STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF WASHINGTON. Complainant, vs. WESTERN WASHINGTON UNIVERSITY, Respondent.	CASE 137252-U-23 DECISION 13877 - PSRA FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Elyse Maffeo, General Counsel, for the Public School Employees of Washington.

Carl Gaul IV and Sara Wilmot, Assistant Attorney Generals, Attorney General Robert W. Ferguson, for Western Washington University.

An unfair labor practice (ULP) complaint in this case was filed on July 27, 2023, by the Public School Employees of Washington (PSE or union) who received a deficiency notice on August 14, 2023. An amended complaint was filed on September 1, 2023. The complaint alleged that Western Washington University (WWU or employer) interfered with employee rights in violation of RCW 41.80.110(1)(a) within six months of the date the complaint was filed, by threats of reprisal or force or promises of benefit made to bargaining unit employees during the grievance process. A virtual hearing was held on January 26, 2024, before the undersigned Examiner. The parties filed post-hearing briefs on March 15, 2024, to complete the record.

ISSUE

The issue in this case, as stated in the September 13, 2023, cause of action statement is as follows:

> Employer interference with employee rights in violation of RCW 41.80.110(1)(a), by threats of reprisal or force or promises of benefit made to bargaining unit employees during the grievance process.

The union has failed to prove that an employee in similar circumstances would have reasonably perceived the employer's statements as interference. The union's charge of interference is dismissed.

BACKGROUND

The union represents approximately 367 classified staff employed at the university, including employees who work in the Facilities Management Department (FM) and the Human Resources Department (HR). The Washington Federation of State Employees (WFSE) represents approximately 357 classified staff at the university, including employees in the Facilities Management Department. As of February 27, 2023, 24 employees in the Facilities Management Department are represented by PSE and 171 by WFSE.

In May 2022, PSE learned that the WFSE-represented employees in Facilities Management would be receiving a retention bonus of $2,000 pursuant to a memorandum of understanding (MOU) reached between the employer and WFSE. Upon learning this, PSE president Cheryl Mathison emailed several members of the university's administration: Sabah Randhawa, University President; Joyce Lopes, Vice President for Business and Financial Affairs; and Anne Gilbert, Director of Strategy. In this email, sent May 24, 2022, Mathison asked whether the same retention payment offer would be made to PSE. Lopes responded to Mathison on June 1, 2022, and offered the same retention payment to PSE-represented employees within the Facilities Management Department and the Human Resources Department, departments that the employer believed were facing staff retention crises. Lopes never stated whether the offer was time limited and indicated that the employer would be sending a separate email with offer language for the union's consideration. Mathison did not respond to this email.

On June 2, 2022, John Kapple, a PSE Field Services Representative at the time, filed a grievance in which the union alleged that the employer had violated the parties' collective bargaining agreement (CBA), sections 25.1 and 25.2, when it provided a lump sum payment to certain WFSE-represented employees and not PSE-represented employees. In an email sent to Gilbert on June 4, 2022, Kapple further explained that the union believed that, in accordance with the CBA, the employer should have offered the retention payment to all PSE-represented employees. During

the pre-arbitration grievance process, the parties discussed the underlying issue and options to resolve the grievance. In an email from Dennis "Geno" Defa[1] to Kapple on July 5, 2022, Defa referenced the offer made by Lopes on June 1; "Once the ULP[2] and Grievance were filed, the offer was placed on hold until these issues were resolved. . . ." Defa further stated, "The university remains interested in and willing to provide the $2,000.00 recruitment and retention payment to the PSE employees in FM. If you can see your way to withdraw both the ULP and the Grievance, we can have an MOU together the same day, get it signed and get the dollars distributed to your members. . . ."

Defa followed up with Kapple by email on July 14, 2022, and Kapple responded, stating that the union continues to assert that the payment should be extended to all PSE bargaining unit employees. Kapple further explained, "PSE would . . . of course be ok if the bonus was presented to our represented FM and HR employees but this would not satisfy our outcome for the grievance. You have indicated that WWU will not do that as long as we have an active grievance. . . ."

