines a grievant as "an employee or employees of the SPS covered by [the CBA] having a grievance or the SEA." CP 934; Op. at 11. The CBA further defines employees as all "certified non-supervisory educational employee[s] represented by the SEA." CP 831; Op. at 11.

The grievance process consists of four, escalating steps. CP 935-36; Op. at 8. The first two steps require conferences with the employee and an administrative supervisor. CP 935 ¶ D(1), (2). If the grievant remains unsatisfied, a central administrator holds a third conference and issues a written response. CP 935 ¶ D(3). If the grievance is not resolved, the "SEA may . . . submit the grievance to final and binding arbitration." CP 936 ¶ D(4); Op. at 8; *see also* RCW 41.56.122 (allowing CBAs to provide for "binding arbitration of a labor dispute"). As the Court of

Appeals correctly noted, the CBA provides that the grievance procedure is mandatory and that failure to follow the procedures results in the grievance being dropped.[1] CP 934; Op. at 8.

B. Mr. Lundquist's Claim Arose During His Employment, but He Failed to Follow the Mandatory Grievance Process

In March 2017, while employed by the District, Mr. Lundquist went on medical leave. CP 4, 1034; Op. at 5. Mr. Lundquist submitted a claim to a third-party long-term disability insurer, Standard Insurance Company (Standard). Op. at 6. Standard reviewed Mr. Lundquist's claim, calculated his insurance benefits under its policy, and began paying him benefits in May 2017. CP 4 ¶ 21-23, 133 ¶ 6; Op. at 7. As he did below, Mr. Lundquist misdescribes Standard's policy by referring to it as the "District's disability benefit plan." *See, e.g.,* Pet. at 1. But the "disability benefit plan" is, in fact, an insurance policy issued by a third-party group insurer, Standard, in which the District is a policyholder and the employees are the insureds. CP 643; *see also* RCW 48.21.010(1).[2] As the

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[1] Courts routinely have enforced identical grievance provisions. *See, e.g.*, *Lew v. Seattle Sch. Dist. No. 1*, 47 Wn. App. 575, 578, 736 P.2d 690 (1987) (affirming summary judgment for Seattle School District where employee failed to exhaust grievance procedures in CBA); *Rowland v. Banda*, 3 Wn. App. 2d 1026, 2018 WL 1907339, at *6 (2018) (unpubl.) (following *Lew*; dismissing claim against Seattle School District for employee's failure to exhaust grievance procedures); *Ota v. Pierce County*, 197 Wn. App. 1009, 2016 WL 7212621, at *4 (2016) (unpubl.) (following *Lew*; affirming summary judgment when plaintiffs failed to exhaust grievance procedures in CBA). *see also Peninsula Sch. Dist. No. 401 v. Public Sch. Emps. of Peninsula*, 130 Wn.2d 401, 415, 924 P.2d 13 (1996) (remanding case for arbitration under CBA grievance process).

[2] The District is not the obligor, but an obligee like Mr. Lundquist. *See* 35 David K.

Court of Appeals correctly held: "the policy clearly identifies Standard as the insurer, the District as the policy holder, and the employees as the insureds." Op. at 24. As a result, the District did not determine whether Mr. Lundquist was eligible for disability benefits and played "no role in calculating the benefits [he was] entitled to receive under Standard's policy." Op. at 23-24; CP 638 ¶¶ 19-20.

On June 19, 2017, while Mr. Lundquist was on leave, the District notified him that he was "still considered [a] district employee[]" and was "still required to sign a certificated teaching contract for the new school year." CP 1039; Op. at 5. When asked two days later whether he was "planning on extending" his "leave through the new school year," Mr. Lundquist replied "how does extending my leave into the fall affect my right to return in the future such as in 2018." CP 1164; Op. at 6. The District explained that he could "come back after your second year of leave," to which Mr. Lundquist responded that he "intend[ed] to continue [his] leave in the fall." CP 1163; Op. at 6. Mr. Lundquist continued on paid leave until November 13, 2017, and on unpaid leave until March 30, 2018. CP 1034; Op. at 6. On March 30, 2018, Mr. Lundquist resigned from the District. CP 1037; Op. at 6.

DeWolf, *Washington Practice: Washington Insurance Law & Litigation* § 10:3 (2019-20); 1A Steve Plitt, *et al.*, *Couch on Insurance* § 7:1 (3rd ed. 2019).

