

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SERVICE EMPLOYEES INTERNATIONAL  
UNION LOCAL 925

Complainant,

vs.

UNIVERSITY OF WASHINGTON

Respondent.

CASE 141275-U-24c

DECISION 14174 - PECB

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER

*Amy Bowles and Jacob Metzger*, Attorneys at Law, Douglas Drachler McKee & Gilbrough, for the Service Employees International Union Local 925.

*Kelly Oshiro*, Assistant Attorney General, Attorney General Nicholas W. Brown, for the University of Washington.

On August 2, 2024, the Service Employees International Union Local 925 (union) filed two unfair labor practice complaints against the University of Washington (employer) alleging that the employer interfered with employee rights by altering the status quo regarding merit pay increase eligibility for two groups of previously unrepresented professional employees. The affected employees are subject to two representation petitions filed by the union. One petition involves a group of advising employees,<sup>1</sup> and the other involves a group of employees in the Continuum College.<sup>2</sup>

Causes of action were found on both complaints in statements issued on August 5, 2024, and the employer filed answers to the complaints on August 23, 2024. The two complaints were

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<sup>1</sup> The petition regarding advising employees was docketed as case 139166-E-24.

<sup>2</sup> The petition regarding Continuum College employees was docketed as case 139167-E-24.

consolidated for further proceedings, and I held a hearing via Zoom videoconference on February 6 and 7, 2025. The parties filed written arguments on April 25, 2025, closing the record.

### ISSUES

The issues in this case, as stated in the cause of action statements issued August 5, 2024, are as follows:

Employer interference in violation of RCW 41.56.140(1) within six months of the date the complaint was filed by threats of reprisal or force or promise of benefit to Advising Staff by altering the status quo after the union filed its petition for representation.

Employer interference in violation of RCW 41.56.140(1) within six months of the date the complaint was filed, by threats of reprisal or force or promise of benefit to Continuum College Professional Staff by altering the status quo after the union filed its petition for representation.

For the reasons explained below, the employer interfered with employee rights when it withheld merit pay increase consideration from the advising and Continuum College employees at issue here after the union filed petitions seeking to represent those employees in new collective bargaining units. The merit pay increase process was part of the dynamic status quo at the time the petitions were filed. The employer was required to maintain that status quo during the pendency of the representation process. By failing to include the employees at issue here in the merit pay increase process, the employer committed unfair labor practices.

### BACKGROUND

The employer provides a variety of higher education services, including operating the Continuum College and providing advising services. Both the Continuum College and advising staff include professional employees who historically were unrepresented for collective bargaining purposes. As unrepresented employees, they do not receive automatic annual cost of living adjustments or negotiated annual salary increases. Instead, the employer decides each year whether to allocate funds in its budget for merit pay increases for unrepresented employees. If funding is allocated for

merit pay increases, the employer develops a detailed process to determine individual employee eligibility to receive a merit pay increase and how much of a merit pay increase those eligible employees will receive.

#### Historic Merit Pay Process

For at least the past ten years, except for one year during the COVID-19 pandemic, the employer has budgeted to include merit pay increases for unrepresented professional employees. The advising and Continuum College employees at issue here were eligible to participate in the merit pay increase process.

The merit pay increase process follows a general pattern. In the first half of each year, senior leadership and the board of regents determine how much funding, if any, will be set aside for a merit pay increase pool. This amount is determined largely by legislative action and funding and other budgetary priorities. When funds are allocated for merit pay increases, the employer's human resources compensation department develops a process guide to govern how merit pay increases are distributed. This includes setting threshold criteria that employees must meet to be eligible for a merit pay increase.

Once employees are deemed eligible, the department heads decide how much of an increase each eligible employee will receive. That discretion is limited by further parameters that are set forth in the process guide. Those parameters include the overall amount available to each department for merit pay increases and setting the minimum and maximum amount individual eligible employees can receive if they are deemed eligible. The process guide requires that eligible employees receive a merit pay increase. Department heads do not have the discretion to deny a merit pay increase to any eligible individual employees. At the end of the process, merit pay increases are effective on September 1 of each year.

