

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WENATCHEE VALLEY COLLEGE,  Employer.	
WALEED MUHAMMAD,  Complainant,	CASE 136289-U-23
vs.	DECISION 13811 - CCOL
ASSOCIATION FOR HIGHER EDUCATION,  Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

*Waleed Muhammad*, the complainant.

*Danielle Franco-Malone*, Attorney at Law, Barnard, Iglitzin & Lavitt LLP, for the Association for Higher Education.

On March 7, 2023, Waleed Muhammad filed an unfair labor practice complaint with the Public Employment Relations Commission (Commission), which he later amended on March 10, 2023. Muhammad's complaint alleged that the Association for Higher Education (union or AHE) retaliated against him for engaging in protected activity. The employer, Wenatchee Valley College (WVC), is not a party to the issues before the Commission in this case, but the employer's name is used to establish jurisdiction and identify the case. Based on a preliminary review of Muhammad's amended complaint, the Commission issued a cause of action statement on March 16, 2023. The assigned Examiner, Daniel Comeau, held a hearing on the matter on November 15 and 16, 2023. The parties filed post-hearing briefs by January 8, 2024, to complete the record.

ISSUES

The issue in this case, as set forth in the March 16, 2023, cause of action statement, is as follows:

Union interference in violation of RCW 28B.52.073(2)(a) within six months of the date the complaint was filed, by filing a complaint with the employer's tenure committee against Waleed Muhammad in retaliation for Muhammad's exercise of protected activity.

Based on the record in this case, Patrick Tracy's complaint to Muhammad's tenure committee was in reprisal for Muhammad expressing his views regarding Tracy's responsiveness to Muhammad on a union related issue. Furthermore, Muhammad is entitled to a remedy in this case, and that remedy will be the conventional remedy awarded in union interference cases.<sup>1</sup>

### BACKGROUND

Waleed Muhammad is an Economics Professor at Wenatchee Valley College and has been at the college for approximately one and a half years. As a faculty member, Muhammad is a member of a collective bargaining unit represented by the Association for Higher Education (union), which has a collective bargaining agreement (CBA) with the college. Out of 91 union members, Muhammad was the only faculty union member who was black.

At all times relevant to these proceedings, Patrick Tracy was the president of the union and employed as a full-time faculty member as a Professor of Medical Laboratory Technology. When Muhammad began his appointment at the college, Tracy attempted to make him feel welcome and engaged.<sup>2</sup> Tracy invited Muhammad to his home on about two occasions. In addition, they dined together at a restaurant, and Muhammad covered the meal. Tracy testified that, at this point, he believed he and Muhammad were becoming friends.

Tracy also identified opportunities for Muhammad to be active within the union. Though there are limited engagement opportunities for newer union members, Tracy appointed Muhammad to the

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<sup>1</sup> The union presented evidence at hearing that Tracy retracted his complaint to the tenure committee and that the tenure committee received Tracy's retraction and confirmed that it will not take his complaint into account in any future considerations or evaluations. The issue of whether this impacts any remedial measures fashioned by this order is to be handled during the compliance stage of the proceeding.

<sup>2</sup> Tracy testified that he had noticed that his (Tracy's) and Muhammad's time in Saudi Arabia overlapped a bit, which was something he mentioned they had in common.

safety committee and to the union's executive board for one year as a full-time temporary faculty representative. No evidence was presented that any fellow faculty members had any issue with Muhammad as a faculty representative to the executive board during his year of service.<sup>3</sup>

At some point in Muhammad's early employment, he began to raise issues with Tracy regarding some conflicts within Muhammad's department. Tracy testified that he had believed that Muhammad was confiding in him as a friend and not in a professional capacity. Furthermore, Tracy testified that he believed that it was not his job to become involved in these matters, as they should be reserved for the Human Resources Department, and that he had instructed Muhammad to proceed with caution in that regard. Specifically, Tracy testified that he had told Muhammad that it would be in his best interest to "not pick any fights until he gets tenure."

#### Union Members' Provision of Snacks to Support Bargaining Team

The union had a culture and practice of providing support to its bargaining teams during negotiations. This support was shown mainly through the provision of snacks or refreshments. Generally, union leadership would seek volunteers from union members within the various educational departments to provide these snacks. The purpose of this practice was to maintain higher levels of membership engagement and as a show of solidarity and strength to the college's administration.