Despite settlement discussions, the parties were unable to resolve this dispute and submitted the matter to arbitration. An arbitration hearing was held before Arbitrator Audrey Eide on April 28, 2023, and an award was issued on July 14, 2023. The parties agreed Eide should frame the issue, which she described as the following:

> Did Western Washington University violate Article 25.1(C) and 25.2(B) of the collective bargaining agreement when they offered a one-time lump-sum retention payment to employees represented by WFSE in Facilities Management and PSE represented employees in Facilities Management and Human Resources but did not offer a one-time lump-sum retention payment to all employees represented by PSE outside of Facilities Management and Human Resources? If so, what is the appropriate remedy?

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[1] Defa served in several roles during the time period relevant to this case: Interim Director of Employee and Labor Relations, Interim Associate Vice President for Human Resources, and Senior Human Resource Advisor.

[2] This is in reference to ULP cases 135141-U-22 and 135158-U-22. In these cases, a deficiency notice was issued by Unfair Labor Practice Administrator Emily Whitney. The union did not provide any further information in response to the deficiency notice, and an order of dismissal was issued by Whitney on August 3, 2022. *Western Washington University*, Decision 13547 (PSRA, 2022).

Eide ruled in favor of the employer, determining that the employer had not violated the identified CBA provisions when it only offered a one-time lump sum retention payment to Facilities Management and Human Resource employees represented by the union.

Elyse Maffeo, General Counsel for the union, who represented the union during the arbitration as well as the instant proceeding, emailed Eide on July 17 seeking clarification about the arbitration award and asked Eide to retain jurisdiction of the matter for 30 days to address this clarification. Maffeo wrote,

> WWU has actually **paid** the WFSE employees in Facilities Management, but has, to date, **refused to pay** PSE employees in Facilities Management or Human Resources even though the grievance involved all other PSE members' right to this additional lump sum payment. This puzzled me as the parties seemed to agree that at least FM employees represented by PSE were entitled to the same retention bonus as FM employees represented by WFSE. However, because your decision did not explicitly require WWU to now pay FM employees represented by PSE (or HR employees represented by PSE) the retention bonus, I am concerned that WWU will now also refuse to do. By virtue of your decision, it is my understanding that you are at least recognizing that WWU has an obligation to pay Facilities Management employees represented by PSE the retention bonus it paid to WFSE employees. Can you please clarify whether you are recognizing this obligation on the part of WWU and ordering it to do so? Are you also ordering WWU to pay the HR employees represented by PSE a retention bonus?

That same day, Eide asked the employer for its response to Maffeo's inquiry. Carl Gaul IV, who represented the employer at the arbitration and in the instant case,[3] responded by email on July 20, 2023:

> WWU's position is that at this time it does not have an obligation to provide another retention payment opportunity to PSE members in Facilities Management or Human Resources and that you should not amend the Decision to create such an obligation. When WWU entered into the Memorandum of Agreement with WFSE on May 19, 2022 to provide retention payments to WFSE members in facilities management, the "me too" clause created an obligation to offer the same opportunity to PSE members in facilities management. WWU discharged that

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[3] Gaul represented the employer with co-counsel Sara Wilmot at the arbitration. Gaul also represented the employer at the hearing for the instant case. Gaul left employment at the Attorney General's Office, and Wilmot filed the respondent's post-hearing brief.

> obligation on June 1, 2022 when VP for Business Affairs Joyce Lopes offered retention payments to PSE members in facilities management. PSE did not accept the offer on behalf of its members in facilities management. PSE could have accepted the offer at that time, which would have bound WWU to provide the retention payment opportunity. However, PSE did not accept and WWU's offer terminated.

Eide offered the union an opportunity to respond, and it did so by email on July 26, 2023. Gaul responded that same day and quoted a statement from the union: "WWU has taken the ludicrous position that it was contractually obligated to only offer such payments to Facilities Management employees represented by PSE. Since it did so (albeit only on the condition that PSE drop its grievance and ULP) WWU is newly insisting that it has no further obligation." In his response to this, Gaul argued that Lopes had offered the payment to Facilities Management employees represented by PSE in Lopes' email to Mathison on June 1, 2022, the day before the union filed the grievance that resulted in the arbitration.