#### The 2024 Merit Pay Process

The 2024 merit pay increase process followed the same pattern as in earlier years. In the first half of the year, senior leadership and the board of regents evaluated legislative action and budget priorities and decided to budget a merit pay increase pool that was equivalent to a 3 percent average

wage increase spread out amongst all employees. While that process played out, the employer's human resources compensation department developed a process guide that defined eligibility and how merit pay increases would be divvied up.

As is relevant in this case, the process guide had specific eligibility requirements in order for employees to receive a merit pay increase. Employees who do not meet those requirements are ineligible and removed from the pool of employees receiving a merit pay increase. Once the ineligible employees were removed and the remaining pool of eligible employees had been identified, department heads then had discretion to divide up their department's share of the merit pay increase pool between their eligible employees. Department heads could give different employees different merit pay increase amounts, so long as they did not exceed their department's overall allocation. Additionally, the process guide required that eligible employees receive no less than a 0.5 percent merit pay increase and no greater than a 10 percent increase. Department heads did not have discretion to give otherwise eligible employees a 0 percent merit pay increase.

The timing of these events are important since key aspects of the merit pay increase process occurred prior to the union filing the representation petitions on June 28, 2024. Namely, on June 13, 2024, the employer, through its board of regents, formalized its decision to allocate funds for merit pay increases for professional employees. Prior to that final approval, the employer already defined the process for determining eligibility and how much each employee would receive. It was announced that those increases would be effective September 1, 2024.

After the petitions were filed, the employer amended the process guide to exclude the petitioned-for employees from merit pay consideration during the processing of those petitions. As a result, those employees did not receive merit pay increases on September 1, 2024, regardless of their eligibility status under the process guide. The employer cites its obligation under the Commission's existing rules, WAC 391-25-140, to maintain the status quo during the pendency of the petition processing, as the reason for excluding those employees from the merit pay process.

The Parties' Factual Stipulations

In preparation for the hearing, the parties conferred and agreed to certain factual stipulations that form the key background for this case.<sup>3</sup> In addition, there was substantial testimony and documentary evidence admitted at hearing regarding those facts. After reviewing the record, I find that the evidence offered at hearing is consistent with the stipulations and accept these factual stipulations as part of this decision. The stipulated facts are as follows:

1. On June 28, 2024, Service Employees International, Local 925 ("Union") filed and served a Representation Petition to represent a bargaining unit of Advising Professional Staff employees ("Advising Professional Staff") employed by University of Washington ("UW") and a separate Representation Petition to represent a bargaining unit of Professional Staff employees employed by UW within the Continuum College (CC Professional Staff).
2. The petitioned-for employees in the Advising Professional Staff and CC Professional Staff petitioned-for bargaining units are "Professional Staff" subject to the policies in UW's Professional Staff Program.
3. The UW's Fiscal Year calendar is from July 1<sup>st</sup> through June 30. The UW's Fiscal Year for FY 2025 is July 1, 2024, to June 30, 2025.
4. The petitioned-for employees in both units who are-merit eligible have participated in the merit pay process in each fiscal year that the UW Board of Regents has adopted a budget that includes funding for merit pay increases for professional staff prior to fiscal year 2025.
5. On January 16, 2024, UW President Ana Marie Cauce and Vice Provost Tricia Serio sent an email addressed to "Colleagues" that they anticipated authorization of a 3% base merit pay increase pool for professional staff contingent on legislative outcomes and projected financial results of clinical and auxiliary operations. The email directed colleagues to proceed with planning for annual performance review and merit processes for nonrepresented faculty and staff effective September 1, 2024. Unit administrators and the UW faculty senate were copied on the email.
6. On April 16, 2024, UW's Executive Office of the President and Provost sent a letter to UW Deans, Chancellors, Vice Presidents, and Vice Provosts, at each of its campuses (Seattle, Bothell, and Tacoma) stating that "subject

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<sup>3</sup> The parties' stipulations were admitted into the record as joint exhibit 15.

to final approval by the Board of Regents on June 13, 2024, this letter provides authorization for 2024-25 (FY25) compensation increases for non-represented...professional staff.” The letter states that “after considering financial forecasts and reflecting upon discussion with the Faculty Senate and Committee on Planning and Budgeting (SCPB) and the Board of Deans and Chancellors (BODC), we are authorizing a total **3% salary increase pool**” inclusive of both merit increases for eligible populations and a centrally funded unit adjustment for faculty. The letter notes that “this pool is authorized and partially funded by the state of Washington operating budget, as signed by Governor Jay Inslee.” The referenced merit increases for fiscal year 2025 will be effective on September 1, 2024. The letter to each campus was signed by UW President Ana Marie Cauce and UW Provost and Executive Vice President, Tricia R. Serio.

