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STATE OF WASHINGTON  
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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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CLARK COUNTY FIREFIGHTERS LOCAL 3674

Plaintiff/Respondent

v.

CLARK COUNTY FIRE DISTRICT NO. 11

Defendant/Appellant

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On appeal from Clark County Superior Court  
Cause No. 08-2-03386-8  
The Honorable Robert Harris

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APPELLANT'S REPLY BRIEF

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Thomas G. Burke, WSBA #6577  
Burke Law Offices, Inc. PS  
612 South 227<sup>th</sup> Street  
Des Moines, WA 98198  
206-824-5630  
Attorney for Appellant

PM 9-4-09

ORIGINAL

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## 1. ARGUMENT IN REPLY

### **REPLY: ASSIGNMENT OF ERROR #1**

ISSUE 1.1 Did the trial court err when it failed to find that the undisputed evidence of the Fire District created at the very least a question of material fact as to whether or not the scope of the CBA included the one year probationary training and evaluation program for new Fire District employees?

ISSUE 1.2 Did the trial court err when it failed to consider the undisputed extrinsic evidence that the scope of the CBA did not include the one year probationary training and evaluation period for new Fire District employees?

This appeal is NOT about whether or not an arbitrator can or should make the decision regarding arbitrability, thus the Local's reliance on *Mount Adams School District v. Cook* to support its position is misplaced. In the *Mount Adams* case, the Supreme Court considered the following language from the school district's CBA, "...Upon request of either party, the merits of a grievance and the *substantive and procedural arbitrability* issues arising in connection with that grievance may be consolidated for hearing before an arbitrator provided the arbitrator shall not resolve the question of arbitrability of a grievance prior to having heard the merits of the grievance." (Emphasis in original) *Mount Adams School District v. Cook*, 150 Wn.2d 716, 720, 81 P.3d 111 (2003) Based upon this specific language in the *Mount Adams School District v. Cook* contract the Court held that those parties "...have clearly and unmistakably agreed to allow an arbitrator to decide whether a grievance is arbitrable." *Id.* at 724. The contract between the Local and the Fire District does not include such language and

there has never been a dispute in this case whether or not the Superior Court was the appropriate forum for deciding arbitrability--- rather the issue here is whether the Superior Court erred in its decision that the grievance filed by the Local should be resolved by an arbitrator.

However, the *Mount Adams School District v. Cook* case does affirm that general principles of law regarding summary judgment proceedings also apply in cases interpreting CBA arbitration clauses. The Court may only affirm an order granting summary judgment when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Id.* at 722. Also, all facts and reasonable inferences are considered in the light most favorable to the nonmoving party, and all questions of law are reviewed de novo. *Id.*

For summary judgment, the burden is on the moving party to demonstrate that there is no issue as to a material fact, and “the moving party is held to a strict standard.” *Scott v. Pacific West Mt. Resort, 119 Wn.2d 484, 502, 503, 834 P.2d 6 (1992)* In a motion for summary judgment, the facts asserted by the nonmoving party and supported by affidavits or any other proper evidentiary material must be taken as true. *Bond v. State 62 Wn.2d 487, 383 P.2d 288 (1963)*

The Local’s argument seems to forget that a summary judgment is not a bench trial by affidavit. The Superior Court in a summary judgment motion does not get to weigh or disregard facts or decide disputed questions of fact.

Assume for purposes of argument that the Local had filed a declaration that concurred with the declaration of Fire Chief Mason that the issues of probationary

employment and termination of probationary employees were excluded from negotiation and execution of the CBA. In that circumstance, there would be no legitimate argument that the grievance and arbitration process do not apply to the Parrish termination. By implication and authority, that is exactly the state of the pleadings in the summary judgment here. The declaration of Fire Chief Mason regarding the exclusion of the District's probationary employment program from the CBA is unchallenged, and must be considered as true. All reasonable inferences from the evidence submitted must be resolved in favor of the Fire District, prior to application of any presumption in favor of arbitrability.