In October 2017, Mr. Lundquist challenged Standard on how it calculated his disability benefits. CP 4-5 ¶¶ 23-28; Op. at 7. He asserted that Standard should have calculated his "Insured Earnings" using the pay he received under his TRI Contract in addition to his pay under his Basic Contract. CP 4-5 ¶¶ 23-28. On December 23, 2017, Standard determined its calculation was correct and cited the CBA, which defined TRI pay as "additional compensation for additional time, additional responsibilities, or incentives." CP 11; Op. at 7; *see also* CP 654 (Standard defines "Insured Earnings" as "your annual rate of earnings from your EMPLOYER, including deferred compensation, but excluding . . . any other extra compensation . . . . If you are paid on an annual contract basis, your annual rate of earnings is your annual contract salary.").

It is undisputed that Mr. Lundquist never initiated the grievance process against the District. Op. at 8.

C. Procedural History

The District first learned of Mr. Lundquist's claim on January 25, 2019, when he sued the District. The District answered the complaint, raising as a defense Mr. Lundquist's failure to comply with the CBA's grievance process. CP 17; Op. at 7.

On May 31, 2019, the District moved for summary judgment seeking to dismiss Mr. Lundquist's claim without prejudice so that the

parties could engage in the grievance process. CP 793; Op. at 8-9. The same day, Mr. Lundquist moved for partial summary judgment, requesting a finding that his claim was not subject to the grievance process. CP 758; Op. at 9. The trial court denied the District's motion and granted Mr. Lundquist's motion. CP 1165-67; Op. at 9.

On March 1, 2021, the Court of Appeals granted review and reversed the trial court's decision. It remanded the case to the superior court with directions that it dismiss Mr. Lundquist's claims against the District "without prejudice." Op. at 28. The Court of Appeals reasoned:

> Lundquist's contract claim is a grievance subject to the CBA grievance procedures because he was an employee when his claim arose. His claim is not independent of the CBA and to resolve it requires an interpretation of the CBA's provisions regarding duties associated with annual base pay and TRI pay. We find no basis in the record for the finding that there is a "unilateral contract" to pay disability compensation to Lundquist.

Op. at 28. The Court of Appeals later denied Mr. Lundquist's motion for reconsideration. Pet. at Appx 2.

For the first time on appeal, Mr. Lundquist refers to Standard's lawsuit against the District, Pet. at 4-5, that is pending (but stayed) at the United States District Court. But that lawsuit is irrelevant because it has no bearing on whether Mr. Lundquist was required to grieve his dispute, the only issue on appeal. *See* RAP 13.4(c)(6) (petitioner's "Statement of

the Case" is to be "[a] statement of the facts and procedures relevant to the issues presented for review"). But his references to it and the pleadings filed also are improper because this Court considers only the record in determining whether to accept review. *See id.* (petitioner's "Statement of the Case" must include "appropriate references to the record"). The Court should disregard that portion of Mr. Lundquist's Statement of the Case.

But should the Court consider the lawsuit's existence as having some bearing on his obligation to grieve his dispute, Mr. Lundquist incorrectly claims that Standard's claim is "basically the same as plaintiffs' complaint." Pet. at 5. To the contrary, Standard rejects Mr. Lundquist's claim that it improperly calculated his benefits. *See Standard Ins. Co. v. Seattle Sch. Dist. No. 1*, No. 20-1097 MJP, 2020 WL 6797447 (W.D. Wash. Aug. 31, 2020) ("Standard is entitled to a declaration that TRI Pay is not included within an employee's 'insured earnings' as defined by the Policy and that TRI Pay is not included in the calculation of the LTD Benefit for which a District employee may be eligible").

III. ARGUMENT

RAP 13.4 governs discretionary review of a decision terminating review. Mr. Lundquist purports to rely on three of the grounds justifying

review[3] but argues only two: that "the decision of the Court of Appeals is in conflict with a decision of the Supreme Court" or if "the petition involves an issue of substantial public interest that should be determined by the Supreme Court." Pet. at 5.

Mr. Lundquist does not satisfy either test because the Court of Appeals' decision is consistent with existing Washington precedent and the undisputed record establishing that Mr. Lundquist was a dues-paying union member, on paid medical leave, under contract with the District, and represented by his union at the time his claim accrued.

A. The Court of Appeals' Decision Is Consistent with Prior Washington Authority.

Mr. Lundquist asserts that the Court should review the Court of Appeals' decision because it conflicts with *Jacoby v. Grays Harbor Chair & Manufacturing Co.*, 77 Wn.2d 911, 468 P.2d 666 (1970), *Vizcaino v. Microsoft Corp.*, 120 F.3d 1006 (9th Cir. 1997), and *Navlet v. Port of Seattle*, 164 Wn.2d 818, 194 P.3d 221 (2008). But there is no conflict.