7. All Merit-Eligible professional employees employed by UW on September 1, 2024, must receive a merit increase unless they are determined not to be meritorious or have had an event that precludes them from receiving merit as outlined in the Fiscal Year 2025 (FY25) Process guide. The “FY25 Process Guide” lists the following events that preclude the petitioned-for employees in both units from receiving merit pay increases on September 1, 2024:
  - received a non-meritorious performance review, or failed to submit required materials for review;
  - received a salary increase as a result of an in-grade adjustment since March 31, 2024;
  - Was hired by UW since March 31, 2024;
  - changed job or sup org since March 31, 2024, and received an upward salary adjustment since March 31, 2024, or had a position review with an upward compensation change;
  - has a retirement or resignation date effective prior to September 1, 2024, and termination has been processed in Workday or will be terminated prior to September 1, 2024;
  - a performance review has not been completed in the previous 12 months.
8. On June 13, 2024, The UW Board of Regents, pursuant to its authority under RCW 28B.15.120 and the Bylaws of the Board of Regents, approved the UW Academy budget for fiscal year 2025 (FY25), which includes funding for merit pay to increase professional staff salaries by 3%, effective

September 1, 2024, as recommended by UW's Executive Office of the President and Provost.

9. When the Union filed the representation petitions on June 28, 2024, none of the petitioned for Advising or CC professional staff titles/job profiles were listed as "not included" in the "FY25 Process Guide."
10. After the Union filed its petitions, UW changed the "FY25 Process Guide" to add the petitioned-for Advising and CC Professional Staff to the list of "Professional Staff Job Profiles Not Included in the Merit Process." Specifically, UW changed this section of the "FY25 Process Guide" by adding the following text:

"On June 28, 2024, SEIU 925 filed two petitions with PERC... to represent:

- Professional Staff employees who advise students or prospective students on financial aid funding for education, enrollment and admissions, academics and courses, career paths, and professional development
- Professional staff in Continuum College

For each petition, PERC will conduct an investigation to determine which of the petitioned-for job classes/titles should be in each unit. After unit composition is determined for each unit, PERC may hold an election in which employees in the unit decide on union representation.

During the time between the filing of the petitions and the resolution of the question of union representation, Washington collective bargaining law requires UW to maintain a state of 'dynamic status quo.' While UW may implement final decisions already made, UW must not make any decisions to change wages (i.e. retention adjustments, in-grade compensation changes, merit), hours (i.e. FTE changes) and working conditions (i.e. schedule change, work location, or a material change in workload) for employees included the representation petitions until the question of union representation for those employees has been decided. The public policy underlying this legal requirement is that employees should vote without potentially being influenced by such changes. To comply with the dynamic status quo rule, employees included in [these] groups below will not be merit eligible, unless advised by labor relations:

1. Professional Staff employees who advise students or prospective students on financial aid funding for education, enrollment and admissions, academics and courses, career paths, and professional development

## 2. Professional staff in Continuum College”

11. On September 19, 2024, PERC interim certified the Union as the exclusive bargaining representative of the CC Professional Staff subsequent to an election.

### The Status of the Merit Pay Process as of June 28, 2024

Based upon the stipulated facts and evidence presented at the hearing, the employer had already exercised key aspects of its discretion to provide merit pay increases before the union filed its representation petitions on June 28, 2024. Namely, it had authorized a 3 percent merit pool and issued the process guide defining parameters for employees to be eligible for a merit increase. The only discretionary act left was for department heads to divvy up their portion of the 3 percent pool between their eligible employees. However, that discretion was limited by the process guide in that eligible employees would receive a merit pay increase of no less than 0.5 percent, no more than 10 percent, and the overall average could not exceed the 3 percent pool allocated to the department. Department heads did not have discretion to completely deny a merit pay increase to an otherwise eligible employee.