In the contract interpretation context, "summary judgment is not proper if the parties' written contract, viewed in the light of the parties other objective manifestations, has two or more reasonable but competing meanings." *Hall v. Custom Craft Fixtures, Inc.*, 87 Wn.App. 1, 9, 937 P.2d 1143 (1997).

It is generally true that "[a]part from matters that the parties specifically exclude, all of the questions on which the parties disagree must ... come within the scope of the grievance and arbitration provisions of the collective [bargaining] agreement." *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 581, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960). However, under the specific facts of this case, and in the context of a summary judgment motion, there are genuine issues of material fact as to whether or not the Local and the Fire District specifically excluded terms of probationary employment and termination of probationary employees from their CBA.

On the one hand, the Court may acknowledge the general principles in favor of arbitration, but “the courts must be equally careful to refrain from blindly throwing into arbitration every case involving an ‘arbitration of interpretation’ clause . . .” *Hanford Guards Local 21 v. General Electric Co.*, 57 Wn.2d 491, 494, 358 P.2d 307, 310 (1961) “A factor to be considered is the unique character of the collective-bargaining process, and contracts resulting therefrom, in which not every potential dispute is attempted to be provided for, and the product of which is designed to be a guide as well as a declaration of rights. Conditions and practices within the industry at the time of negotiation may have been relied upon and expected to continue without unmistakable reference being made to them in the contract.” *Shulman: Reason, Contract, and Law in Labor Relations*, 68 *Harvard L.Rev.* 999 (1955), cited in *Hanford Guards*, at 495, 496.

A genuine issue of material fact exists, the summary judgment order should be vacated, and the case remanded for further proceedings and trial. This is because summary judgment exists to examine the sufficiency of legal claims and narrow issues, not as an unfair substitute for trial. *Babcock v. State*, 116 Wn.2d 596, 599, 809 P.2d 143 (1991).

## **REPLY: ASSIGNMENT OF ERROR # 2:**

ISSUE 2.1 Did the trial court err by failing to examine the entire context of the CBA to interpret the meaning and scope of its provision?

ISSUE 2.2 Did the trial court err by improperly limiting its inquiry to the specific terms of the CBA in order to determine the intent of the parties?

The record is clear that the trial court granted summary judgment, relying solely on the fact that there was no specific clause for probationary employees in the CBA. RP 8. The judge made no mention of any other factors or considerations in reaching his decision.

Under the “context rule” used to interpret a contract, the intent of the parties to a particular agreement may be discovered not only from the actual language of the agreement, but also from viewing the contract as a whole, the subject matter and objective of the contract, all the circumstances surrounding the making of the contract, the subsequent acts and conduct of the parties to the contract, and the reasonableness of respective interpretations advocated by the parties. *Go2Net, Inc. v. C I Host, Inc.*, 115 Wn.App. 73, 84, 60 P.3d 1245 (2003)

Article 15 of the CBA provides that “Except as expressly limited by the terms of this Agreement, the Fire District reserves the right to manage and operate the Fire District in all respects.” This language is a specific limitation on the scope of the CBA, excluding any and all issues not “expressly limited” by its language. Since the CBA is silent as to any aspect of probationary employment with the Fire District, there is no “express limitation” on the rights of the Fire District in its hiring process. The Local’s argument that “just cause” is required for termination of probationary employees is a strained effort, at best. It supposes that the Fire District has complete and unfettered discretion to hire, train, test, and evaluate probationary employees, but then cannot terminate employees who are unable to successfully complete their probation.

When viewed as a whole, and in the context of all circumstances surrounding the making of the CBA, the Local's argument is not reasonable, should have been rejected by the judge, and the case set for trial to resolve the disputed issues.

### **REPLY: ASSIGNMENT OF ERROR #3**

ISSUE 3.1 Did the trial court's decision granting summary judgment violate an explicit, well established and dominant public policy of the State of Washington in favor of probationary periods for fire fighters?