On or around January 4, 2023, Tracy notified the entire bargaining unit of the pending weekly negotiation meetings for the negotiating team and asked for volunteers, per custom, to provide snacks and drinks for the first and future meetings. Tracy did not indicate in his email whether the custom included the expectation that personal funds, as opposed to union funds, would be used to secure the refreshments. On Monday, January 16, 2023, Muhammad responded to the group indicating that the economics department would cover the refreshments for the negotiating team's planning session.

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<sup>3</sup> The union presented evidence about faculty having difficulties with Muhammad in the math department, which is explained in more detail below.

Muhammad was able to secure for each negotiating team member a \$20 gift card from the campus cafeteria to obtain food and snacks for the negotiation session that week. The total cost of gift cards, therefore, was \$100. Muhammad would later request reimbursement from the union for that \$100.

Muhammad's Request for Reimbursement from the Union and the February 9, 2023, Email Chain

On February 9, 2023, as a continuation of the ongoing practice of seeking volunteers to provide snacks for the negotiating team, Tracy emailed the entire bargaining unit seeking such volunteers again. During that email exchange, Muhammad, while including everyone on the email message, asked Tracy and Kerin Keys, the union treasurer at the time of the hearing, the following:

Hi Pat/Kerin

Is there anything that prevents the union budget from covering these expenses? Just wondering.

Muhammad sent this message at 11:16 a.m. that morning. Later, at 11:37 a.m., Tracy notified the group that “[i]t looks like Jan Kaiser has it covered. Thanks Jan.” According to Tracy, he wrote this email to the entire group while he was in his vehicle preparing to go into a dental appointment. Two minutes later, at 11:39 a.m., Muhammad ‘replied all’ to Tracy with the following message:

Not sure why you couldn't answer the question.

Union representatives typically respond to simple inquiries.

At approximately the same time, Tracy responded to Muhammad (again, to all) with, “No, there isn't, but I like to keep the membership involved even if it's a small token.” Muhammad then replied with a single word, “Dues.”

Angela Russell, a fellow faculty member in the in the math department, responded to Muhammad at 11:44 a.m., again to the entire group email, with the following:

Waleed,

Bringing snacks is an optional thing that some of us enjoy doing to show our support for the negotiators who work very hard on our behalf.

Your question was answered within 10 minutes; I think you probably owe Pat an apology.

Angie Russell

Muhammad then replied to Russell by stating the following:

Hi Angela,

I'll take this issue offline. I don't believe I owe an apology for inquiring about a response. There was no harm intended and the question was answered.

We can raise points of this nature to Union representatives and they can respond. Thanks.

This concluded the portion of the email string presented at hearing regarding the provision of snacks.

That same day, February 9, Russell emailed Amy Snively-Martinez—who was a member of Muhammad's tenure committee—her concerns as follows:

Hi Amy

I did a little digging to find out that you are on Waleed's pre-tenure committee. I wanted to reach out with a concern about his attitude. He really doesn't seem to be a team player. Aside from today's email exchanges, he is being very rigid and inflexible in working on scheduling with the math department so that our classes that the business students need won't overlap. If you haven't already submitted your information for the year, I wanted you to have this information.

Thanks,

Angie Russell

Both Tracy and Sharon Wiest, who was the AHE president at the time of the hearing, testified concerning their impressions of Muhammad's email messages. Tracy, specifically, believed that the tone of Muhammad's emails was offensive and that the emails were like Muhammad "snapping his fingers" at Tracy and saying, "hey, hey, hey, jump."

Muhammad's Reimbursement Request and the Executive Board Debate

On or around February 10, 2023, Muhammad submitted his reimbursement request to both Tracy and Keys, having already received \$40 from Tracy. The union's practice of providing this support, however, did not carry with it the expectation that money used for providing the snacks would come from the union budget. Tracy and Wiest testified that the practice was much more meaningful if individual members either prepared or provided the snacks themselves, rather than using the union account.<sup>4</sup>

Since the union did not have a practice of reimbursing individual members for their contribution, the matter was submitted to the union's executive board for debate. On February 22, 2023, via email discourse, the union executive board debated the issue, and the responses from the executive board members varied. Some members believed that it would set a bad precedent to reimburse Muhammad, whereas others believed it may be acceptable to reimburse Muhammad in this instance with a caveat. Specifically, Wiest testified that she would be amenable to reimbursing Muhammad as he was most likely unaware of the union's culture and practice in this regard.

