

No. 68343-8-I Duane Storti v. University of Washington

Appelwick, J. (dissenting) — I respectfully dissent.

The faculty plaintiffs taught at the University of Washington in the academic year 2008-2009. They were evaluated and determined to be meritorious. They continued in employment in the subsequent academic year, 2009-2010. Prior to the academic year, the University of Washington made an explicit contractual promise to increase their rate of pay by 2 percent for the academic year 2009-2010 for faculty who met these conditions. Late into the 2008-2009 academic year, the University of Washington withdrew that promise. It subsequently refused to pay the raises. This is a clear breach of contract.

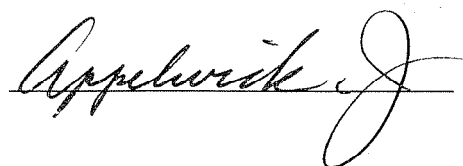
The contract adjusts compensation based on the academic year. It provides for performance evaluations based on the academic year. It promised a raise for the subsequent academic year based on that evaluation. The contract must be analyzed in light of these temporal provisions. I acknowledge that the contract contained a “Funding Cautions Section” that stated, “[A] reevaluation of this Faculty Salary Policy *may* prove necessary.” This is a possibility, in the future. Properly read, reevaluation has application to future academic years. It cannot be reasonably read to be an agreement by the faculty that the University of Washington had the unilateral right to modify or cancel the promised raise for meritorious faculty in the middle of and effective for the current academic contract year.

The promise of the 2 percent raise for meritorious faculty performance was critical to the University of Washington’s desire to retain quality faculty. It worked, the faculty stayed. The promise was not that the University of Washington in its discretion

“might” grant a raise. The language is “shall.” And, the funding caution was not self-executing. It did not expressly condition the promised 2 percent raise for the academic year as due only if specific legislative funding was provided. Nor did the policy expressly state that the raises promised were subject to cancellation if overall funding by the legislature was deemed inadequate. The promise was not expressly conditional as to the current academic year’s work and the right to raises in the following year.

I fully understand the University of Washington was facing significant fiscal challenges that drove its change of policy. I agree that the reevaluation clause allowed the University of Washington to modify this promise for future academic years. I agree that the University of Washington followed the proper procedures. I agree that Executive Order 29 was effective immediately to cut off any promise of a raise in 2010-2011 based upon academic service in the year 2009-2010. However, I strongly disagree that the change could lawfully deny the promised 2 percent salary increase for 2009-2010. The faculty had substantially performed their service when the executive order was promulgated. The right to the promised raise was vested. The performance was evaluated as meritorious. The University of Washington breached the agreement when it failed to pay the promised raises.

I would reverse the grant of summary judgment to the University of Washington, direct the trial court to enter summary judgment for the plaintiffs, and I would award the plaintiffs their reasonable attorney’s fees.

A handwritten signature in black ink, appearing to read "Appelwick J.", written over a horizontal line.