ISSUE 3.2 Would the State's public policy favoring probationary employment would be violated by requiring a "for cause" standard for termination including grievance arbitration?

The purpose of a probationary period is to give the employer time to observe and evaluate the actual performance of the new employee on the job. *Samuels v. City of Lake Stevens*, 50 Wn.App. 475, 478, 749 P.2d 187, review denied, 110 Wn.2d 1031 (1988); *Arbogast v. Town of Westport*, 18 Wn.App. 4, 6, 567 P.2d 244 (1977), review denied, 89 Wn.2d 1017 (1978); Sandra M. Stevenson: Antieau on Local Government Law 2d, Vol. 5. Section 76.10 (2008) In reviewing a case involving a police officer, the Wisconsin Supreme Court held that "...probationary periods are a valuable part of the appointment process, as they allow fire and police chiefs an opportunity to assess a candidate's performance in the position, and thus better measure a candidate's qualifications prior to making a final decision on appointment. *City of Madison v. Wisconsin Employment Relations Com'n*, 261 Wis.2d 423, 434 662 N.W.2d 318 (2003)

In the context of new hires, the Wisconsin court has stated that “[t]here is no doubt that the use of a probationary period is an excellent means of examining candidates and is well-suited to securing the best service available.” *Id.* at 435

That purpose is consistent with the public policies set forth in the comprehensive set of statutes and administrative regulations in the State of Washington that express the public need for safety and efficiency in the fire service. The Local’s interpretation of the CBA ignores the well-established public policies regarding probationary employment for new fire fighters. These policies have the purpose of protecting and promoting the safety of Washington firefighters and the public they serve.

The case of *Rose v. Erickson* 106 Wn.2d 420, 721 P.2d 969 (1986), cited as controlling by the Local, does not even address these public policy issues. That case merely determined that in the event of a conflict between two statutes, a court must determine which statute the Legislature intended to prevail, and then found that RCW 41.56 prevails over RCW 41.14. *Rose v. Erickson*, It has no application to this case.

Even if the CBA in this case could be interpreted as requiring a “for cause” standard for termination including grievance arbitration, enforcement of such a requirement would be contrary to public policy and unenforceable. Where a contract, including a collective bargaining agreement, violates some explicit, well-defined, and dominant public policy, Washington courts are not required to enforce it. *Kitsap County Deputy Sheriff’s Guild v. Kitsap County*, 140 Wn.App. 516, 165 P.3d 1266 (2007). As stated in the City of Madison case, “...to make a probationary termination arbitrable is to wholly vitiate the significance of a probationary term.” *City of Madison*, at 440. The

Court held that such a ruling would be contrary to a clear manifestation of legislative intent that the standards for the training and education of police officers are matters of statewide concern. *Id.* at 441.

Federal law is in accord: public policy *is* a ground for refusing to enforce a collective bargaining agreement. *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 765-6, 103 S.Ct. 2177, 2183, 76 L.Ed.2d 298, 306 (1983). As with any contract, a court may not enforce a collective bargaining agreement that is contrary to public policy. *Id.*, at 766

The question of public policy is ultimately one for resolution by the courts. *International Brotherhood of Teamsters v. Washington Employers, Inc.*, 557 F.2d 1345, 1350 (CA9 1977). Such a public policy, however, must be well defined and dominant, and is to be ascertained “by reference to the laws and legal precedents and not from general considerations of supposed public interests.” *Muschany v. United States*, 324 U.S. 49, 66, 65 S.Ct. 442, 451, 89 L.Ed. 744 (1945)