At the conclusion of the debate, the executive board decided not to reimburse Muhammad with union funds, and Tracy and another union member reimbursed Muhammad with their personal funds. Despite Muhammad's lack of knowledge regarding the culture and practice, there is no evidence that anyone on that executive board had any conversation with Muhammad, or resolved to have any conversation with Muhammad, about the debate, the culture and practice, or the decision regarding his reimbursement.

Tracy's Submission to Muhammad's Tenure Committee

Muhammad was a probationary faculty member, otherwise known as a "probationer," which meant that he was pre-tenure and under consistent and ongoing review by a tenure committee. The CBA sets forth the process and standards for the creation of the pre-tenure committee and the

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<sup>4</sup> In other words, the union believes it is a stronger signal of solidarity to the administration if the individual members, and not the union, take the initiative to provide these snacks.

evaluation of the pre-tenure probationer. One of the standards on which a probationer is evaluated is their relationship with their peers, and this is set out under Article 8, section D, point 3.

The CBA also provides a mechanism through which peer faculty may provide to the committee their insights and experiences with a probationer so that the committee might consider that information in formulating its recommendation. On February 27, 2023, five days after the executive board debate over reimbursement concluded, Tracy emailed his concerns to Muhammad's pre-tenure committee regarding Muhammad's responses during the February 9, 2023, email exchange. Tracy recounted Muhammad's email exchanges in his submission to the committee and wrote the following:

[Muhammad's] exchange was looked upon by faculty and myself as very insulting and bewildering to the point that another faculty member stepped into the email exchange and told Waleed that he owes me an apology. He responded by saying that he didn't.

I addressed his 11:16 email at 11:39, 23 minutes from the time he wrote it. Calling me out for not responding in his timeframe is rude at best. What is most repugnant is that he did all of this in front of the faculty. His actions were less than collegial.

I have serious reservations about someone who behaves this way being offered a tenured position at WVC.

Before Tracy's February 27, 2023, email was sent, Muhammad's pre-tenure committee had convened already and completed its recommendation on the requisite nine evaluation points. Still, Holly Bringman, the Dean of Math and Sciences, responded to Tracy via email on February 28, 2023, and wrote the following:

Pat,

In the interest of full disclosure, would you be willing to share your response to Waleed? I only see his words reported below, but not yours. Also, I am struggling to see what is offensive about his question. I just want to be sure we aren't inferring tone where there is none. Additionally, have you attempted to have a follow up conversation with your colleague to find common ground? Just trying to gain a better understanding of the full context within which your concerns arose. After all, relationships with peer faculty are bi-directional.

Thank you,

Holly

Since Tracy had not had a conversation with Muhammad following the February 9 exchange, Tracy reached out to Muhammad, via email, on March 6, 2023. In this email, Tracy explained his rationale for submitting his concerns to the pre-tenure committee, which included Tracy's understanding of a difficult situation Muhammad was having with another faculty member in the math department. Specifically, Tracy explained the following in this email:

. . . . Since meeting you, we have had at least one discussion about a difficult situation you had with another faculty member. I was concerned and tried to steer that discussion in your best interest with the goal of helping you succeed at WVC. However, the email string that took place on February 9<sup>th</sup> among AHE members about negotiator snacks has led me to have real concerns about your ability to communicate and work collegially with faculty. . . .

At no point in this email did Tracy offer the opportunity to meet and discuss the matter personally with Muhammad or offer suggestions to Muhammad on how his question about the use of union dues could have been more palatable.<sup>5</sup> Instead, he directed Muhammad to communicate with him in the future only via email, primarily their WVC emails, and said that Muhammad could either contact him (Tracy) for assistance in matters requiring union assistance or union vice president Samuel Johnson.