Maffeo responded that same day referencing an exhibit admitted at the arbitration, and also admitted in this proceeding, wherein Defa stated that the employer is "only 'interested and willing' to pay PSE employees in FM if PSE withdrew its ULP and grievance." Maffeo also stated,

> PSE presumed that WWU would act consistent with its promise and pay those it indicated it would pay. The grievance (Joint Exhibit 5) was filed on behalf of all other PSE members, again because it was presumed that there was no argument regarding payment to the FM employees represented by PSE or the HR employees represented by PSE.

On July 27, 2023, the ULP complaint in this case was filed.

Eide issued a supplementary award on July 28, 2023, in response to Maffeo's request from July 17:

> The parties do not agree on implementation of the award. The question is does the award require WWU to offer and pay PSE represented employees in Facilities Management and Human Resources the same one-time lump-sum retention payment as WWU paid WFSE represented employees in Facilities Management? The answer is yes.

After Eide issued the supplementary award, the employer provided the same one-time lump sum bonus to the Facilities Management and Human Resources employees represented by the union.

ANALYSIS

Applicable Legal Standard(s)

Under Washington's collective bargaining laws, it is an unfair labor practice for an employer to interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by the collective bargaining laws. RCW 41.80.110(1)(a); RCW 41.56.140(1).

To prove an interference violation, the complainant must show, by a preponderance of the evidence, that the employer's conduct interfered with protected employee rights. *State – Ecology*, Decision 12732-A (PSRA, 2017) (citing *Grays Harbor College*, Decision 9946-A (PSRA, 2009); *Pasco Housing Authority*, Decision 5927-A (PECB, 1997)); *Tacoma School District*, Decision 5466-D (EDUC, 1997). An employer interferes with employee rights when an employee could reasonably perceive the employer's actions as a threat of reprisal or force, or a promise of benefit, associated with the union activity of that employee or other employees. *Kennewick School District*, Decision 5632-A (PECB, 1996).

An employer may interfere with employee rights by making statements, through written communication, or by actions. *Snohomish County*, Decision 9834-B (PECB, 2008); *Pasco Housing Authority*, Decision 5927-A, *remedy aff'd*, *Pasco Housing Authority v. Public Employment Relations Commission*, 98 Wn. App. 802 (2000).

The legal determination of interference is based not upon the reaction of the particular employee involved but rather on whether a typical employee under similar circumstances could reasonably perceive the actions at issue as attempts to discourage protected activity. *State – Ecology*, Decision 12732-A (citing *King County*, Decision 6994-B (PECB, 2002); *University of Washington*, Decision 11091-A (PSRA, 2012)). The Commission differentiates between statements made to union representatives and those made to rank-and-file bargaining unit employees. *Grant County Public Hospital District 1*, Decision 8378-A (PECB, 2004); *City of Bremerton*, Decision 3843-A (PECB, 1994). "The longer a union official is involved in representing the interests of bargaining

unit employees, the less reasonable are their claimed perceptions of threats and coercion." *State – Office of Financial Management*, Decision 11084-A (PSRA, 2012).

To meet the burden of proving interference, a complainant need not establish that an employee was engaged in protected activity. *State – Ecology*, Decision 12732-A (citing *State – Washington State Patrol*, Decision 11775-A (PSRA, 2014); *City of Mountlake Terrace*, Decision 11831-A (PECB, 2014)). The complainant is not required to demonstrate that the employer intended or was motivated to interfere with employees' protected collective bargaining rights. *City of Tacoma*, Decision 6793-A (PECB, 2000). Nor is it necessary to show that the employee involved was actually coerced by the employer or that the employer had union animus for an interference charge to prevail. *Id*.

Application of Standard(s)

Did the Employer Make a Threat of Reprisal?