Washington State has a well-established matrix of statute and administrative regulation for the fire services. In 1986, the State Legislature created the Fire Protection Safety Board. The legislature found that the paramount duty of the state in fire protection services is to enhance the capacity of all local jurisdictions to assure that their personnel with fire suppression, prevention, inspection, origin and cause, and arson investigation responsibilities are adequately trained to discharge their responsibilities. It was the intent of the legislature to consolidate fire protection services into a single state agency and to create one state board with the responsibility of (1) establishing a comprehensive state

policy regarding fire protection services and (2) advising the chief of the Washington state patrol and the director of fire protection on matters relating to their duties under state law. *RCW 43.43.930*

In carrying out those policies, the law requires that all members who engage in emergency operations shall be trained commensurate with their duties and responsibilities. Training shall be as frequent as necessary to ensure that members can perform their assigned duties in a safe and competent manner. *WAC 296-305-05501(1)*

In Washington, an employer has a duty to provide a safe workplace to all employees. This is true of all employers. *RCW 49.17.060* However the Fire Service certainly has a higher expectation of safety due to the nature of the work. Fire Service is a hazardous activity and therefore safety is not only a paramount concern but is a core value to the Fire District. Fire District employees are asked to entrust their safety to each other. Therefore any unwillingness or inability to learn, practice and adhere to fire safety rules and procedures cannot be tolerated. The probationary employment period is the time when the employee is evaluated on the ability to actually perform.

The State of Washington has adopted specific standards to ensure the safety of fire fighters and their supervisors. *WAC 296-305-01001* The fire fighter safety and health standards were adopted by the department of labor and industries to assist employers and employees in the reduction of work related injuries and illnesses. Chapter 296-305 WAC must be considered as establishing the fire fighter safety standards for the state of Washington. *WAC 296-305-01003(3)* The safety rules established by the Washington Administrative Code apply with respect to any and all activities, operations

and equipment of employers and employees involved in providing fire protection services, and apply to all fire fighters and their work places. *WAC 296-305-01003(1) (2)*

In addition to providing an enforceable set of safety and health standards for the fire protection services, these provisions are intended to assist both employers and employees in achieving the safest workplace reasonably attainable under the conditions to which employees are or will be exposed. *WAC 296-305-01001* (Emphasis added) All fire fighting methods, and operations shall be so designed as to promote the safety and health of employees. The Code requires that the Fire District must do everything reasonably necessary to protect the safety and health of its employees. *WAC 296-305-01513(1)* That statutory purpose is served by requiring new employees to pass a probationary period, and allowing the Fire District to terminate employees who cannot successfully complete their probation. This is entirely different from disciplinary processes for violation of policy or procedure.

The Fire District employer must assure that training and education is conducted frequently enough to assure that each member is able to perform the member's assigned duties and functions satisfactorily and in a safe manner so as not to endanger members or other employees. *WAC 296-305-05503(10)*(Emphasis added) The Fire District has a responsibility to all its employees to establish, supervise, maintain, and enforce, in a manner which is effective in practice: “(a) A safe and healthful working environment, as it applies to noncombat conditions or to combat conditions at a fire scene...” *WAC 296-305-01509.*

Conversely, the Washington Code also imposes specific, mandatory duties upon

the District's Firefighter employees: (1) to cooperate with the employer and other employees in efforts to eliminate accidents; (2) to comply with the provisions of this chapter which are applicable to his/her own actions and conduct in the course of his/her employment; to notify the appropriate employer representative of unsafe work practices and of unsafe conditions of equipment, apparatus, or work places; and (4) to apply the principles of accident prevention in their work. *WAC 296-305-01511* Fire Fighters are required to use all required safety devices, protective equipment, and safety practices, as provided and/or developed by management. *WAC 296-305-01511*(Emphasis added) In this case, Parrish was unable to pass the mandatory performance tests and successfully complete his probation.

The Local's argument defies logic and completely ignores the statutory and administrative policies designed to promote safety and protect the public and fire fighters. It is uncontroverted that state statutes, local custom, and the subsequent practice of the parties are all in accord that a probationary fire fighter employee does not have any recourse to CBA grievance or civil service review of the failure to meet the standards of his probation. Even assuming for purposes of argument that this CBA required "just cause" to terminate a probationer like Parrish, then that interpretation would be contrary to clear public policy and not enforceable.