Contrary to Mr. Lundquist's contention, the Court of Appeals properly distinguished Mr. Lundquist's claim from those in *Jacoby*, *Vizcaino*, and *Navlet*, avoiding any conflict. Op. at 24-27. While Mr.

[3] Mr. Lundquist misstates RAP 13.4(b) in claiming that review is permitted whenever a "'significant question' of Washington law" is at issue. Pet. at 5. RAP 13.4(b) requires "a significant question of law *under the Constitution of the State of Washington or of the United States*," RAP 13.4(b) (emphasis added), neither of which is implicated here.

Lundquist relies on these holdings to support his claim that the District has a unilateral contract with its employees, Pet. at 6, 13, the Court of Appeals correctly held that the District did not create a unilateral contract with its employees by virtue of Standard's insurance policy because the record contains "no evidence the District ever promised to pay disability compensation directly to an employee if Standard denied coverage."[4] Op. at 23. The appellate court reasoned that Mr. Lundquist provided no proof of any policy or employee handbook in which such promises were made to its employees, Op. at 23. Rather, the District's sole promise to its employees was to pay premiums in accordance with the CBA's provisions. Op. at 22-23.[5]

The Court of Appeals thus rightly distinguished each decision on which Mr. Lundquist relied. It explained that in *Jacoby*, "the employer not only promised to finance 100 percent of the pension plan for its employees but it also actually did so." Op. at 25; *see also Jacoby*, 77 Wn.2d at 912 ("[T]he employer contracted with the company for payment

[4] No implied contract could exist as a matter of law when, as here, the CBA identifies that it is "complete in and of itself and set[s] forth *all* terms and conditions" of the agreements between the District and Mr. Lundquist's union. CP 832 (emphasis added). If the District had a duty to provide benefits under Standard's policy, it is a duty that would be in the CBA as an express agreement. But there is no such duty.

[5] The District told its employees that the premiums it paid to Standard were based on employees' Basic Contract and not their TRI Contract. CP 638-39, 674 (Enrollment Memo: "Life and LTD [Long-Term Disability] Insurance: . . . Your basic annual earnings *do not include* other income, such as TRI.") (emphasis added).

of pensions to qualified salaried employees. . . . The employer agreed to deposit periodically with the company *the sums of money which the company determined were required to fund the payments*.") (emphasis added). In other words, the employer in *Jacoby* paid the entire benefit. *Id.* In contrast, the District funds the cost of long-term disability insurance (*i.e.*, premiums) as set forth in the CBA. Op. at 25-26 (District agreed "to contribute a certain dollar amount per employee, to match what the State paid, into a pool that would cover employee group benefits, which included long-term disability insurance purchased from Standard").

Mr. Lundquist asserts that "the District pays the entire cost of the benefits through premiums," Pet. at 9, but there is no support for this statement. The citations that he provides only bolster the Court of Appeals' explanation that the District funds *premiums* and not *benefits*. *E.g.*, CP 97 (Standard's policy states "[the District] will pay the entire *cost* of your Insurance") (emphasis added); Op. at 24 ("Standard is the only party obligated to pay benefits under the policy."). The record reflects that Standard maintains a "premium deposit account" on the District's behalf that "accumulates any unused premiums for each policy year" and allows the District to "buy down premium rates for the following year." CP 636. That the District and Standard have a mechanism by which the District can

avoid premium rate fluctuations does not mean that the District pays long-term disability benefits; only Standard does.

The Court of Appeals likewise distinguished *Vizcaino*, in which the Ninth Circuit held that Microsoft's stock purchase plan was a unilateral contract between Microsoft and its employees and deferred compensation for services rendered. Op. at 26-27. The Court of Appeals correctly explained that in *Vizcaino* Microsoft made "a promise of compensation offered and funded entirely by the employer," whereas the District made "a promise to provide access to insurance." Op. at 27.

The same was true in *Navlet*. There, the employer took on "a clear, written contractual obligation to pay welfare benefits, which were tied to the language of the CBA at issue in that case." Op. at 25 n.8; *Navlet*, 164 Wn.2d at 824. Again, the District made no similar promise.