#### Issues in the Math Department

The evidence presented at hearing suggested that the math and sciences department<sup>6</sup> was looking to implement a system known as "block scheduling." This scheduling practice had been the subject of some debate among the faculty involved in the department. Wiest testified that students were having difficulty or were unable to attend requisite classes because the times would overlap, or they would be offered at different campus locations. She further testified that Bringman had been working with Muhammad, Accounting Professor Mike Schoman, and faculty in Omak to coordinate a schedule that would keep students on track to earn a timely degree. Thus, as Russell

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<sup>5</sup> Tracy did not do either of these things in the email even though Dean Bringman had suggested them to Tracy.

<sup>6</sup> The record is not fully clear on the structure of the respective departments, but the evidence does suggest that both the math and sciences department and the economics department report to Bringman and share or overlap in certain student curriculum degree requirements.



acknowledged in her testimony, Muhammad was not the only faculty member who had issues or conflicts with the block schedule change.

These were the issues that Muhammad discussed with Tracy early in Muhammad's appointment. Tracy, as set forth above, believed that Muhammad was not coming to him in a professional capacity, but as a friend. In addition, Tracy did not believe it was his place to get involved in these matters, that they were reserved for Human Resources, and he had instructed Muhammad not to pick fights until he received tenure. The following exchange between Muhammad and Tracy during Tracy's cross-examination provided an example of Tracy's level of involvement.

Q Okay. So if you testified that there was a dispute about the [math department] schedule and you don't know who made the decision, isn't that, you know, inappropriate or you don't – how does that match up?

A **Well, what I was speaking to is the negotiating process, meaning that the different departments need to work together to come to some kind of schedule that is, you know, fair and equitable for everybody. And the one person that spoke to me said that it was very difficult working with you.**

Q Well, the reaction –

A **I don't know –**

Q My next question would be if I told you it was difficult for me to work with that person, would you believe it?

A **Well, I had no reason up until that time to believe that anything that came out – that you told me was untrue. So I would believe it.**

Q Did you ask me my side of the issue?

A **No.**

Q Okay. So you didn't have my position? You just took – let me rephrase that. So you did not – did you – so you didn't know my position; is that correct?

A **Correct.**

Q When you sent the email to my tenure committee, did you discuss it with me, Waleed Muhammad, first?

A **No.**

Post-Complaint Evidence Presented by the Union<sup>7</sup>

Upon receipt of Muhammad's unfair labor practice complaint, Tracy realized that Muhammad may have been confused as to the role in which Tracy was submitting his concerns to the committee. Based upon that realization, he contacted Muhammad's pre-tenure committee and asked that his concerns no longer be considered moving forward. The committee acknowledged receipt of Tracy's redaction request and confirmed that it was to be disregarded in the future.

ANALYSISApplicable Legal Standard(s)*Union Interference*

Under Washington law, employees have the right to organize and designate representatives of their choosing for purposes of collective bargaining or exercise other rights free from interference, restraint, coercion, or discrimination. RCW 28B.52.025. Pursuant to RCW 28B.52.073(2)(a), a union is prohibited from interfering with protected employee rights, and threats of reprisal or force or promises of benefit associated with the union activity are unlawful. *See Bellevue College (Bellevue Community College Association of Higher Education)*, Decision 10031 (CCOL, 2008).

To prove an interference violation, the complainant must prove, by a preponderance of the evidence, that a typical employee in similar circumstances could reasonably perceive the conduct as a threat of reprisal or force or promise of benefit related to pursuing a right protected by the collective bargaining laws. *City of Port Townsend (Teamsters Local 589)*, Decision 6433-B (PECB, 2000). A finding of intent is not necessary. *Id.* (citing *City of Mercer Island*, Decision 1580 (PECB, 1983)).

In *Community College District 13 (Lower Columbia College)*, Decision 8117-B (PSRA, 2005), the Commission determined that, based on a review of applicable National Labor Relations Board (NLRB) case law, the interference standard for unions is narrower than the interference standard

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<sup>7</sup> The union attempted to introduce evidence stemming from mediation conducted under the Commission's rules. WAC 391-45-260 expressly excludes both conversations and offers made during mediation and the Examiner, sua sponte, limited this line of questioning and precluded the introduction of the evidence.