#### ***REPLY: ASSIGNMENT OF ERROR #4***

ISSUE 4.1 Did the trial court's order on summary judgment ignore an express condition precedent of the CBA that Parrish execute a written waiver of all administrative or judicial remedies in order to pursue arbitration?

ISSUE 4.2 Should the Fire District be compelled to engage in an arbitration process where Parrish has rejected the arbitration process and elected to pursue judicial and administrative remedies?

The language of the CBA is clear regarding an election of remedies by Parrish. Article 16 states that “...prior to any arbitration, the employee shall have an election of remedies between arbitration and judicial or administrative remedies, If the employee elects arbitration, he or she must provide a written waiver of all other remedies.”

(Emphasis added) The employee is required to provide a written waiver of all other administrative and judicial remedies “prior to any arbitration.” Similarly, the summary judgment order requires the Fire District to engage in “arbitration” without any waiver of other remedy by Parrish.

“Arbitration” is a “process” or “method” of dispute resolution in which a neutral third party renders a decision after a hearing at which both parties have an opportunity to be heard. *Black’s Law Dictionary (6<sup>th</sup> ed. 1990)*; *Black’s Law Dictionary (8<sup>th</sup> ed. 2004)* A “remedy” is the means of enforcing a right or preventing or redressing a wrong; legal or equitable relief. *Black’s Law Dictionary (8<sup>th</sup> ed. 2004)* Since neither the terms “arbitration” nor “remedy” are defined in the CBA, the dictionary provides the common meaning. *John H. Sellen Constr. Co. v. Dep’t of Revenue, 87 Wn.2d 878, 883, 558 P.2d 1342 (1976)*. From the dictionary definition, it is clear that the terms are comprehensive to include the entire process or method involved and not limited to one specific phase of that process.

Ignoring the plain meaning of the word “arbitration,” the Local argues that “the only reasonable interpretation” for this language is that the employee must make this

election at any point in time before the start of the arbitration hearing or civil trial of the discrimination claim. The logical effect of this position is that the employee has the ability to require the Fire District to prepare for both an arbitration hearing and a civil trial up until the day and time the hearing is convened for either proceeding.

The Local's argument ignores the fact that, for purposes of this summary judgment motion, all inferences must be drawn in the light most favorable to the Fire District. Nothing in the CBA limits the language to allow an employee to proceed with the remedy of arbitration and all judicial and administrative remedies up until the date of trial.

Also, this argument omits any mention of waiver of administrative remedies. It is not disputed that Parrish has filed a discrimination complaint with the Equal Employment Opportunity Commission. This election of an administrative remedy is the commencement of an administrative process that bars further proceedings in arbitration. Nothing in the CBA permits Parrish to "preserve his options"; to the contrary, Parrish is required to make an early election in writing if he wishes to pursue arbitration.

Contrary to the Local's argument, the election of a remedy attaches at the commencement of the action, not at its conclusion. It has been frequently declared that "any decisive action of a party, with knowledge of his rights and of the facts, determines his election, in case of conflicting and inconsistent remedies." *6 A.L.R.2d 10*. In Washington, the rule has been stated to be that the commencement of a suit or action constitutes a conclusive election barring resort to an inconsistent remedy. *Behneman v.*

*Schoemer*, 141 Wash. 560, 252 P. 133 (1927); *Babcock-Cornish Co. v. Urquhart*, 53 Wash. 168, 101 P. 713 (1909); *Gaffney v. Megrath* (1900) 23 Wash 476, 63 P 520 (1900)

Where a party has a right to pursue one of two inconsistent remedies against another by bringing an action for one remedy, he thus makes an election which bars him from later seeking to pursue the other. *Anderson v. Bauer*, 146 Wash. 594, 264 P. 410 (1928) The commencement of the action constitutes the election, and this election is not revocable. *Standard Finance Co. v. Townsend*, 1 Wn.2d 274, 276, 95 P.2d 786 (1939)