The Court of Appeals' reasoning that the District does not have a unilateral contract with its employees to pay disability benefits is not in tension with the holdings in *Jacoby*, *Vizcaino*, or *Navlet*, where the employers made direct promises to their employees to provide a benefit and not merely to fund insurance premiums. Extending Washington authority in the manner Mr. Lundquist proposes would mean "any employer who purchased employee health insurance from a third-party insurer would somehow become directly liable to its employees for the

payment of health care expenses if the insurer refused to cover those expenses." Op. at 27.

Because there was no direct promise to pay benefits, Mr. Lundquist raises the entirely new argument that also is refuted by the record: he claims that the District should be liable to employees for allegedly "underreporting . . . insured earnings" to Standard. Pet. at 9-10. Not only is his allegation unsupported (*see id.*), the record refutes it: the District submitted payroll information (paystubs) to Standard at Standard's request.[6] Had Standard believed its policy covered TRI pay, it had the payroll information to include TRI in its benefit calculation. *See, e.g.*, CP 11 (letter from Standard to Mr. Lundquist indicating it received "payroll reports" from the District which "reflect" salary and various "TRI" pay).

In other words, the District provided even the information Mr. Lundquist claims it did not provide, and Standard alone decided not to include TRI pay in determining the amount of benefits. *See* CP 12.

Mr. Lundquist likewise urges that he is entitled to review because "[e]mployee compensation is an important issue," Pet. at 12, and the Court of Appeals determined "that the long-term disability benefit offered by the District to its employees is not compensation," Pet. at 8. There is no such

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[6] Even Mr. Lundquist himself acknowledged that Standard included TRI pay in calculating his benefits but later unilaterally elected to omit it. *See* CP 4 ¶¶ 22-23, 12.

holding. The appellate court's decision does not address whether disability benefits constitute deferred compensation because it did not need to. Rather, the Court of Appeals' decision narrowly addresses (and decides in the affirmative) the specific issue of whether Mr. Lundquist's claim constitutes a grievance such that he must follow the mandatory grievance process in the CBA. Op. at 28. Far from preventing an employee from raising a dispute about insurance (or any benefit or compensation for that matter), the Court of Appeals made the unremarkable determination that, when an employee is subject to a broad grievance provision in a CBA, the employee is required to raise his dispute within the grievance framework. The appellate court's decision is consistent with a long line of decisions that have reached similar holdings.[7] Mr. Lundquist tries to avoid this result by arguing that if "long-term disability benefits are the deferred compensation they are intended to be," then an employee may sue its employer when a promised benefit is not provided. Pet. at 12. This argument fails to recognize that his CBA grievance provision encompasses disputes regarding compensation. *See* CP 934 (referencing "grievances related to salary").

Mr. Lundquist's petition attempts to create a conflict where none

[7] *See supra* n. 1 (citing cases).

exists. This Court should decline review.

B. The Court of Appeals Correctly Determined that Mr. Lundquist's Claim Arose When He Was an Employee Subject to the CBA

Mr. Lundquist argues that the Court of Appeals departed from "federal labor law" in determining that Mr. Lundquist was subject to the CBA. Pet. at 17-20. But the Court of Appeals followed well-established rules of contract interpretation and prior decisions in concluding that the record established Mr. Lundquist was an employee when his claim accrued. This conclusion is neither remarkable nor in conflict with federal case law.

The CBA defines "grievant" as "an employee . . . of the [District] covered by this Agreement having a grievance." CP 934; Op. at 11. An employee is defined as "a certificated non-supervisory educational employee represented by the SEA." CP 831; Op. at 11. Relying on *Allied Chemical & Alkali Workers of America v. Pittsburg Plate Glass Co.*, 404 U.S. 157, 168, 92 S. Ct. 383, 30 L. Ed. 2d 341 (1971), Mr. Lundquist asserts that he was not represented by the SEA because he was on disability leave, had no expectation of returning to work, and does not share a "community of interest" with current employees. Pet. at 14.

Setting aside his own admission that he was a member of SEA's bargaining unit when became disabled, Resp't Br. at 4 ("At the time [he]

became totally disabled he was in the SEA's bargaining unit."), the Court of Appeals correctly rejected the assertion that the union did not represent Mr. Lundquist when his claim accrued as contrary to the undisputed record (Op. at 12). That record established the following:

– Mr. Lundquist's claim accrued in July 2017, when Standard notified him that it would not include TRI in calculating his disability benefits. CP 133 ¶ 7; Op. at 7, 12 n.5.
– Mr. Lundquist renewed his employment contract. CP 1040.
– Before, during, and after the July 2017 accrual, Mr. Lundquist was an on paid medical leave (March to November 2017) and then unpaid medical leave (to March 2018). CP 1034.
– He remained a dues-paying member. CP 1150-54.
– He resigned from the District on March 30, 2018. CP 1037.
– Until he resigned, he was an employee, retained the right to return to work, was notified of those facts, and indicated to the District that he might return to work. CP 1039, 1163-64.