for employers. The threshold for union interference, therefore, is more restrictive to include tactics such as “violence, intimidation, and reprisals.” *Id.* The evidence in the *Lower Columbia Valley* case showed that some employees felt “pressured” upon being approached by a competing union to sign an authorization card. But, the Commission noted, feeling some pressure during an organizing campaign is not tantamount to intimidation that would rise to the level of unlawful coercion. *Id.*; *City of Bellingham (Washington State Council of County and City Employees)*, Decision 13299-A (PECB, 2021).<sup>8</sup>

#### Application of Standard(s)

On these facts, Muhammad has established, by a preponderance of the evidence, that a typical employee in similar circumstances could reasonably perceive Tracy’s submission to the pre-tenure committee as a threat of reprisal or force or promise of benefit related to pursuing a right protected by the collective bargaining laws. Specifically, on February 9, 2023, Muhammad was expressing frustration with what he (Muhammad) believed to be Tracy’s inability to answer a question regarding Muhammad’s reimbursement for supporting the union. Tracy’s subsequent complaint to Muhammad’s tenure committee can reasonably be perceived as reprisal against Muhammad for expressing these views.

The facts in this case demonstrate that Tracy, as union president, was disinterested in becoming involved in issues, unless those issues involved him and his union leadership capacity. Muhammad brought to Tracy the issues regarding the scheduling conflicts in the math department and discussed those with Tracy. But Tracy did not attempt to get involved and testified that he (Tracy)

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<sup>8</sup> RCW 28B.52.073(2)(a) does not contain the term “interfere with” but instead makes it unlawful for a union to “restrain or coerce” an employee’s exercise of their protected rights. There are no Commission-level decisions interpreting this statutory provision, but the agency has historically treated claims under this provision as union interference claims. *See Bellevue College (Bellevue Community College Association of Higher Education)*, Decision 10031. As such, the Commission’s standard for union interference will apply in this case. In that regard, the Commission in *City of Bellingham* does not appear to be expressly overruling the union interference standard set forth in *Community College District 13 (Lower Columbia College)*. Instead, there seems to be a distinction between the use of that standard when “laboratory conditions” exist in an election context and in non-election cases when those conditions do not exist. Further clarity around this issue is for the Commission to decide, as well as providing clarity around the application of RCW 28B.52.073(1) and (2) and the differing standard between employer versus union interference claims in general. In the present case, the standard being applied is the standard set forth in *Community College District 13 (Lower Columbia College)*, and the conclusions reached are consistent with that standard.

did not believe it was his place as union president to do so. Instead, Tracy instructed Muhammad to be cautious prior to achieving tenure and to refrain from instigating any conflict with other professors (i.e., Tracy's testimony implies his assumption that the conflict in the math department was *because* of Muhammad, without investigating any further). Thus, at the time, Tracy's inaction was a signal that the math department conflicts were not sufficiently important to warrant any action on the part of the union.

Conversely, Tracy's complaint to the tenure committee signaled that Muhammad's expression of frustration toward Tracy and his representational capacity was sufficient to warrant action. However, the action that Tracy took was not to communicate directly with Muhammad but instead to go directly to Muhammad's tenure committee. Moreover, Tracy's complaint was directed squarely at impacting Muhammad's continued appointment with the college. Indeed, he expressed to the tenure committee that he (Tracy) had "serious reservations about someone who behaves this way being offered a tenured position at WVC."

Tracy, Russell, and even Wiest believed Muhammad's February 9 emails contained varying levels of uncivil and unprofessional communication. However, Tracy, as a self-proclaimed friend and mentor to Muhammad, *never* reached out to Muhammad after those emails to seek a mutual understanding or provide Muhammad with context as to the union's practice in supporting the negotiating team. Neither Russell nor Wiest reached out to Muhammad either, even though Wiest, in particular, knew that Muhammad's questions and responses were coming from a place of ignorance to the union's practice of supporting its negotiators.<sup>9</sup> Wiest testified that, from an executive board perspective, the conflict had been resolved simply by agreeing to reimburse Muhammad for his expenditures, without resolving to orient or educate Muhammad on the union's practices and culture.

This fact was highlighted by Dean Bringman's email to Tracy following Tracy's complaint. As a disinterested party, she did not fully understand why Muhammad's emails were so offensive and

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<sup>9</sup> Russell also submitted a complaint to Muhammad's tenure committee and also failed to have any further conversation with him.

believed that further communication between Tracy and Muhammad to find “common ground” would be appropriate under the circumstances. She suggested that Tracy reach out to Muhammad and reminded Tracy that collegiality between two faculty members is “bi-directional.”

