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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 925,

Petitioner,

v.

WASHINGTON STATE - THE PUBLIC
EMPLOYMENT RELATIONS
COMMISSION.

Respondent.

**PETITION FOR JUDICIAL
REVIEW**

Petitioner Service Employees International Union Local 925 (SEIU 925 or Union), petitions this Court for judicial review of a final decision issued by Respondent Public Employment Relations Commission (PERC), pursuant to RCW 34.05.570. Respondent PERC’s final decision for which Petitioner seeks judicial review is the Decision of Commission, in *University of Washington*, Decision 14174-A (PECB, 2026), issued on February 18, 2026.

I. PETITIONER

Petitioner SEIU 925 is a labor organization with its principal place of business in Seattle, King County, Washington. SEIU 925 represents approximately 8,500 employees employed by University of Washington (UW). Petitioner’s mailing address is:

1 Service Employees International Union (SEIU) Local 925
1914 N 34th St.
2 Seattle, WA 98103
3 Tel: (206) 322-3010

4 **II. PETITIONER’S ATTORNEYS**

5 Petitioner is represented by:

6
7 Jacob Metzger, WSBA No. 39211
8 Douglas Drachler McKee & Gilbrough LLP
1215 Fourth Avenue, Suite 1350
9 Seattle, WA 98161
Tel. (206)623-0900 x234

10 Amy Bowles, WSBA No. 33541
11 Douglas Drachler McKee & Gilbrough LLP
1215 Fourth Avenue, Suite 1350
12 Seattle, WA 98161
Tel. (206)623-0900

13 **III. IDENTIFICATION OF RESPONDENT AGENCY**

14 Respondent agency the Public Employment Relations Commission (PERC) is an
15 administrative agency of the State of Washington with jurisdiction over public sector labor
16 relations and collective bargaining, including the adjudication of unfair labor practice charges
17 pursuant to Chapter 41.56 RCW and Chapter 391-45 WAC. Respondent PERC’s mailing address
18 is:

19
20 PERC
21 PO Box 40919
Olympia, WA 98504-0919

22 **IV. IDENTIFICATION OF AGENCY ACTION AT ISSUE**

23 Petitioner seeks judicial review of PERCs Decision of Commission, *University of*
24 *Washington*, Decision 14174-A (PECB, 2026), issued on February 18, 2026, and attached here as

25 **Exhibit 1.** The Decision of Commission reversed in-part the hearing examiner’s Conclusions of

1 Law, and Order in *University of Washington*, Decision 14174 (PECB, 2025), attached here as
2 **Exhibit 2**. The hearing examiner determined that UW interfered with employee rights in violation
3 of RCW 41.56.140(1)¹ when it illegally altered the dynamic status quo during the pendency of
4 petitions for representation filed by the Union by revoking merit pay consideration from affected
5 employees included in the petitions. The Examiner ordered UW to restore the dynamic status quo
6 including by providing 3% merit pay increases to all affected employees, retroactive to September
7 1, 2024. In the Decision of Commission, PERC affirmed the hearing examiner’s conclusion of law
8 and remedy for affected employees in UW’s School of Medicine but reversed the hearing
9 examiner’s conclusions of law and ordered remedy for all UW departments other than the School
10 of Medicine.
11

12 Petitioner seeks review of those portions of the Decision of Commission that reversed in-
13 part the Conclusions of Law and Order of the Examiner.

14 **V. IDENTIFICATION OF PARTIES IN ADJUDICATIVE PROCEEDINGS**
15 **THAT LED TO PERC ACTION.**

16 The University of Washington is an institution of higher education and a party to the
17 adjudicative proceedings for which Petitioner seeks judicial review. The name and address of
18 UW’s representative and attorney in this matter are:

19 Banks Evans III
20 University of Washington
21 4320 Brooklyn Ave NE
22 PO Box 354960
23 Seattle, WA 98195-4960

24 Kelly Oshiro
25 Office of the Attorney General
PO Box 40145

¹ After the complaint was filed and the Examiner’s decision was issued, the Washington State Legislature enacted Senate Bill 5435 which reorganized and renumbered chapter 41.56 RCW so that what was previously RCW 41.56.140(1) is now RCW 41.56.045(1).

1 Olympia, WA 98504-0145

2 **VI. JURISDICTION AND VENUE**

3 This Petition for Judicial Review under the APA is properly filed in King County Superior
4 Court pursuant to RCW 34.05.514 including but not limited to because Petitioner SEIU 925's
5 principal place of business is in King County, and the proceedings involve UW which has its
6 principal office and a campus in King County. Petitioner has standing pursuant to RCW 34.05.530.
7