Put another way, on June 27, 2024, the day before the petitions were filed, eligible employees that would be included in the petitions were in line to receive a merit pay increase effective September 1, 2024. But, on June 28, 2024, the employer removed those employees from the merit pay process, taking them out of consideration for a merit pay increase effective September 1, 2024. The employer based this decision solely on its view that including the employees in the merit pay increase process would violate its duty to maintain the status quo during the representation process.<sup>4</sup>

If the union had not filed the representation petitions, those eligible employees would have received a merit pay increase on September 1, 2024.

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<sup>4</sup> During the processing of the petitions, the parties agreed that certain employees who were originally included in one of the petitions would not be included after all and would instead remain unrepresented. As those employees were “released” from the petition, the employer included them in the merit pay process.



ANALYSISApplicable Legal Standard(s)*Burden of Proof*

In unfair labor practice proceedings, the ultimate burdens of pleading, prosecution, and proof all lie with the complainant. WAC 391-45-270(1)(a); *City of Seattle*, Decision 8313-B (PECB, 2004). This burden of proof requires the complainant to show, by a preponderance of the evidence, that the respondent has committed the complained-of unfair labor practice. *Whatcom County*, Decision 8512-A (PECB, 2005).

*Employer's Status Quo Obligations*

Long-standing Commission precedent and rules require an employer to maintain the status quo with respect to the wages, hours, and other terms and conditions of employment of employees affected by a representation petition while it is pending before PERC. *Klickitat County*, Decision 5462 (PECB, 1996); WAC 391-25-140(2). The relevant status quo is determined as of the date of the filing of the petition. *Valley View Sewer District*, Decision 8963 (PECB, 2005). Changes to mandatory subjects of bargaining during the pendency of a representation petition may improperly affect the laboratory conditions necessary to the free exercise by employees of their right to vote. *Clark County*, Decision 5373 (PECB, 1995) (citing *Mason County*, Decision 1699 (PECB, 1983)), *aff'd*, Decision 5373-A (PECB, 1996). The obligation to maintain the status quo is premised on preventing employer interference in the election process in violation of RCW 41.56.140(1).

Whether a particular item is a mandatory subject of bargaining is a mixed question of law and fact for the Commission to decide. WAC 391-45-550. To decide, the Commission applies a balancing test on a case-by-case basis. The Commission balances “the relationship the subject bears to [the] ‘wages, hours and working conditions’” of employees and “the extent to which the subject lies ‘at the core of entrepreneurial control’ or is a management prerogative.” *International Association of Fire Fighters, Local Union 1052 v. Public Employment Relations Commission (City of Richland)*, 113 Wn.2d 197, 203 (1989). The decision focuses on which characteristic predominates. *Id.* The Supreme Court held in *City of Richland* that “[t]he scope of mandatory bargaining thus is limited to matters of direct concern to employees” and that “[m]anagerial decisions that only remotely

affect ‘personnel matters’, and decisions that are predominantly ‘managerial prerogatives’, are classified as nonmandatory subjects.” *Id.* at 200.

### *Dynamic Status Quo*

The Commission recognizes that occasionally the status quo “is not static and the employer needs to take action to follow through with changes that were set in motion prior to the union filing a representation petition.” *City of Seattle*, Decision 9938-A (PECB, 2009) (citing *King County*, Decision 6063-A (PECB, 1998)). This concept is referred to as the “dynamic status quo.” Changes that are part of the dynamic status quo are not seen as disruptive to laboratory conditions in a representation proceeding because the changes are already expected by employees. If the changes were set in motion and communicated to employees prior to the filing of the representation petition, employees should recognize that the changes are not related to the petition and therefore should not undermine support for a union. *King County*, Decision 6063-A. Operation of the dynamic status quo ensures that petitions do not block routine, nondiscretionary changes to employee working conditions. *City of Seattle*, Decision 9938-A. There is no requirement that a planned change be 100 percent complete in order to become part of the dynamic status quo. *King County*, Decision 6063-A; *State – Attorney General*, Decision 10733-A (PSRA, 2011). At the same time, the intended changes to employee working conditions must be sufficiently definite as to form employee expectations. *Central Washington University*, Decision 10967-A (PECB, 2012); *Ben Franklin Transit*, Decision 13249 (PECB, 2020).