As outlined above, the dispute between the parties originated in 2022 when the employer entered into an MOU with WFSE to provide the WFSE-represented employees in Facilities Management retention bonuses. PSE quickly learned of this payment and immediately reached out to the employer questioning why PSE was not also approached with a similar offer. A short time after PSE's correspondence, the employer offered the retention payment to PSE-represented employees in Facilities Management and also offered the retention bonus to PSE represented employees in Human Resources. The employer informed the union that, like Facilities Management, Human Resources was also facing a staffing retention problem. The next day, the union filed a grievance arguing that the retention bonus should be extended to the entire PSE bargaining unit. As explained by Defa in an email to the union on July 5, 2022, the employer considered the offer to pay PSE-represented Facilities Management and Human Resources employees to be on hold while the parties sought to resolve the grievance and the ULP complaint.

This history, provided as background for the ULP complaint, led the union to believe that the employer still intended to pay the Facilities Management and Human Resources employees the bonus and that the dispute was about the other PSE-represented employees. The issue before the Arbitrator, as framed by the Arbitrator herself, concerned the employer only offering a payment

to Facilities Management and Human Resources employees but not offering the lump sum payment to all PSE employees. Accordingly, the Arbitrator ruled on this issue in favor of the employer and did not address the payment offered to the Facilities Management and Human Resources employees. Maffeo, concerned that the employer might interpret the Arbitrator's award as not requiring the employer to pay its previously offered bonus, sought to have the Arbitrator add this requirement to the arbitration award.

The alleged interference occurred when the employer responded to PSE's request for the Arbitrator to issue the supplemental award granting the payments that were in line with the employer's initial offer; the employer stated, seemingly for the first time, that it had fulfilled its obligation by offering the payment, regardless of if that offer had, at some unknown and unannounced point, been terminated.

While a complainant is not required to establish that an employee was engaged in protected activity to prove interference (*see State – Ecology,* Decision 12732-A) it is indisputable that the union did so in this case. The union filed a grievance and took a dispute over the employer's interpretation of the collective bargaining agreement to arbitration. During the supplemental arbitration award arguments, the employer stated, seemingly for the first time, that that offer had been terminated. Additionally, the employer asserted that the CBA did not require the employer to make such an offer again. Depending on the situation and context, this could be reasonably perceived a threat of reprisal or force, or a promise of benefit, associated with the union activity of pursuing a grievance to arbitration. *See Kennewick School District*, Decision 5632-A (PECB, 1996).

Can Legal Arguments Made to an Arbitrator Constitute a Threat of Reprisal?

The Audience

Under the specific circumstances of this case, these legal arguments made to an Arbitrator don't constitute a threat of reprisal. In determining if the employer's legal arguments were interference or not, the audience that the statements are directed to is of paramount importance. The legal determination of interference is based not upon the reaction of the particular employee involved but rather on whether a typical employee under similar circumstances could reasonably perceive

the actions at issue as attempts to discourage protected activity. *State – Ecology*, Decision 12732-A (citing *King County*, Decision 6994-B); *University of Washington*, Decision 11091-A).

Maffeo's request for the Arbitrator to retain jurisdiction was a reply to the Arbitrator's email containing the award and instructions concerning payment. The Arbitrator's initial email was sent to the three attorneys in this case (a paralegal from the Attorney General's office was added to the email after informing the Arbitrator that there was a problem opening the award file and remained on the subsequent emails). Maffeo sent her request for the Arbitrator to retain jurisdiction to the same parties, the Arbitrator responded to the same parties, and Gaul sent the employer's position to the same parties. In sending her response to the Arbitrator on July 26, 2023, Maffeo copied several others on the email, specifically Melissa Mason, a paralegal at PSE; Heather Christianson, PSE Chapter President[4] and WWU employee; and Bennett Massey-Helber, who was not identified on the record but appears to be a PSE staff member. These emails were also included in the email chain. Gaul responded that same day and replied to all the newly included individuals on the email chain. Maffeo contested Gaul's response by email to the same named individuals.

The Two Statements

In its complaint and post-hearing brief, the union cites two emailed statements by the employer as constituting interference. The first was the employer's statement that, according to its interpretation of the "me too" clause at the heart of the arbitration, it was only required to offer the retention payment and thus it "does not have an obligation to provide another retention payment opportunity to PSE members in Facilities Management or Human Resources." The second was the employer's statement that its previous bonus offer had terminated. An employer may interfere with employee rights by making statements, through written communication, or by actions. *Snohomish County*, Decision 9834-B.