8 **VII. FACTS**

9 On June 28, 2024, Petitioner filed two representation petitions for employee employed by
10 UW: one for advising professional staff employees across UW and the other for a unit of
11 professional staff employees employed in UW's Continuum College. On August 2, 2024, SEIU
12 925 filed unfair labor practice complaints against UW on behalf of each petitioned-for unit alleging
13 that UW interfered with employee rights by altering the status quo when it revoked merit pay
14 eligibility for employees subject to the representation petitions because of the filing of the
15 petitions. PERC found causes of action on both complaints and issued cause of action statements
16 on August 5, 2024. UW filed answers to the complaints on August 23, 2024. PERC then
17 consolidated the complaints for further proceedings and a held a hearing via zoom videoconference
18 on February 6 and 7, 2025. The parties filed post-hearing briefs on April 25, 2025.
19

20 On July 25, 2025, the Examiner issued PERC's Findings of Fact, Conclusions of Law, and
21 Order in *University of Washington*, Decision 14174 (PECB, 2025) finding that UW illegally
22 interfered with employee rights when it altered the dynamic status quo by revoking merit pay
23 eligibility from affected employees included in the petitions. As a remedy, the Examiner ordered
24 UW to restore the dynamic status quo by reinstating the wages, hours and working conditions that
25 existed for the affected employees prior to UW's withholding of merit pay eligibility, including

1 by providing 3% merit pay increases to all otherwise eligible employees, retroactive to September
2 1, 2024.

3 UW filed a timely Notice of Appeal on August 14, 2025. UW filed an untimely appeal
4 brief on September 2, 2025, and the Union filed a motion to strike UW’s untimely appeal brief on
5 the same day. On September 3, 2025, the Union objected to the participation of PERC
6 Commissioner Henry Farber in the matter based on Commissioner Farber’s previous
7 representation of UW against SEIU 925 in cases before PERC. On September 15, 2025,
8 Commissioner Farber declined to recuse himself from this case.
9

10 On February 18, 2026, PERC issued its Decision of Commission (*University of*
11 *Washington*, Decision 14174-A (PECB, 2026) affirming in part, and reversing in part, the hearing
12 examiner’s Decision and Order. The Commission correctly affirmed and adopted the Examiner’s
13 Findings of Fact (1-10) and Conclusion of Law 1. The Commission incorrectly reversed the
14 Examiner’s decision regarding employees in all other UW departments/subdivisions, finding that
15 while UW “had determined an overall salary increase pool” prior to the filing of the petitions,
16 because UW had not determined the amount of merit increase each employee would receive when
17 the petitions were filed (other than in the School of Medicine), the increases were not part of the
18 dynamic status quo and therefore UW’s revocation of merit pay eligibility for affected employees
19 covered by the petitions did not illegally interfere with employee rights. Petitioner seeks judicial
20 review of this portion contained in Conclusions of Law 1 of the Decision of Commission. PERC’s
21 Decision of Commission (*University of Washington*, Decision 14174-A (PECB, 2026)) is the final
22 adjudicative Decision and Order of the agency in this matter.
23

24 **VIII. PETITIONER IS ENTITLED TO JUDICIAL REVIEW**
25

1 Petitioner SEIU 925 is entitled to judicial review pursuant to RCW
2 34.05.570(3)(d)(e)(g)(h) and (i) because PERC erroneously applied RCW 41.56.045(1)
3 (previously RCW 41.56.140(1)) to the facts of this case, the Decision of Commission is not
4 supported by evidence that is substantial when viewed in light of the whole record, a motion for
5 disqualification was made and improperly denied, the Decision of Commission is inconsistent
6 with PERCs rules, and is arbitrary and capricious. Additionally, the Petitioner has standing, has
7 exhausted all available administrative remedies, and has timely filed this Petition for Judicial
8 Review.
9

10 UW interfered with employee rights when it altered the status quo by excluding the
11 petitioned-for employees from the Fiscal Year 2025 (FY 25) merit process after its Board of
12 Regents adopted its FY25 operating budget that included funding to increase professional staff
13 salaries by 3% prior to the filing of the petitions. The adoption of the FY 25 budget by the Board
14 of Regents that included funding for these pay increases constitutes the exercise of discretion by
15 UW as to whether it would provide merit pay increases to professional staff employees for FY 25
16 and regarding employee eligibility to participate in the merit process. The FY 25 Merit Process,
17 including the fixed criteria for determining merit pay eligibility, was published prior to the
18 adoption of the FY 25 Operating Budget and became part of the dynamic status quo when the
19 Board of Regents adopted the budget prior to the filing of the petitions. UW was bound by the
20 adopted budget's mandate to increase professional staff salaries by 3% using the fixed criteria for
21 merit pay eligibility already published in the FY 25 Merit Process Guide and Merit Authorization
22 letters. After the Union filed its petitions, UW unlawfully altered the status quo by changing the
23 eligibility criteria in the FY 25 Merit Process making petitioned-for employees that were
24 previously eligible for merit pay increases, ineligible because of the filing of the petitions. The
25