### Application of Standard(s)

#### *Merit Pay Increase Eligibility is a Mandatory Subject*

To determine whether the employer’s decision is a mandatory subject, the *City of Richland* balancing test weighs the employees’ interest in wages against the extent to which the employer’s decision is a management prerogative. Wages are unquestionably a mandatory subject of bargaining. *University of Washington*, Decision 10608-A (PSRA, 2011); RCW 41.56.030(4). Employees have a strong interest in subjects related to wages, such as the merit pay eligibility at issue in this case. The change in merit pay eligibility is directly related to wages because the merit pay process was the primary way these employees received annual wage increases.

On the management prerogative side of the equation, the employer cites its view of its legal obligation to maintain the status quo as its reason to remove the Continuum College and advising employees from merit pay eligibility. Following the law is a key management interest. Of course, in this case, the legal question of whether the merit pay increases were part of the status quo is the crux of this dispute.

Balancing the employees' and employer's interests in the decision to remove employees from merit pay eligibility, the employees' interest in wages outweighs the extent to which the decision is a management prerogative. The decision's relationship to employee wages is therefore the predominant characteristic under the *City of Richland* balancing test. Merit pay eligibility is a mandatory subject. If found to be part of the status quo, the employer cannot unilaterally change merit pay eligibility during the pendency of the representation process.

*Employee Eligibility for Merit Pay Increases Was Part of the Status Quo When the Petitions Were Filed*

By June 13, 2024, the employer set in motion its decision to alter the status quo as it relates to professional employees' wages effective September 1, 2024. It did so when it formally adopted the budget that included the 3 percent merit pay increase pool and issued a process guide, establishing eligibility criteria and the parameters that department heads must follow when divvying up their share of the 3 percent merit pay increase pool. The employees at issue were included in the process at that point. Therefore, the dynamic status quo included those employees being part of the merit increase process that was outlined in the process guide.

Cases evaluating whether a wage increase is part of the dynamic status quo depend on what level of discretion was left to the employer to implement the wage increase. On one hand, when a wage increase was budgeted, scheduled, and announced prior to the filing of a representation petition, that increase became part of the dynamic status quo. Wage increases can include across-the-board "market adjustment" increase[s]," such as those in *Valley View Sewer District* which had been budgeted, scheduled, and implemented for other employees not included in a representation petition. They can also include step increases, such as those triggered by an employee's years of service. *Lewis County Public Utility District*, Decision 7277-A (PECB, 2002).

On the other hand, there are general wage increases where discretion is yet to be exercised, and increases have not been set in motion before the filing of a representation petition. In those cases, any later wage increase that was not set in motion prior to the filing of a representation petition would not be part of the status quo. *King County Library System*, Decision 9039 (PECB, 2005) (“The difference is that ‘general wage increases are usually far less concrete, do not follow an established or fixed formula, and allow the employer discretion as to whether to grant an increase at all.’” (citing *Lewis County Public Utility District*, Decision 7277-A)).

This case is more similar to the situation in *Valley View Sewer District* where an increase had been budgeted, announced, and implemented for nonaffected employees. Similar to that situation, in this case, the key aspects of the employer’s discretion to set in motion the merit pay increase process occurred prior to the filing of the petitions. The employer’s leadership and board of regents determined that they would fund merit pay increases. They budgeted a pool of funds, expressed as 3 percent of the applicable payroll dollars, to be allocated to the merit pay increase pool. The employer’s compensation department generated a process guide for determining who would be eligible to receive merit pay increases. The guide required that eligible employees receive no less than a 0.5 percent increase and no more than a 10 percent increase, with the specific amount to be determined by individual department heads, so long as they did not expend more than their share of the 3 percent overall merit pay increase pool.

In short, before the petitions had been filed, the employer approved, budgeted for, announced, and developed a detailed process guide that would guide further decisions regarding the implementation of the 3 percent merit pay increases. The effective date for the increases had also been set for September 1, 2024. The employees at issue here could reasonably expect to be included in the merit pay increase process before the petitions were filed and, if eligible under that process, receive a merit pay increase. As a result, the merit pay increase process was part of the dynamic status quo when the petitions were filed.