In its brief, the employer argues that the Arbitrator had asked the parties for their interpretations of her initial award. The brief argues that the employer's proffered interpretation was that, in accordance with the award, the employer had a duty to offer the payment and had discharged this

[4] Christianson took over the president role from Mathison.

duty in June 2022. I believe the employer is mistaken. At no time did the Arbitrator ask that the parties interpret her initial award. Instead, Eide asked the employer to respond to the union's request and questions, which were as follows:

> By virtue of your decision, it is my understanding that you are at least recognizing that WWU has an obligation to pay Facilities Management employees represented by PSE the retention bonus it paid to WFSE employees. Can you please clarify whether you are recognizing this obligation on the part of WWU and ordering it to do so? Are you also ordering WWU to pay the HR employees represented by PSE a retention bonus?

The "Offer" Statement

Additionally, in Gaul's first response to Eide on July 20, 2023, he does not appear to be interpreting Eide's award but rather providing the employer's legal interpretation of the "me too" clause as only requiring that the employer offer the payment. While this improbable argument appeared to be a reversal of the employer's previous statements and was introduced for the first time during the post-award discussions based on a dubious interpretation of the Arbitrator's decision, the argument is not a threat of reprisal or force or promise of benefit having been made in the legal context it was.

In this first of two statements the union argues are interference, the employer is clearly articulating its interpretation of its obligations in light of the Arbitrator's framing of the arbitrable issue. The stated issue focused solely on whether the employer violated the CBA by not extending its offer of a lump sum payment to all PSE employees. The Arbitrator determined that the employer was not obligated to extend the offer to all PSE-represented employees. The employer argued that it had already made an offer to the union in line with the Arbitrator's interpretation of the "me too" clause. Gaul's argument was narrowly focused on any requirement by the employer regarding its responsibility to offer payment, not the payment itself, likely because the Arbitrator's decision was equally narrow in its focus on the offer. Such a narrow focus does not in itself constitute a threat of reprisal as required by *Kennewick School District,* Decision 5632-A.

The "Termination" Statement

The second statement, the employer's legal argument that a previous offer of a retention bonus had mysteriously terminated, is more concerning. As described above, the employer made an offer

to PSE in line with the requirement of the "me too" provision, as eventually determined by the Arbitrator. The employer did not give a timed expiration when it made this offer on June 1, 2022. The employer later informed the union that the offer was "on hold until these issues were resolved." The ULP complaint in question had been dismissed and, with the issuance of an award, the grievance process had been completed. Accordingly, in line with the employer's last communication to the union concerning the offer, the issues had been resolved and the hold should have been lifted from the offer rather than the offer being terminated. The choice to terminate the offer rather than remove the hold was made sometime between Defa's communication on July 5, 2022, and Gaul's email on July 20, 2023, during which the union was pursuing a grievance through the parties' agreed upon process, including through arbitration. This decision to terminate the offer was communicated to the union for the first time during the supplemental award arguments, and it was reasonable to perceive that the termination was directly related to the union's choice to pursue the grievance to arbitration.

However, the employer's legal argument that it was terminating its previous offer could not reasonably be perceived as interference by the audience at which it was directed. Christianson was the only bargaining unit member on the email chain when the employer stated that its previous offer was terminated. The only other recipients were labor relations professionals, many of whom were attorneys. Christianson was included on one of the last emails sent in the post-award email discussion when Maffeo submitted her reply argument upon Eide's invitation on July 26, 2023. This occurred after Gaul's statement in his July 20, 2023, email that the previous offer had been terminated. Maffeo chose to submit her argument to Eide as a "reply all" email to the chain of previous emails, therefore Gaul's termination statement was included in the email Christianson received. Gaul responded to this email, also on July 26, and sent it as a "reply all" email including the newly expanded list of addresses that included Christianson. In this email, the only one sent to Christianson, Gaul does not make mention of the terminated offer but rather highlights that the employer had made the offer and thus had complied with the Arbitrator's ultimate interpretation before the grievance was even filed. Maffeo concludes the email chain that day disputing Gaul's argument, and Christianson is copied on this final email.