1 Commission's decision that UW's retained discretion to determine merit increase amounts
2 between .5% and 10% does not remove it from the dynamic status quo because this discretion
3 could only be exercised within the confines of the fixed criteria of the Merit Process and was
4 therefore expected by employees and part of the dynamic status quo. The status quo when the
5 petitions were filed required UW to proceed with the merit process for employees covered by the
6 petitions and to provide a merit pay increase between .5% and 10% to each eligible employee. UW
7 unlawfully changed that status quo when it chose to make employees covered by the petitions
8 retroactively ineligible to participate in the merit process and provided 0% merit pay increases to
9 previously eligible employees only because of the filing of the petitions.
10

11 **IX. REQUEST FOR RELIEF**

12 Petitioner respectfully asks for judgment and an Order:

13 1. Reversing respondent's Conclusions of Law and Order in *University of Washington*,
14 Decision 14174-A (PECB, 2026) and finding that UW interfered with employee rights in
15 violation of RCW 41.56.045(1) (previously RCW 41.56.140(1)) by altering the dynamic status
16 quo with regards to merit pay consideration from advising and continuum college employees
17 after the Union filed its petitions for representation seeking to represent those employees in new
18 collective bargaining units and restoring the dynamic status quo by reinstating the wages, hours
19 and working conditions that existed for the employees included in the petitions prior to the
20 withholding of merit pay increase consideration.
21

22 2. Order UW to apply a 3% merit pay increase, retroactively to September 1, 2024, to all
23 affected employees who are otherwise eligible and not precluded from a merit pay increase and
24 provide all other standard PERC remedies.
25

3. Grant such other and further relief as the Court deems just.

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DATED this 20th day of March, 2026.

DOUGLAS DRACHLER MCKEE & GILBROUGH

/s/ Jacob Metzger
Jacob Metzger, WSBA #39211
Amy Bowles, WSBA #33541
1904 Third Ave. Ste. 1030
Seattle, WA 98101
Phone: (206) 623-0900, Fax: (206) 623-1432
Jacobm@ddmglaw.com
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Attorneys for Petitioner SEIU Local 925

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CERTIFICATE OF SERVICE

The undersigned attorney certifies that on the 20th day of March, 2026, a true copy of the foregoing was served via delivery on:

Office of the Executive Director of PERC
112 Henry Street NE, Suite 300
Post Office Box 40919
Olympia, WA 98504-0919

And was served by mail and email was served on:

Banks Evans III
University of Washington
Assistant Vice President, Labor Relations
4300 Roosevelt Way NE, Box 354960
Seattle, WA 98195
bankse@uw.edu

Kelly Oshiro
Office of the Attorney General
PO Box 40145
Olympia, WA 98504-0145

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED in Seattle, Washington this 20th day of March 2026.

/s/ Amy Bowles
Amy Bowles, WSBA #33541
Jacob Metzger, WSBA #39211
1904 Third Avenue, Suite 1030
Seattle, WA 98101
Telephone: (206) 623-0900
Facsimile: (206) 623-1432
amyb@ddmglaw.com
jmetzger@ddmglaw.com

EXHIBIT 1

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-A - PECB

DECISION OF COMMISSION

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.

SUMMARY OF DECISION

The essential issue before the Commission is whether the University of Washington (UW) altered the dynamic status quo, contrary to WAC 391-25-140(2), when it excluded employees from its merit pay increase process who were covered by two petitions filed by the Service Employees International Union Local 925 (SEIU). The Hearing Examiner concluded that the merit pay increases were part of the dynamic status quo and that the UW interfered with employee rights in violation of RCW 41.56.045(1).¹ We agree with the Hearing Examiner with respect to one department of the UW but disagree and reverse his findings regarding all other departments. While the UW had determined an overall salary increase pool, it had not determined the amount of increase each employee would receive by the date of the filing of the petitions. Thus, when the

¹ After the complaint was filed and the Examiner's decision was issued, the Washington State Legislature enacted Senate Bill 5435 which reorganized and renumbered chapter 41.56 RCW. All references to chapter 41.56 RCW will be to the renumbered sections.

petitions were filed, the amount of the increases were not definite, and the UW retained discretion over the amount of increase. The increases were therefore not part of the dynamic status quo. The exception is the School of Medicine, in which the amounts of the merit pay increase were announced prior to the filing of the petitions.

BACKGROUND

The Representation Petitions

On June 28, 2024, the SEIU filed two petitions seeking to represent professional staff at the UW. In one petition, the SEIU sought to represent a bargaining unit of employees who are employed at the Curriculum College.² The Executive Director certified the SEIU as the exclusive bargaining representative of professional employees of the continuum college in an interim certification on September 19, 2024, and in a final certification on June 25, 2025. *University of Washington*, Decision 13958 (PECB, 2024); *University of Washington*, Decision 13958-A (PECB, 2025). In the second petition, the SEIU sought to represent advising professional staff employees.³ In an interim certification, the Executive Director certified the SEIU as the exclusive bargaining representative of advising employees on July 11, 2025. *University of Washington*, Decision 14159 (PECB, 2025).