The wrinkle that makes this case different from *Valley View Sewer District* is the fact that the department heads had yet to determine and distribute their share of the 3 percent merit increase pool, the one discretionary act left in the merit pay increase process. While this fact differentiates

this case, I am not persuaded that the remaining discretionary act removed merit pay increase eligibility from the dynamic status quo.

There is no requirement that a planned change be 100 percent complete in order to become part of the dynamic status quo. *King County*, Decision 6063-A. While the department heads were still left to decide specific percentages to award their pool of eligible employees, the process guide required them to provide eligible employees with no less than a 0.5 percent increase and no more than a 10 percent increase. Importantly, department heads did not have discretion to deny a merit pay increase to eligible employees, which is what happened here. The discretion to award eligible employees with a merit pay increase had already been exercised by the employer.

The employer argues that, because the specific amount merit-eligible employees would receive had not been communicated to individual employees before the petitions were filed, the increase was not part of the status quo that employees could reasonably expect. This argument is unpersuasive. Beginning in January 2024, the employer took public actions, consistent with what it had done in previous years, to budget, announce, implement, and plan for the merit pay increase process. Those decisions and actions were announced along the way, and the process guide had been developed. It is unconvincing that employees would not be aware of public information regarding merit pay increase developments, as it was the primary way many of them would receive a wage adjustment.

The decision to remove the employees from the merit pay increase process was made after and solely because of the filing of the representation petitions on June 28, 2024. The change was inconsistent with the merit pay increase process that was set in motion prior to the filing of the representation petitions. Therefore, the employer violated its obligation to maintain the status quo by withholding the petitioned-for employees from further consideration in the merit pay increase process.

CONCLUSION

The union met its burden to establish that the employer committed an unfair labor practice when it withheld eligible employees from the merit pay increase process after the process had been finalized, and those increases had been scheduled prior to the filing of the representation petitions.

REMEDY

“Where the commission finds that a party has committed an unfair labor practice, it must ‘issue [an] appropriate remedial order.’” *Amalgamated Transit Union, Local 1384 v. Kitsap Transit*, 187 Wn. App. 113, 126 (2015) (citing RCW 41.56.160(1)). An appropriate remedial order requires the offending party “to cease and desist from [the] unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy of” chapter 41.56 RCW. *Id.* (citing RCW 41.56.160(2)). The standard remedy includes ordering the offending party to cease and desist and, if necessary, to restore the status quo, make employees whole, post notice of the violation, and publicly read the notice into the record. *City of Anacortes*, Decision 6863-B (PECB, 2001).

The standard remedy is appropriate here. Regarding the make whole portion, I am ordering the employer to retroactively apply a 3 percent merit pay increase to all affected employees who are otherwise eligible and not precluded from a merit pay increase. It is true that as of June 28, 2024, the date the petitions were filed, the department heads still had the discretion to award anywhere between 0.5 percent and 10 percent to eligible employees. However, the passage of time has rendered that discretion moot as it relates to the employees affected by the unlawful change in the status quo regarding the September 1, 2024, merit pay increase.

The record indicates that otherwise-eligible employees who had been included in one of the petitions when they were filed but then were released and not included in the petition after September 1, 2024, received a retroactive 3 percent wage increase. To effectuate the purposes of RCW 41.56, the employer is ordered to make affected employees whole by retroactively increasing their salary by 3 percent, effective September 1, 2024.

FINDINGS OF FACT

1. The University of Washington is a public employer within the meaning of RCW 41.56.030(13).
2. The Service Employees International Union Local 925 is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The employer provides a variety of higher education services, including operating the Continuum College and providing advising services. Both the Continuum College and advising staff include professional employees who historically were unrepresented for collective bargaining purposes.
4. Unrepresented professional employees do not receive automatic annual cost of living adjustments or negotiated annual salary increases. Instead, the employer decides each year whether to allocate funds in its budget for merit pay increases for unrepresented employees.
5. For at least the past ten years, except for one year during the COVID-19 pandemic, the employer has budgeted to include merit pay increases for unrepresented professional employees. The advising and Continuum College employees at issue here were eligible to participate in the merit pay increase process.
6. In preparation for the hearing, the parties agreed to factual stipulations, which, after reviewing the record as a whole, I adopt the following as part of my findings of fact:
  1. On June 28, 2024, Service Employees International, Local 925 (“Union”) filed and served a Representation Petition to represent a bargaining unit of Advising Professional Staff employees (“Advising Professional Staff”) employed by University of Washington (“UW”) and a separate Representation Petition to represent a bargaining unit of Professional Staff employees employed by UW within the Continuum College (CC Professional Staff).
  2. The petitioned-for employees in the Advising Professional Staff and CC Professional Staff petitioned-for bargaining units are “Professional Staff” subject to the policies in UW’s Professional Staff Program.