This email chronology is important because the employer's problematic statement about the terminated offer was not made to a bargaining unit member but to the union's in-house Counsel and a labor arbitrator. The Commission's interference case law is concerned with statements made by employers to employees, not those made to union staff members.

Even if the statement was made to Christianson or if it could be considered that the employer made a statement to Christianson when Gaul replied all to an email that included Christianson, with a copy of previous emails that included the notice of termination, Christianson is not a rank-and-file union member. She is the president of the local union chapter at WWU and is also the union's Zone 13 Director, a role that represents higher education bargaining units across the state. As the president, Christianson participated in pre-arbitration settlement discussions and attended the arbitration. A rank-and-file member would not have expressed concerns to the employer's administration on behalf of the union nor would they have been involved in settlement discussions. The Commission differentiates between statements made to union representatives and those made to rank-and-file bargaining unit employees. *See Grant County Public Hospital District 1*, Decision 8378-A; *City of Bremerton*, Decision 3843-A. Here, the perception of a typical employee under similar circumstances is appropriately restricted to a union officer, being privy to legal arguments made to an Arbitrator.

A typical union officer, one who was involved with the entire processing of this grievance, from initial informal communication to arbitration, would not have reasonably interpreted the employer's termination of the previous offer as a threat of reprisal. It was clear that Gaul was responding on behalf of the employer at the behest of the Arbitrator to a request made by the union. Gaul's statement was clearly intended for the Arbitrator, not the bargaining unit members. The statement was a response to the union seeking an amended award. Gaul was making a last-ditch effort to explain that the employer had already offered the bonus and that the offer itself was the foundation of the grievance, and thus the employer had already met its "me too" obligation and that it was not required to make an expanded offer like the union sought. Therefore, a reasonable employee in this situation would know that a decision about payment was before the Arbitrator and that the Arbitrator would issue a response soon as she had retained jurisdiction of the case for

only 30 days. Therefore, a reasonable employee would not have interpreted Gaul's statement to be a threat of reprisal, and thus it cannot be the basis of interference.

Finally, a rank-and-file member of the union could not interpret the statement made by the employer as interference. During the hearing in the instant case, Mathison testified that, during the post-award, pre-supplemental award period, she had provided updates to the bargaining unit members, especially the Facilities Management employees who regularly asked for updates on the process. Through those updates, Mathison shared that the employer was taking the position that it would not be obligated to pay a retention bonus to the Facilities Management employees because the employer had already made its offer. Mathison decided to share this information with the bargaining unit members; the employer did not ask Mathison to convey this message to the members. The employer did not make a statement to the rank-and-file members that the offer had been terminated. The union chose to share its interpretation of the employer's argument with the employees sometime between July 20, 2023, when the argument was made, and July 28, 2023, when the supplemental award was issued. Whether or not the union or Mathison specifically believed it was required or good practice to keep the bargaining unit informed, the relationship between Gaul's argument to an Arbitrator and rank-and-file employees hearing the union's interpretation of Gaul's argument is too tenuous to be interference.

In conclusion, making the statement for the first time that the employer's offer had mysteriously terminated after a grievance arbitration hearing pursued by the union was completed could very well have been viewed as a threat of reprisal, a prerequisite to interference. In this case, the employer is saved from having engaged in interference because of the narrow, sophisticated audience privy to the employer's statement. For this reason, the union did not meet its burden of proof, and the complaint must be dismissed.

CONCLUSION

The union was unable to prove that the employer made threats of reprisal or force or promises of benefit to bargaining unit employees during the grievance process. The complaint is dismissed.

FINDINGS OF FACT

1. Western Washington University (employer or university) is a public employer as defined by RCW 41.80.005(8).

2. The Public School Employees of Washington (union or PSE) is a bargaining representative within the meaning of RCW 41.80.005(9).