Merit Pay

The professional staff program at the UW addresses employment conditions and policies for nonacademic staff who meet certain criteria and are not represented for purposes of collective bargaining.⁴ Unrepresented professional staff can receive a salary increase through different methods including merit pay increases, in-grade salary adjustments, position reviews, or hiring

² Case 139167-E-24; Joint Exhibit (Ex.) 15.

³ Case 139166-E-24; Joint Ex. 15.

⁴ Employer Ex. 7.

into a new position.⁵ Wage increases for professional staff are not automatic.⁶ All salary increases require approval of the appropriate dean or vice president and the Human Resources Compensation Office (Compensation).⁷

Merit pay increases occur almost annually.⁸ Since 2018, the only year that the UW did not provide merit pay increases was Fiscal Year (FY) 2021. Generally, the Board of Regents authorizes a salary increase pool of money for the upcoming fiscal year, and the UW undertakes a process to determine how to distribute that salary increase pool to eligible individual employees through merit pay increases. The amount of the salary increase pool varies by year.⁹

Compensation is responsible for oversight of the merit pay increase process.¹⁰ Executive Director of Compensation Amy Junglov explained the process her department used for the increases at issue. Consistent with previous years, Compensation began planning for the FY 2025 merit process in January 2024,¹¹ before the Board of Regents authorizes the budget. Compensation eventually publishes an updated Professional Staff Program Guide and the Merit & Faculty Unit Adjustment Process Guide (merit process guide).¹² This guide establishes the criteria and parameters for merit pay increases in that fiscal year. Departments cannot make decisions that are

⁵ Employer Ex. 7 at 3 and 4; Transcript (Tr.) 204:8–13.

⁶ Employer Ex. 7; Tr. 204:5–7.

⁷ Employer Ex. 7 at 3.

⁸ Union Ex. 28.

⁹ Tr. 212, Union Ex. 28 at 1.

¹⁰ Tr. 203:1–3.

¹¹ Tr. 263:22–25; 220:21–22; 220:25–221:4.

¹² Tr. 220:25–221:4; 203:22–204:4; Employer Ex. 7; Joint Ex. 5, 7, and 14.

outside of the criteria provided by Compensation.¹³ Compensation retains final approval over departmental recommended merit pay increases.¹⁴

Fiscal Year 2025 Merit Pay Timeline

For FY 2025, the merit planning process began on January 16, 2024, when UW President Ana Mari Cauce and Provost and Executive Vice President Tricia Serio sent an email explaining that the UW anticipated a 3 percent merit pool for professional staff employees.¹⁵ On April 16, 2024, the Executive Office of the President and Provost sent a letter to the Deans, Chancellors, Vice Presidents, and Vice Provosts at each of the UW's campuses.¹⁶ The letter notified leaders that, subject to final approval by the Board of Regents, campuses were given "authorization for 2024-25 (FY25) compensation increases for . . . professional staff."¹⁷ The letter authorized "a total 3% salary increase pool" and an effective date of September 1, 2024.¹⁸ All eligible meritorious professional staff "may receive an increase of between 0.5% and 10%, provided the average across the unit's professional staff population does not exceed 3%."¹⁹

On April 23, 2024, Compensation published the first merit process guide.²⁰ The merit process guide provided a timeline for the merit process.²¹ This guide identified August 16 as the date by which departments were required to submit their recommended increases for each

¹³ Tr. 270:25–271:3; 369:25–370:5.

¹⁴ Joint Ex. 5.

¹⁵ Joint Ex. 1; Joint Ex. 15 ¶ 5; *University of Washington*, Decision 14174 (PECB, 2025) Finding of Fact (FF) 6.

¹⁶ Joint Ex. 2–4; Joint Ex. 15 ¶ 6; Decision 14174 at FF 6.

¹⁷ Joint Ex. 2–4; Joint Ex. 15 ¶ 6; Decision 14174 at FF 6.

¹⁸ Joint Ex. 2–4; Joint Ex. 15 ¶ 6; Decision 14174 at FF 6.

¹⁹ Joint Ex. 2–4.

²⁰ Joint Ex. 5.

²¹ Joint Ex. 5 at 1, 7 at 1-2, and 14 at 1-2.

employee, September 1 as the date by which Compensation would approve or disapprove the recommendations, and September 3 as the date by which the final decisions were announced to the departments.²² The merit process guide included a list of job profiles excluded from the merit process.²³ At that time, the employees that were later the subject of the SEIU's petitions were included as employees eligible for merit increases.

The merit process guide defined eligibility of individual employees for merit pay increases. A professional staff employee was precluded from receiving a merit pay increase in FY 2025 if they were hired after March 31, 2024; they received a salary increase equal to or greater than 10 percent as a result of an in-grade adjustment; they received a position review with a salary increase; or they were scheduled to retire or had resigned by September 1, 2024. In addition, to receive a merit pay increase, a professional staff employee must have a performance evaluation on file.