The burden is upon Parrish to make his choice, and once made, he is bound by that choice. For instance, Parrish can choose to litigate his claim in court, or pursue administrative remedies, but just because he appears to be losing the case, he cannot dismiss those proceedings and start over in arbitration. Since Parrish has not waived judicial or administrative remedies, but has in fact commenced the process for an EEOC administrative remedy, he is barred from commencing arbitration of his claims. The trial court erred by ordering the Fire District to arbitrate the claim in violation of the terms of the contract.

## **2. RESPONDENT LOCAL'S REQUEST FOR ATTORNEY FEES**

Reasonable attorney fees are recoverable on appeal if allowed by statute, rule, or contract, and the request is made pursuant to RAP 18.1(a). *Malted Mousse, Inc. v. Steinmetz*, 150 Wn.2d 518, 535, 79 P.3d 1154 (2003). The contract between these parties expressly provides that each party will pay its own attorney's fees in any grievance

proceeding. In addition, the Respondent Local fails to cite any statute in support of the request for fees.

Nevertheless, the Local argues that it is entitled to recover reasonable attorney's fees on "equitable grounds." The Local cites the one case of *Noble v. Safe Harbor Family Preservation Trust*, 141 Wn.App. 168, 169 P.3d 45 (2007), review granted 163 Wn.2d 1045, 187 P.3d 750 (2008) to support its argument. However, that citation to "four equitable grounds" that may support the award of attorney's fees is taken from the dissent, and the Supreme Court has granted review of the case. *Noble v. Safe Harbor Family Preservation Trust*

The Local argues that the Fire District's "refusal to proceed to arbitration" and the "trial court's entry of summary judgment establish that the Fire District has acted in "bad faith" and supports an award of attorney's fees as a matter of equity." Resp Brief; 18. The Local's argument that the Fire District's failure to "address" the *Mount Adams School District v Cook* case is definitive of the "absence of a good faith legal argument" by the Fire District. Resp Brief; 18 The Local's misplaced reliance on the *Mount Adams School District* case has already been discussed in this Reply, and will not be repeated here. The sole factual basis for the Local's claim is that the Fire District refused to engage in a grievance process over the Parrish termination. For all of the reasons set forth in this appeal, that is a good faith dispute over the scope of the CBA grievance and appeal provisions.

It is admitted by the Local that neither the contract nor a statute authorizes an award here. In an appropriate case, the equitable ground of "bad faith" may justify

attorney fees. *Rogerson Hiller Corp. v. Port of Port Angeles*, 96 Wn.App. 918, 927, 982 P.2d 131 (1999) (quoting *In re Recall of Pearsall-Stipek*, 136 Wn.2d 255, 267 & n. 6, 961 P.2d 343 (1998)). The three types of bad faith recognized as warranting attorney fees include prelitigation misconduct, procedural bad faith, and substantive bad faith. *Id.* Prelitigation misconduct refers to obstinate conduct in bad faith to enforce a clearly valid legal right that wastes private and judicial resources. *Id.* at 927-28. Procedural misconduct includes vexatious conduct during litigation and is unrelated to the merits of the case. *Id.* at 928. Substantive bad faith occurs when a party intentionally brings a frivolous claim, counterclaim, or defense for the purpose of harassment. *Id.* at 929.