3. The union represents approximately 367 classified staff employed at the university, including employees who work in the Facilities Management Department (FM) and the Human Resources Department (HR).

4. The Washington Federation of State Employees (WFSE) represents approximately 357 classified staff at the university, including employees in the Facilities Management Department. As of February 27, 2023, 24 employees in the Facilities Management Department are represented by PSE and 171 by WFSE.

5. In May 2022, PSE learned that the WFSE-represented employees in Facilities Management would be receiving a retention bonus of $2,000 pursuant to a memorandum of understanding (MOU) reached between the employer and WFSE. Upon learning this, PSE president Cheryl Mathison emailed several members of the university's administration: Sabah Randhawa, University President; Joyce Lopes, Vice President for Business and Financial Affairs; and Anne Gilbert, Director of Strategy. In this email, sent May 24, 2022, Mathison asked whether the same retention payment offer would be made to PSE. Lopes responded to Mathison on June 1, 2022, and offered the same retention payment to PSE-represented employees within the Facilities Management Department and the Human Resources Department, departments that the employer believed were facing staff retention crises. Lopes never stated whether the offer was time limited and indicated that the employer would be sending a separate email with offer language for the union's consideration. Mathison did not respond to this email.

6. On June 2, 2022, John Kapple, a PSE Field Services Representative at the time, filed a grievance in which the union alleged that the employer had violated the parties' collective

bargaining agreement (CBA), sections 25.1 and 25.2, when it provided a lump sum payment to certain WFSE-represented employees and not PSE-represented employees. In an email sent to Gilbert on June 4, 2022, Kapple further explained that the union believed that, in accordance with the CBA, the employer should have offered the retention payment to all PSE-represented employees.

7. During the pre-arbitration grievance process, the parties discussed the underlying issue and options to resolve the grievance. In an email from Dennis "Geno" Defa to Kapple on July 5, 2022, Defa referenced the offer made by Lopes on June 1; "Once the ULP and Grievance were filed, the offer was placed on hold until these issues were resolved. . . ." Defa further stated, "The university remains interested in and willing to provide the $2,000.00 recruitment and retention payment to the PSE employees in FM. If you can see your way to withdraw both the ULP and the Grievance, we can have an MOU together the same day, get it signed and get the dollars distributed to your members. . . ."

8. Defa followed up with Kapple by email on July 14, 2022, and Kapple responded, stating that the union continues to assert that the payment should be extended to all PSE bargaining unit employees. Kapple further explained, "PSE would . . . of course be ok if the bonus was presented to our represented FM and HR employees but this would not satisfy our outcome for the grievance. You have indicated that WWU will not do that as long as we have an active grievance. . . ."

9. Despite settlement discussions, the parties were unable to resolve this dispute and submitted the matter to arbitration.

10. An arbitration hearing was held before Arbitrator Audrey Eide on April 28, 2023, and an award was issued on July 14, 2023.

11. The parties agreed Eide should frame the issue, which she described as the following:

> Did Western Washington University violate Article 25.1(C) and 25.2(B) of the collective bargaining agreement when they offered a one-time lump-sum retention payment to employees represented by WFSE in Facilities Management and PSE represented employees in Facilities Management and Human Resources but did not offer a one-time lump-sum retention payment to all employees represented by PSE

outside of Facilities Management and Human Resources? If so, what is the appropriate remedy?

12. Eide ruled in favor of the employer, determining that the employer had not violated the identified CBA provisions when it only offered a one-time lump sum retention payment to Facilities Management and Human Resource employees represented by the union.