Compensation updated the merit process guide on July 29, 2024,²⁴ and on September 4, 2024.²⁵ The dates of August 16, for department submissions, and September 3, for notification of final decisions, did not change.²⁶ The July 29 merit process update stated that the employees included in the SEIU's June 28 petitions were not "merit eligible."²⁷

On June 13, 2024, the Board of Regents approved a budget that included funding for merit pay increases to professional staff salaries by 3 percent, effective September 1, 2024.²⁸ As detailed

²² Joint Ex. 5 at 1.

²³ *Id.* at 5–6; 7 at 5–7; and 14 at 6–7.

²⁴ Joint Ex. 7

²⁵ Joint Ex. 14.

²⁶ *Id.* at 1–2.

²⁷ Joint Ex. 7 at 1; Joint Ex. 8; Tr. 324–325.

²⁸ Joint Ex. 6 and 15 ¶ 8; Decision 14174 at FF 6.

in the merit process guide and the April 16, 2024, letter, departments had discretion, within the 0.5 to 10 percent range, to determine how much of a merit pay increase to provide employees.

Departments took various approaches to granting merit pay increases. Erin Alexander, the School of Medicine Human Resources Director, explained that the dean of the School of Medicine decides if the merit will be pooled or a set percentage.²⁹ During Alexander's tenure, individual merit pay increases have been either zero or the average of the merit pool.³⁰ On May 8, 2024, the School of Medicine notified its departments that eligible professional staff would receive a 3 percent merit increase on September 1, 2024.³¹

The School of Educational Studies at the UW of Bothell granted all professional staff in its unit the same increase.³² In contrast, the School of Social Work takes a different approach.³³ Vicki Anderson-Ellis, the Assistant Dean of Finance and Administration for the School of Social Work, explained supervisors may determine the amount of merit pay, between 0.5 and 10 percent, so long as the average is 3 percent in the unit.³⁴ The size of merit increases in the School of Social Work "is all over the place."³⁵

Between the filing of the SEIU's representation petitions on June 28, 2024, and the deadline for department submissions on August 16, 2024, the SEIU and the UW agreed to remove certain classifications of employees from the petitions. Once these classifications were removed,

²⁹ Tr. 336:13–17.

³⁰ Tr. 336:18–21.

³¹ Tr. 337–340; Employer. Ex. 23 at 7.

³² Tr. 112:8–13; Tr. 113:3–11.

³³ Tr. 356:21–357:25.

³⁴ Tr. 356:22–25.

³⁵ Tr. 361:8–19.

the UW again included them in the merit pay increase process. The employees who were released from the representation petition received increases ranging from 2 to 10 percent.³⁶

The Examiner's Decision

The Examiner determined that merit pay directly related to wages and was a mandatory subject of bargaining. Decision 14174 (PECB, 2025) at 10–11. The Examiner concluded that merit pay increases were part of the dynamic status quo when the SEIU filed the representation petitions. *Id.* at 11–13. Eligible employees were included when the UW adopted a budget for a 3 percent merit pay increase pool and issued a process guide for applying merit pay. *Id.* at 11. The key aspects of the UW's discretion were exercised before the petition was filed. *Id.* at 12. Although department heads had not determined the merit pay increases for individual employees when the SEIU filed the petitions, the Examiner concluded that that remaining discretion was insufficient to remove merit pay from the dynamic status quo. *Id.* at 12–13. A planned change need not be completed to be part of the dynamic status quo. *Id.* at 13 (citing *King County*, Decision 6063-A (PECB, 1998)). The process guide provided parameters for merit pay. Decision 14174 at 13. The Examiner concluded that the UW interfered with employee rights when it withdrew merit pay increase consideration from the advising and Continuum College employees after the SEIU filed petitions to represent those employees. *Id.* at 13.

To remedy the violation, the Examiner ordered the standard remedy. *Id.* at 14. To make employees whole, the Examiner ordered the UW to retroactively apply a 3 percent merit pay increase to all affected employees who were otherwise eligible and not precluded from a merit pay increase. *Id.* The order for retroactive pay did not include an order for interest.

The UW filed a timely appeal but did not file its appeal brief by the due date. There are two issues before the Commission. First, should the Commission grant the UW's request to accept

³⁶ Union Ex. 30.

its late appeal brief? Second, did the UW interfere with employee rights when it did not grant professional staff employees merit pay increases after the SEIU filed the representation petitions?

ANALYSIS

The University of Washington's Appeal Brief Is Stricken as Untimely

“The due date for any appeal brief that the party filing an appeal or cross-appeal desires to have considered by the commission is 14 days following the filing of its notice of appeal or notice of cross-appeal.” WAC 391-45-350(6). On August 14, 2025, the UW filed a timely appeal. The UW’s appeal brief was due on August 28, 2025. On September 2, 2025, the UW filed an appeal brief. Subsumed in the appeal brief was a request for the Commission to “exercise its statutory discretion to waive the deadline and accept” the UW’s untimely brief.³⁷ The same day the UW filed its late brief, the SEIU filed a motion to strike the UW’s appeal brief. The UW filed a response brief. The SEIU filed a reply brief.³⁸

A request for an extension “may only be considered if made by the date the brief is due.” WAC 391-45-350(8); *Kitsap County*, Decision 12163-A (PECB, 2015). Accordingly, to be considered, the UW’s request for an extension had to be filed by August 28. Since that was not done, the rule precludes consideration of the request for extension.