3. The UW's Fiscal Year calendar is from July 1<sup>st</sup> through June 30. The UW's Fiscal Year for FY 2025 is July 1, 2024, to June 30, 2025.
4. The petitioned-for employees in both units who are-merit eligible have participated in the merit pay process in each fiscal year that the UW Board of Regents has adopted a budget that includes funding for merit pay increases for professional staff prior to fiscal year 2025.
5. On January 16, 2024, UW President Ana Marie Cauce and Vice Provost Tricia Serio sent an email addressed to "Colleagues" that they anticipated authorization of a 3% base merit pay increase pool for professional staff contingent on legislative outcomes and projected financial results of clinical and auxiliary operations. The email directed colleagues to proceed with planning for annual performance review and merit processes for nonrepresented faculty and staff effective September 1, 2024. Unit administrators and the UW faculty senate were copied on the email.
6. On April 16, 2024, UW's Executive Office of the President and Provost sent a letter to UW Deans, Chancellors, Vice Presidents, and Vice Provosts, at each of its campuses (Seattle, Bothell, and Tacoma) stating that "subject to final approval by the Board of Regents on June 13, 2024, this letter provides authorization for 2024-25 (FY25) compensation increases for non-represented...professional staff." The letter states that "after considering financial forecasts and reflecting upon discussion with the Faculty Senate and Committee on Planning and Budgeting (SCPB) and the Board of Deans and Chancellors (BODC), we are authorizing a total **3% salary increase pool**" inclusive of both merit increases for eligible populations and a centrally funded unit adjustment for faculty. The letter notes that "this pool is authorized and partially funded by the state of Washington operating budget, as signed by Governor Jay Inslee." The referenced merit increases for fiscal year 2025 will be effective on September 1, 2024. The letter to each campus was signed by UW President Ana Marie Cauce and UW Provost and Executive Vice President, Tricia R. Serio.
7. All Merit-Eligible professional employees employed by UW on September 1, 2024, must receive a merit increase unless they are determined not to be meritorious or have had an event that precludes them from receiving merit as outlined in the Fiscal Year 2025 (FY25) Process guide. The "FY25 Process Guide" lists the following events that preclude the petitioned-for employees in both units from receiving merit pay increases on September 1, 2024:
  - received a non-meritorious performance review, or failed to submit required materials for review;



- received a salary increase as a result of an in-grade adjustment since March 31, 2024;
  - Was hired by UW since March 31, 2024;
  - changed job or sup org since March 31, 2024, and received an upward salary adjustment since March 31, 2024, or had a position review with an upward compensation change;
  - has a retirement or resignation date effective prior to September 1, 2024, and termination has been processed in Workday or will be terminated prior to September 1, 2024;
  - a performance review has not been completed in the previous 12 months.
8. On June 13, 2024, The UW Board of Regents, pursuant to its authority under RCW 28B.15.120 and the Bylaws of the Board of Regents, approved the UW Academy budget for fiscal year 2025 (FY25), which includes funding for merit pay to increase professional staff salaries by 3%, effective September 1, 2024, as recommended by UW's Executive Office of the President and Provost.
9. When the Union filed the representation petitions on June 28, 2024, none of the petitioned for Advising or CC professional staff titles/job profiles were listed as "not included" in the "FY25 Process Guide."
10. After the Union filed its petitions, UW changed the "FY25 Process Guide" to add the petitioned-for Advising and CC Professional Staff to the list of "Professional Staff Job Profiles Not Included in the Merit Process." Specifically, UW changed this section of the "FY25 Process Guide" by adding the following text:
- "On June 28, 2024, SEIU 925 filed two petitions with PERC... to represent:
- Professional Staff employees who advise students or prospective students on financial aid funding for education, enrollment and admissions, academics and courses, career paths, and professional development
  - Professional staff in Continuum College

For each petition, PERC will conduct an investigation to determine which of the petitioned-for job classes/titles should be in each unit. After unit composition is determined for each unit,

PERC may hold an election in which employees in the unit decide on union representation.