After Bringman’s email, Tracy reached out to Muhammad. However, his communication with Muhammad suggests that Tracy was not seeking common ground but was instead intent on *confirming* more strongly Tracy’s rationale for why he (Tracy) complained to the committee. Tracy offered no options or opportunities for he and Muhammad to discuss Muhammad’s emails or Muhammad’s perceived communication style, further signaling that Tracy was not interested in obtaining Muhammad’s point of view.

Being a purported friend and mentor to Muhammad, it is difficult believe that Tracy, as an educated and sophisticated leader of the union, could not have taken Muhammad aside, either on February 9 or soon thereafter, to discuss the issue. Thus, at the time Muhammad received Tracy’s March 6, 2023, email, a typical employee in Muhammad’s circumstances could reasonably conclude that Tracy was only willing to get involved in conflict when that conflict called Tracy’s representational abilities into question. Thus, a reasonable employee could conclude that Tracy’s complaint to the tenure committee was in reprisal for challenging Tracy as a union representative.

*The Faculty/President Distinction Is Irrelevant.*

The union’s argument that Tracy was submitting his concerns to the tenure committee as a faculty member, and not as the union president, is misplaced. The standard for interference is from the perspective of the *employee*, and the respondent’s intent is not required. *City of Port Townsend (Teamsters Local 589)*, Decision 6433-B. Thus, Tracy’s intended use of his submission to the committee as a faculty member, and not the union president, is irrelevant.

Furthermore, Muhammad was not challenging or otherwise behaving abrasively on an issue related to Tracy’s professional abilities (e.g., Tracy’s instructional choices or curriculum plans). Instead, Muhammad, was challenging Tracy’s representational capacities (i.e., the ability to answer either yes or no on whether union dues could be used to reimburse an employee for negotiation support efforts). Thus, Tracy’s choice to submit a complaint to the tenure committee after Muhammad

expressed frustration on a union related issue, rather than a professional issue, substantiates the conclusion that his (Tracy's) complaint was in reprisal for the former.

Therefore, Tracy's complaint to the tenure committee was in reprisal for Muhammad expressing frustration with what he (Muhammad) believed to be Tracy's inability to answer a question regarding Muhammad's reimbursement for supporting the union. Muhammad is entitled to a remedy in this case.

*The Commission's Conventional Remedy is Appropriate in this Case.*

Fashioning remedies is a discretionary act of the Commission, and appropriate remedies are generally necessary to effectuate the purposes of the statute and to make the Commission's lawful orders effective. *Clark Public Utilities*, Decision 2045-B (PECB, 1989); *Municipality of Metropolitan Seattle (METRO)*, Decision 2845-A (PECB, 1988), *aff'd*, *Municipality of Metropolitan Seattle*, 118 Wn.2d 621 (1992). The standard remedy includes ordering the offending party to cease and desist and also includes, but is not limited to, restoring the status quo ante, posting a notice, and reading said notice at a meeting of the offending party's governing body. *State - Corrections*, Decision 11060-A (PSRA, 2012); *City of Anacortes*, Decision 6863-B (PECB, 2001); *City of Yakima*, Decision 10270-A (PECB, 2011).

Deviations from the standard remedy are extraordinary remedies, and extraordinary remedies are to be used sparingly. *University of Washington*, Decision 11499-A (PSRA, 2013). Thus, anything outside of the scope of those standard remedies, such as compensatory damages, are extraordinary and should only arise "when a defense is frivolous, or when the respondent has engaged in a pattern of conduct showing a patent disregard of its good faith bargaining obligation." *Id.* (citing *State – Department of Corrections*, Decision 11060-A). Here, though the union's defense is misplaced regarding Tracy's role as a faculty member (versus union representative) when he submitted his concerns to the tenure committee, it is not frivolous. Furthermore, Tracy's singular action in submitting his concerns does not demonstrate a pattern of conduct showing a patent disregard of

his good faith representation obligation (he later offered to continue to represent him in union matters). Thus, a conventional remedy is appropriate in this case.<sup>10</sup>

### CONCLUSION

Based on the record in this case, Patrick Tracy's complaint to Muhammad's tenure committee was in reprisal for Muhammad expressing his views regarding Tracy's responsiveness to Muhammad on a union related issue. Furthermore, Muhammad is entitled to a remedy in this case, and that remedy will be the conventional remedy awarded in union interference cases. This includes an order for the union to cease and desist, posting and reading a notice of violation of the statute, and a restoration of the status quo ante.