That Mr. Lundquist was on medical leave does not mean he did not have a "community of interest" with others in his union. Mr. Lundquist refers (again) to the District's argument on class certification that he did not share a community of interest with his bargaining unit. Pet. at 17. But the District's argument was not that Mr. Lundquist was not a union

member when his claim arose, it was that he could not adequately represent other class members. *See* CP 613, 627. Whether Mr. Lundquist satisfies the CR 23 requirements is a different legal issue from whether—at the time his claim accrued—he was an employee and, therefore, a "grievant" under the CBA. In fact, "[h]ad the District denied Lundquist's request to extend his leave or denied him the opportunity to return to work, the CBA provided Lundquist with the right to union representation to grieve the denial of those rights under the CBA." Op. at 13.

Based on the undisputed record, the Court of Appeals properly distinguished *Allied Chemical* because that case addressed whether an employer must bargain with a union over *changes* to benefits held by *retirees*. Op. at 12. Mr. Lundquist's position would require an untenable extension of *Allied Chemical* by finding that unions do not represent disabled employees on medical leave even when their claims relate to existing benefits they received as employees.[8] Mr. Lundquist erroneously claims that Washington has adopted this extension, citing an unpublished PERC decision, *Aldridge v. Washington State Troopers Assoc.*, 2019 WL 1549471 (PERC Jan. 5, 2019). Pet. at 16. Putting aside that the administrative law decision has no precedential value, PERC found that

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[8] Such an extension would drastically curtail employee rights. *E.g.,* RCW 49.12.270, .287, .295.

"[i]ndividuals receiving disability payments pursuant to RCW 43.43.040 are equivalent to retirees." *Id.* at *7. The cited statute, RCW 43.43.040 – referred to as "a system unique to the state patrol" – applies only to active duty Washington state patrol officers. Disabled patrol officers are not part of the bargaining unit because they are not "commissioned" (*i.e.*, authorized to enforce the law), which is a requirement of the bargaining unit. 2019 WL 1549471 at *6-7. The PERC's decision in *Aldridge* has no relevance in determining whether a teacher like Mr. Lundquist was an employee and grievant under the CBA.

The Court of Appeals likewise determined that *Meza v. General Battery Corp.*, 908 F.2d 1262 (5th Cir. 1990) did not support Mr. Lundquist's position because "[i]t was undisputed that the union did not represent Meza . . . because Meza had already been terminated from his employment," when the union initiated a lawsuit. Op. at 15. As in *Allied Chemical*, "[t]here is nothing in *Meza* to support the conclusion that Meza lost his entitlement to union representation before his termination occurred." Op. at 15.

Mr. Lundquist's repeated insistence that a difference exists between being "on the payroll as an employee," as opposed to an employee entitled to union representation, Pet. at 18, is contrary to the CBA's plain language. CP 831. A teacher like Mr. Lundquist who is on

leave and on the payroll necessarily is covered by the CBA, entitled to union representation, and required to follow the grievance procedure in the CBA. The Court of Appeals' decision requiring Mr. Lundquist to follow the grievance procedure hardly leaves him with "no remedy under the CBA," let alone rises to the level of being "perverse."[9] Rather, the Court of Appeals correctly interpreted the CBA and applied well-settled precedent in holding that Mr. Lundquist was required to grieve his claim.

IV. CONCLUSION

The Court should deny the Petition for Review.

SUBMITTED this 25th day of June, 2021.

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[9] The Court of Appeals instructed the trial court to dismiss Mr. Lundquist's claims "without prejudice," thus allowing Mr. Lundquist to pursue his claims in court if he exhausts the grievance process and meets the prerequisites to do so.

CERTIFICATE OF SERVICE

I, Florine Fujita, declare that I am employed by the law firm of Harrigan Leyh Farmer & Thomsen LLP, a citizen of the United States of America, a resident of the state of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

On June 25, 2021, I caused a true and correct copy of the foregoing document to be served on the person(s) listed below in the manner indicated:

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DATED this 25th day of June, 2021.

s/ Florine Fujita
Florine Fujita, Legal Assistant
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HARRIGAN LEYH FARMER & THOMSEN LLP

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