13. Elyse Maffeo, General Counsel for the union, who represented the union during the arbitration as well as the instant proceeding, emailed Eide on July 17 seeking clarification about the arbitration award and asked Eide to retain jurisdiction of the matter for 30 days to address this clarification. Maffeo wrote,

> WWU has actually paid the WFSE employees in Facilities Management, but has, to date, refused to pay PSE employees in Facilities Management or Human Resources even though the grievance involved all other PSE members' right to this additional lump sum payment. This puzzled me as the parties seemed to agree that at least FM employees represented by PSE were entitled to the same retention bonus as FM employees represented by WFSE. However, because your decision did not explicitly require WWU to now pay FM employees represented by PSE (or HR employees represented by PSE) the retention bonus, I am concerned that WWU will now also refuse to do. By virtue of your decision, it is my understanding that you are at least recognizing that WWU has an obligation to pay Facilities Management employees represented by PSE the retention bonus it paid to WFSE employees. Can you please clarify whether you are recognizing this obligation on the part of WWU and ordering it to do so? Are you also ordering WWU to pay the HR employees represented by PSE a retention bonus?

14. That same day, Eide asked the employer for its response to Maffeo's inquiry. Carl Gaul IV, who represented the employer at the arbitration and in the instant case, responded by email on July 20, 2023:

> WWU's position is that at this time it does not have an obligation to provide another retention payment opportunity to PSE members in Facilities Management or Human Resources and that you should not amend the Decision to create such an obligation. When WWU entered into the Memorandum of Agreement with WFSE on May 19, 2022 to provide retention payments to WFSE members in facilities management, the "me too" clause created an obligation to offer the same opportunity to PSE members in facilities management. WWU discharged that obligation on June 1, 2022 when VP for Business Affairs Joyce Lopes offered retention payments to PSE members in facilities management. PSE did not accept the offer on behalf of its members in facilities management. PSE could have accepted the offer at that time, which would have bound WWU to provide the

> retention payment opportunity. However, PSE did not accept and WWU's offer terminated.

15. Eide offered the union an opportunity to respond, and it did so by email on July 26, 2023. Gaul responded that same day and quoted a statement from the union: "WWU has taken the ludicrous position that it was contractually obligated to only offer such payments to Facilities Management employees represented by PSE. Since it did so (albeit only on the condition that PSE drop its grievance and ULP) WWU is newly insisting that it has no further obligation."

16. In his response, Gaul argued that Lopes had offered the payment to Facilities Management employees represented by PSE in Lopes' email to Mathison on June 1, 2022, the day before the union filed the grievance that resulted in the arbitration. Maffeo responded that same day referencing an exhibit admitted at the arbitration, and also admitted in this proceeding, wherein Defa stated that the employer is "only 'interested and willing' to pay PSE employees in FM if PSE withdrew its ULP and grievance." Maffeo also stated,

> PSE presumed that WWU would act consistent with its promise and pay those it indicated it would pay. The grievance (Joint Exhibit 5) was filed on behalf of all other PSE members, again because it was presumed that there was no argument regarding payment to the FM employees represented by PSE or the HR employees represented by PSE.

17. On July 27, 2023, the ULP complaint in this case was filed.

18. Eide issued a supplementary award on July 28, 2023, in response to Maffeo's request from July 17:

> The parties do not agree on implementation of the award. The question is does the award require WWU to offer and pay PSE represented employees in Facilities Management and Human Resources the same one-time lump-sum retention payment as WWU paid WFSE represented employees in Facilities Management? The answer is yes.

19. After Eide issued the supplementary award, the employer provided the same one-time lump sum bonus to the Facilities Management and Human Resources employees represented by the union.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to chapter 41.80 RCW and chapter 391-45 WAC.

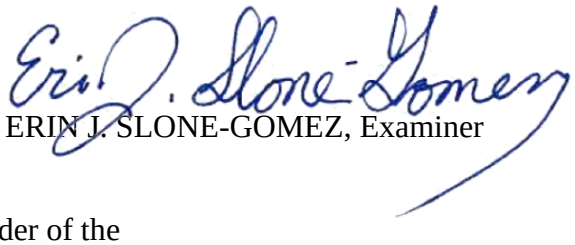
2. By its actions described in findings of fact 3–19, the employer did not violate 41.80.110(1)(a), by threats of reprisal or force or promises of benefit made to bargaining unit employees during the grievance process.

ORDER

The complaint[s] charging unfair labor practices filed in the above-captioned matter[s] is dismissed.

ISSUED at Olympia, Washington, this 14th day of June, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



ERIN J. SLONE-GOMEZ, 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.