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No. 54300-8

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

BELLEVUE JOHN DOES *et al.*,
Appellants/Cross-Respondents,

v.

BELLEVUE SCHOOL DISTRICT NO. 405, FEDERAL
WAY SCHOOL DISTRICT NO. 210 AND SEATTLE
SCHOOL DISTRICT NO. 1,
Respondents,

and

THE SEATTLE TIMES COMPANY,
Respondent/Cross-Appellant

BELLEVUE SCHOOL DISTRICT'S RESPONSE TO
SEATTLE TIMES COMPANY'S SUPPLEMENTAL
BRIEF

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
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ORIGINAL

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TABLE OF AUTHORITIES

Cases

Confederated Tribes v. Johnson, 135 Wn.2d 734, 958 P.2d
260 (1998) 1

Statutes

RCW 42.17.320 & -.330 2
RCW 42.17.340(4)..... 1

The Bellevue School District ("BSD") respectfully submits this response to The Seattle Times' Supplemental Brief of August 19, 2004.

BSD generally agrees with and adopts the arguments of the Federal Way School District in its Response also filed this date. *Confederated Tribes v. Johnson*, 135 Wn.2d 734, 958 P.2d 260 (1998), forecloses award of the Times' attorneys fees against BSD. The Times did not and cannot "prevail against" the BSD in this matter, RCW 42.17.340(4). As the trial court's decision notes, by February 14, 2003, when the Times made an actual records request concerning the matters at issue here (after it was pointed out to the Times earlier in February 2003 that there was no actual request pending, CP 2714), this litigation was already commenced and the court was supervising the process of production of records. BSD merely cooperated in the process ordered by the court, and did nothing to restrict it.

BSD had earlier (January 10, 2003) produced the information summary drawn from records as requested by the Times in its initial December 2002 request, but withheld employees' names temporarily pending notice to them and their union. That notice triggered this litigation brought by affected employees. CP 135-148; 149-51; 199-203; 2710-18.

The Times appears to argue that it "prevailed against" BSD because it eventually gained access to some of the employee names that were temporarily withheld pending this process, notwithstanding that there was no true records request pending at this time.

BSD believes that in notifying affected employees, it did the only appropriate and decent thing upon receiving the Times' initial request for summaries of information drawn from records. The statute's explicit authorization of such a procedure, RCW 42.17.320 & -.330, surely cannot be squared with the contention that giving such notice violates the law (as the Times contended repeatedly during December 2002 and early 2003, CP 136-48, 2710-18). Nor can it be squared with the contention that giving such notice amounts to being "against" the Times, such that the Times "prevails" against an agency that has given the notice (and indicated it will release requested items within a reasonable period if litigation does not prevent its doing so), even if litigation ensues and eventually results in some disclosure. BSD gave notice to affected employees and followed the court's directions once litigation was commenced, but did not oppose the Times. CP 136-48, 149-51, 199-203, 2707-09, 2710-18, 2719-30.

For these reasons, the Bellevue School District urges that the trial court's denial of The Times' attorneys fees against the District be affirmed.

Respectfully submitted this 17th day of September, 2004.

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By



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Attorneys for Respondent Bellevue School
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CERTIFICATE OF SERVICE

I, Becky Severin, certify that on September 17, 2004, I caused to be emailed and mailed by U.S. mail a copy of **Bellevue School District's Response to Seattle Times Company's Supplemental Brief** to:

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