Additionally, requests for extensions of time must comply with WAC 391-08-180. That rule requires a request for extension to “state whether or not all other parties agree to the continuance.” WAC 391-08-180(2). The UW’s request did not do so.

The UW has also requested that we waive the requirements for timely filing of the brief and the request for extension. WAC 391-08-003 provides that the “agency may waive any requirement of the rules unless a party shows that it would be prejudiced by a waiver.” While the

³⁷ Employer Appeal Brief at 2.

³⁸ On September 15, 2025, the Executive Director informed the parties by email that the Commission would grant the SEIU’s motion.

SEIU has not shown that any actual prejudice would result from granting the waiver, the “absence of prejudice does not mandate a waiver; it is a necessary condition for waivers but not sufficient by itself.” *Sound Transit*, Decision 13992-A (PECB, 2025). Here, the UW has not demonstrated that it would effectuate the purposes and provisions of the statute to grant the waiver. Our authority to grant a waiver is narrowly construed and generally only used when a party relies on agency statements, the agency’s rules are unclear, or other important statutory principles are at play. *Id.* An inadvertent calendaring error does not qualify, especially when it does not appear that the UW contacted the SEIU to negotiate an extension. We decline to waive the requirements.

The UW’s appeal brief is hereby stricken. Accordingly, we have not considered the UW’s appeal brief.

Standard of Review

On appeal, the Commission reviews findings of fact to determine if they are supported by substantial evidence, and, if so, whether those findings in turn support the Examiner’s conclusions of law. *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B (PECB, 2002). The Commission reviews conclusions and applications of law, as well as interpretations of statutes, *de novo*. *City of Wenatchee*, Decision 8802-A (PECB, 2006).

The Commission reviews findings of fact for substantial evidence in light of the entire record. *Wapato School District*, Decision 12894-A (PECB, 2019). Substantial evidence exists if the entire record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *City of Vancouver v. Public Employment Relations Commission*, 107 Wn. App. 694, 703 (2001); *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B. A party assigning error has the burden of showing a challenged finding is in error and not supported by substantial evidence; otherwise, findings are presumed correct. *Renton Technical College*, Decision 7441-A (CCOL, 2002) (citing *Fisher Properties, Inc. v. Arden-Mayfair, Inc.*, 115 Wn.2d 364 (1990); *Brinnon School District*, Decision 7201-A (PECB, 2001)). Unchallenged findings of fact are verities on appeal. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. 333, 347 (2014); *Brinnon School District*, Decision 7210-A.

The UW appealed findings of fact 7, 8, and 9; conclusion of law 2;³⁹ and the order. Findings of fact 7, 8, and 9 are supported by substantial evidence. The UW and the SEIU entered stipulated facts.⁴⁰ Many of the facts in the decision are based on these stipulations. The stipulated facts are also supported by the record. Therefore, the facts of the appeal are largely undisputed. The issue before the Commission is an application of law.

The University of Washington Did Not Alter the Status Quo After the SEIU Filed Its
Representation Petition.

After the SEIU filed the representation petitions on June 28, 2024, the UW could not change the status quo on employee wages, hours, and terms and conditions of employment during the pendency of the petitions. WAC 391-25-140(2); *City of Seattle*, Decision 9938-A (PECB, 2009); *King County*, Decision 9039 (PECB, 2005). Merit pay increases are wages, and wages are a mandatory subject over which parties are required to bargain. RCW 41.56.030(4); *See NLRB v. Katz*, 369 U.S. 736, 745-46 (1962) (finding merit increases to be a mandatory subject of bargaining). As the complainant, the SEIU bears the burden of proving that the merit increases were part of the dynamic status quo. WAC 391-45-270(1)(a).

Our cases recognize that the status quo is not limited to only those terms fixed in place when a representation petition is filed. *Central Washington University*, Decision 10967-A (PECB, 2012). If a decision has been made to change wages, hours, or working conditions on a date before the petition is filed, then that change is part of the “dynamic status quo.” *Adams County*, Decision 7961 (PECB, 2003). The dynamic status quo is set in motion when an employer makes a “decision to which it is bound and at which point it no longer has discretion.” *Central Washington University*, Decision 10967-A (PECB, 2012). That decision must be final and by the authorized decision-maker; a preliminary decision is not part of the dynamic status quo. *See King County Library System*, Decision 9039 (PECB, 2005) (finding a preliminary budget including a general

³⁹ The notice of appeal identified conclusion of law 1. However, the notice of appeal included the language from conclusion of law 2.