To the extent that the Local is arguing “prelitigation conduct” or “substantive bad faith” as the basis for its demand, both arguments must fail. At the summary judgment, the trial court made no finding of bad faith on either ground, did not award the Local any attorney’s fees, and reserved the entire issue of attorney’s fees. Even the mere bringing of a frivolous claim is not enough for an award of attorneys fees; there must be evidence of an intentionally frivolous claim brought for the purpose of harassment. *In re Pearsall-Stipek*, In addition, the trial court must make a finding that the party acted in bad faith; failure to do so means a sanctioning attorney fee award must be reversed for abuse of discretion. *Id.*, at 267. Absent an express finding of bad faith by the trial court, an appellate court will not assume bad faith, even where record supports it. *State v. S.H.*, 102 Wn.App. 468, 479, 8 P.3d 1058 (2000)

In this case, the trial judge specifically refused to make finding of bad faith, striking that language from the Local’s proposed summary judgment order. CP 228

Instead of finding the Fire District's position frivolous, the trial court found that there were "very meaningful" issues to be determined, but that those would have to be presented to the arbitrator in dealing with the labor contract. RP 8 . The Fire District's actions have not been in bad faith nor are they frivolous in any manner. It is the Fire District's duty to enforce the public policy set forth above in the interests of the safety of its employees as well as the public.

For all of these reasons, the Local's request for award of attorney's fees must be denied.

### **3. CONCLUSION**

The trial court's summary judgment order renders the Fire District's entire "probationary" testing and evaluation process meaningless, violates public policy, and re-writes the contract of the parties. For all of these reasons, the court should reverse the decision of the trial court, vacate the order granting summary judgment, and remand the case to the superior court.

Respectfully submitted this 4 day of September, 2009.



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Thomas G. Burke      WSBA# 6577  
Attorney for Appellant

## **Appendix**

FILED  
COURT OF APPEALS  
DIVISION II

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No. 38711-5-II

STATE OF WASHINGTON

BY \_\_\_\_\_  
DEPUTY

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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CLARK COUNTY FIREFIGHTERS LOCAL 3674

Plaintiff/Respondent

v.

CLARK COUNTY FIRE DISTRICT NO. 11

Defendant/Appellant

---

On appeal from Clark County Superior Court  
Cause No. 08-2-03386-8  
The Honorable Robert Harris

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DECLARATION OF SERVICE

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Thomas G. Burke, WSBA #6577  
Burke Law Offices, Inc. PS  
612 South 227<sup>th</sup> Street  
Des Moines, WA 98198  
206-824-5630  
Attorney for Appellant

ORIGINAL

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

I am a paralegal for Thomas G. Burke, and on the below indicated date, I mailed a copy(ies) of the following documents:

- Appellant's Reply Brief

To the following parties:

|   |   |
|---|---|
| David Snyder<br>Snyder & Hoag, LLC<br>1007 NE Broadway, Suite 221<br>Portland, OR 97212 | VIA:<br>ABC Legal Messenger <input type="checkbox"/><br>U.S. Mail <input checked="" type="checkbox"/><br>Facsimile _____ <input type="checkbox"/><br>E-mail at <a href="mailto:dsnyder@snyderandhoagllc.com">dsnyder@snyderandhoagllc.com</a> <input checked="" type="checkbox"/> |
|---|---|

Signed in Des Moines, Washington this 4th day of September, 2009.

BURKE LAW OFFICES, INC. PS

  
\_\_\_\_\_  
Jeannie L. Kenyon  
Paralegal to Thomas G. Burke

**BURKE LAW OFFICES INC., P.S.**

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THOMAS G. BURKE  
ATTORNEY AT LAW  
T\_G\_BURKE@MSN.COM

*OF COUNSEL:*  
BRIAN K. SNURE  
CLARK B. SNURE

JEANNIE L. KENYON  
PARALEGAL

September 4, 2009

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RE: Case No. 38711-5-II  
Clark Co. Firefighters Local 3674 v. Clark County Fire District No. 11

Dear Clerk:

Enclosed please find Appellant's Reply Brief along with a copy to conform and return to me in the enclosed envelope.

If you have any questions, please do not hesitate to contact me. Thank you for your assistance.

Very Truly Yours,



Jeannie L. Kenyon  
Paralegal to Thomas G. Burke

/jlk  
Enclosure  
cc: David Snyder

Clark 11. 2009-09-004. Court of Appeals.doc