During the time between the filing of the petitions and the resolution of the question of union representation, Washington collective bargaining law requires UW to maintain a state of 'dynamic status quo.' While UW may implement final decisions already made, UW must not make any decisions to change wages (i.e. retention adjustments, in-grade compensation changes, merit), hours (i.e. FTE changes) and working conditions (i.e. schedule change, work location, or a material change in workload) for employees included the representation petitions until the question of union representation for those employees has been decided. The public policy underlying this legal requirement is that employees should vote without potentially being influenced by such changes. To comply with the dynamic status quo rule, employees included in [these] groups below will not be merit eligible, unless advised by labor relations:

1. Professional Staff employees who advise students or prospective students on financial aid funding for education, enrollment and admissions, academics and courses, career paths, and professional development
2. Professional staff in Continuum College"

11. On September 19, 2024, PERC interim certified the Union as the exclusive bargaining representative of the CC Professional Staff subsequent to an election.

7. The employer had already exercised key aspects of its discretion to provide merit pay increases to before the union filed its representation petitions on June 28, 2024.
8. The only discretionary act left was for department heads to divvy up their portion of the 3 percent pool between their eligible employees. That discretion was limited by the process guide in that eligible employees would receive a merit pay increase of no less than 0.5 percent, no more than 10 percent, and the overall average could not exceed the 3 percent pool allocated to the department. Department heads did not have discretion to completely deny a merit pay increase to an otherwise eligible employee.

9. After the petitions were filed, the employer amended the process guide to exclude the petitioned-for employees from merit pay consideration during the processing of those petitions.
10. The petitioned-for employees did not receive merit pay increases on September 1, 2024, regardless of their eligibility status under the process guide.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under chapter 41.56 RCW and chapter 391-45 WAC.
2. By its actions described in findings of fact 1–10, the employer interfered with employee rights in violation of RCW 41.56.140(1) by altering the dynamic status quo with regards to merit pay consideration from advising and Continuum College employees after the union filed its petitions for representation seeking to represent those employees in new collective bargaining units.

#### ORDER

The University of Washington, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:
  - a. Withholding merit pay increase consideration from advising and Continuum College employees who are included in the petitions for representation filed by the Service Employees International Union Local 925 on June 28, 2024
  - b. In any other manner interfering with, restraining, or coercing its employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of chapter 41.56 RCW:
- a. Restore the dynamic status quo by reinstating the wages, hours, and working conditions that existed for the employees included in petitions 139166-E-24 and 139167-E-24 prior to the withholding of merit pay increase consideration found unlawful in this order.
  - b. Apply a 3 percent merit pay increase, retroactively to September 1, 2024, to all affected employees who are otherwise eligible and not precluded from a merit pay increase.
  - c. Contact the compliance officer at the Public Employment Relations Commission to receive official copies of the required notice for posting. Post copies of the notice provided by the compliance officer in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.
  - d. Read the notice provided by the compliance officer into the record at a regular public meeting of the Board of Regents of the University of Washington and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.
  - e. Notify the complainant, in writing, within 20 days following the date of this order as to what steps have been taken to comply with this order and, at the same time, provide the complainant with a signed copy of the notice provided by the compliance officer.
  - f. Notify the compliance officer, in writing, within 20 days following the date of this order as to what steps have been taken to comply with this order and, at the

same time, provide the compliance officer with a signed copy of the notice the compliance officer provides.

ISSUED at Olympia, Washington, this 25th day of July, 2025.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



E. MATTHEW GREER, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.



# RECORD OF SERVICE

ISSUED ON 7/25/2025

DECISION 14174 - PECB has been served electronically by the Public Employment Relations Commission to the parties and their representatives listed below. If no email address was provided, a paper copy was sent to the mailing address.

BY: ALYSSA GERCHAK

CASE 141275-U-24c

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