⁴⁰ Joint Ex. 15.

wage increase was not part of the dynamic status quo because the employer retained discretion until the final budget was approved). Where the employer has scheduled a change, communicated a change to employees, the employees expect change, and the employer can no longer change its decision, then the decision is part of the status quo. *Washington State Language Access Providers*, Decision 13355-A (PECB, 2021) (finding a delay in the implementation of a new scheduling system, which was adequately communicated and explained, did not remove the decision from the status quo), *aff'd*, Decision 13355-B (PECB, 2022).

The application of the dynamic status quo has often focused on the differences between fixed step increases and annual cost of living increases. *Snohomish County*, Decision 1868 (PECB, 1984); *Snohomish County Fire Protection District 3*, Decision 4336 (PECB, 1993), *aff'd*, Decision 4336-A (PECB, 1994). The Commission generally finds fixed step increases to be part of the dynamic status quo because the amount and timing have been predetermined, and the employer lacks any element of discretion in granting the raise. *Snohomish County*, Decision 1868. In contrast, the Commission typically does not consider general cost-of-living wage increases to be part of the dynamic status quo because they are less concrete, do not follow an established or fixed formula, and allow the employer discretion as to whether to grant the increase at all, and if so, in what amount. *Central Washington University*, Decision 10967-A.

Despite a complicated university-wide compensation process for unrepresented staff, the key facts before us are relatively simple and undisputed. Prior to the filing of the representation petitions, the UW decided to use a salary increase pool concept and the Board of Regents approved a 3 percent salary increase pool. However, the determination of the amount of the increase each individual employee would receive was made after the filing of the representation petitions. The allocation of increases to employees was scheduled for final approval by September 1 and announcement of final decisions on September 3. When the petitions were filed, the UW excluded the covered employees from the merit increase process. Those employees who were later removed from the petitioned-for bargaining units were placed back in the merit increase process. Accordingly, we must decide whether the Board of Regents' decision to authorize a 3 percent

salary increase pool became part of the dynamic status quo or whether the need to determine individual employee increases meant the merit increases were not part of the dynamic status quo.

We conclude that the merit pay increases were not part of the dynamic status quo. The merit pay increase process provided departments with substantial discretion in how to administer the pool, and those decisions had not yet been made. Departments could choose to provide the same level of increase to all eligible employees or to vary the increase based on performance. These decisions require a lot of consideration and do not fall into an already defined result. With this level of discretion, there is no way for the employees to know what increase, within the provided range, to expect. *See generally NLRB v. Katz*, 369 U.S. at 746 (stating that if an employer retains discretion, then a union cannot know whether there has been a substantial departure from past practice). Employees' expectations about a change are tied to the details of the planned change. In the case before us, the UW's policies communicated that merit pay increases are discretionary. The range provided, 0.5 to 10 percent, is significant. Employees would not learn of their increase until after it had been allocated by the department in August and subsequently approved by Compensation. While employees could reasonably expect to receive some amount of increase if they were deemed meritorious, they could not expect any specific increase. Accordingly, the UW had not fully exercised its discretion when the SEIU filed the representation petition.

Our decision is also consistent with the purposes of WAC 391-25-140(2). That rule establishes the status quo as of the date of a petition in order to prevent interference, coercion, or undue influence during the representation proceedings. By limiting the dynamic status quo to decisions already made that can be expected by employees, we preserve a fair election process. Allowing an employer to make individual decisions about the increases employees will receive during the election process runs counter to that goal.

The parties presented evidence about how departments administered the merit pay increases. The testimony presented by the SEIU showed that some departments adopted an all-or-nothing approach. The testimony presented by the UW showed that at least one department used the discretion granted to it to vary the amount of merit pay increases provided to employees.

Finally, the documentary evidence in response to the SEIU's subpoena showed that merit pay increases, including those given to employee released from the petition, varied within the allotted range. This variation among departments as well as among individual employees demonstrates that the UW retained discretion to determine the amount of merit pay increases after the SEIU filed its representation petitions.

We disagree with the Examiner that this case is analogous to *Valley View Sewer District*, Decision 8963 (PECB, 2005). In *Valley View Sewer District*, the employer passed a budget fixing salary increases for 2003, 2004, and 2005, before the union filed the representation petition. After the union was certified and the parties began negotiations, the employer did not provide the employees with the 2004 salary increase. Both the employer in *Valley View Sewer District* and the UW had budgeted, approved, and announced the effective date for the increases before the representation petitions were filed. Unlike the UW, which retained final discretion as to the amount of an increase an employee would receive after the SEIU filed its representation petition, the employer in *Valley View Sewer District* had exercised its discretion over the wage increases when the union filed its petition and the 2004 cost-of-living increase was part of the dynamic status quo. In *Valley View Sewer District*, the increase was fixed and known to the employees before the union filed the representation petition. In contrast, in this case, the increase was variable and not fixed before the SEIU filed the representation petitions.

The remedy ordered by the Examiner helps demonstrate that the merit pay increases should not be included in the dynamic status quo. The Examiner ordered the UW to provide a 3 percent increase to all affected employees. However, not all eligible employees in the pool received a 3 percent increase, and that remedy would not be consistent with what would have happened if the merit increases for petitioned-for employees had been implemented. Indeed, contrary to the statement of the Examiner, employees that were released from the petition and reinstated to the salary increase pool did not all receive a 3 percent increase.⁴¹

⁴¹ Union Ex. 30.

There is one exception to the above analysis. Although the SEIU has not met its burden of proof that the UW's decisions about the merit pay increases became part of the status quo before the petitions were filed, the SEIU has met its burden of proof with respect to the School of Medicine within the UW. On May 8, 2024, the School of Medicine notified its department chair, vice-chair, and directors and administrators that "it has been decided that all professional staff members who are determined to be meritorious and are not otherwise precluded will receive a 3% merit increase effective September 1, 2024."⁴² This decision was then incorporated into another communication to the same leadership in the School of Medicine on June 17, after the Board of Regents approved the salary increase pool.⁴³ Accordingly, before the SEIU filed its petition to represent the advising employees in the School of Medicine, the School of Medicine had decided how the pool would be allocated and eliminated any further discretion in determining the increases.⁴⁴ The SEIU has therefore met its burden of proof that the UW modified the dynamic status quo by not providing the 3 percent pay increase to petitioned-for advising employees in the School of Medicine.⁴⁵

CONCLUSION

Before the SEIU filed its representation petition, the UW set discretionary merit pay increases in motion. Except within the School of Medicine, the decision about the amount of merit pay increase an individual employee would receive had not been exercised when the SEIU filed

⁴² Employer Ex. 23 at 7.

⁴³ *Id.* at 1.

⁴⁴ Although the School of Educational Studies at the UW Bothell also provided the same 3 percent increase to all eligible employees, there is no evidence that such a decision was made and communicated to employees before the filing of the petitions.

⁴⁵ We recognize that our conclusion results in differing treatment of employees within the petitioned-for unit. However, that variation results from the UW's delegation of authority to departments about how to allocate increases and is consistent with our precedent of including predetermined changes in the dynamic status quo. Given the university-wide scope of the unit, there may well be other working conditions that apply to advising employees in some departments and not others.

the representation petitions. Accordingly, the decision to provide merit pay increases was not part of the dynamic status quo. On this basis, we reach the following conclusions:

1. The UW did not unlawfully modify the status quo with respect to the petitioned-for professional staff employees in the Continuum College. We reverse the Examiner on this ground and Case 140160-U-24 shall be dismissed.
2. The UW did unlawfully modify the status quo with respect to the petitioned-for advising staff employees in the School of Medicine. The UW did not unlawfully modify the status quo for other advising staff employees in the petitioned-for unit. We affirm the Examiner limited to the School of Medicine and reverse as to all other employees. The remedy for Case 140159-U-24 is set forth below.

ORDER

The findings of fact issued by Examiner E. Matthew Greer are AFFIRMED and adopted by the Commission. Conclusion of law 1 issued by Examiner E. Matthew Greer is AFFIRMED and adopted as the conclusion of law of the Commission. Conclusion of law 2 is VACATED. We substitute and add the following conclusions of law:

2. By its actions described in findings of fact 1–10, the UW did not interfere with employee rights in violation of RCW 41.56.045(1).
3. By its actions described in findings of fact 1–10, the employer interfered with employee rights in violation of RCW 41.56.045(1) by altering the dynamic status quo with regards to merit pay consideration for advising employees in the School of Medicine after the union filed its petitions for representation seeking to represent those employees in new collective bargaining units.

The order issued by Examiner E. Matthew Greer is VACATED. With the exception of petitioned-for employees of the School of Medicine, the complaints charging unfair labor practice in the above-captioned matters are dismissed. The following order is substituted:


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

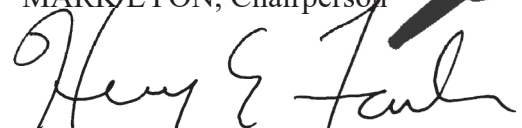
1. CEASE AND DESIST from:
 - a. Withholding merit pay increase consideration from employees at the School of Medicine who are included in the petitions for representation filed by the Service Employees International Union Local 925 on June 28, 2024.
 - b. In any other manner interfering with, restraining, 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 School of Medicine employees included in petition 139166-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 at the School of Medicine 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 18th day of February, 2026.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARK LYON, Chairperson


HENRY L. FARBER, Commissioner

Commissioner Elizabeth Ford did not participate in the consideration or decision of this case.

This order will be the final order of the agency unless a notice of appeal is filed under RCW 34.05.542.

EXHIBIT 2

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,¹ and the other involves a group of employees in the Continuum College.²

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

¹ The petition regarding advising employees was docketed as case 139166-E-24.

² 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.³ 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 1st 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

³ 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.⁴

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

⁴ 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 1st 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 in 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.