### FINDINGS OF FACT

1. Wenatchee Valley College (employer) is a public employer within the meaning of chapter 28B.52 RCW.
2. The Association for Higher Education (union) is an employee organization within the meaning of RCW 28B.52.020(1) and is the exclusive bargaining representative within the meaning of RCW 28B.52.020(6).
3. Waleed Muhammad is an academic employee within the meaning of RCW 28B.52.020(2) and is an employee within the bargaining unit represented by the union.
4. Patrick Tracy was the president of the union and employed as a full-time faculty member as a Professor of Medical Laboratory Technology.
5. When Muhammad began his appointment at the College, Tracy appointed Muhammad to the safety committee and to the union's executive board for one year as a full-time temporary faculty representative. No evidence was presented that any fellow faculty

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<sup>10</sup> The Commission is also not authorized to award punitive damages. *See University of Washington*, Decision 11499-A (PSRA, 2013).

members had any issue with Muhammad as a faculty representative to the executive board during his year of service.

6. At some point in Muhammad's early employment, he began to raise issues with Tracy regarding some conflicts within Muhammad's department. Tracy believed that it was not his job to become involved in these matters, as they should be reserved for the Human Resources Department, and he had instructed Muhammad to proceed with caution in that regard. Specifically, Tracy told Muhammad that it would be in his best interest to "not pick any fights until he gets tenure."
7. Tracy did not investigate further into any conflicts between Muhammad and bargaining unit members within the math department.
8. The union had a culture and practice of providing support to its bargaining teams during negotiations through the provision of snacks or refreshments at bargaining sessions.
9. On Monday, January 16, 2023, Muhammad indicated that the economics department would cover the refreshments for the negotiating team's planning session.
10. Muhammad was able to secure for each negotiating team member a \$20 gift card from the campus cafeteria to obtain food and snacks for the negotiation session that week. The total cost of gift cards, therefore, was \$100.
11. On February 9, 2023, Muhammad, while including all union members on the email message, asked Tracy and Kerin Keys whether there was "anything that prevents the union budget from covering" Muhammad's expenses for providing snacks to the bargaining team.
12. Tracy didn't immediately respond, and Tracy's next message to the union member email group was that "Jan Kaiser has it covered."
13. Two minutes later, Muhammad replied to Tracy and everyone else on the email list again with, "[n]ot sure why you couldn't answer the question. Union representatives typically respond to simple inquiries."



14. At approximately the same time, Tracy responded to Muhammad (again, to all) with, “No, there isn’t, but I like to keep the membership involved even if it’s a small token.” Muhammad then replied with a single word, “Dues.”
15. Tracy believed that the tone of Muhammad’s emails was offensive and that the emails were like Muhammad “snapping his fingers” at Tracy and saying, “hey, hey, hey, jump.”
16. On or around February 10, 2023, Muhammad submitted his reimbursement request to both Tracy and Keys, having already received \$40 from Tracy
17. Muhammad was engaging in protected activity when he was expressing his opinion regarding Tracy’s representation in these emails.
18. Since the union did not have a practice of reimbursing individual members for their contribution, Muhammad’s request for reimbursement was submitted to the union’s executive board and debated on February 22, 2023. Sharon Wiest, a member of the executive board, was amenable to reimbursing Muhammad as he was most likely unaware of the union’s culture and practice in this regard. At the conclusion of the debate, the executive board decided not to reimburse Muhammad with union funds, and Tracy and another union member reimbursed Muhammad with their personal funds.
19. Muhammad was a probationary faculty member, otherwise known as a “probationer,” which meant that he was pre-tenure and under consistent and ongoing review by a tenure committee. The CBA sets forth the process and standards for the creation of the pre-tenure committee and the evaluation of the pre-tenure probationer. One of the standards on which a probationer is evaluated is their relationship with their peers, and this is set out under Article 8, section D, point 3.
20. The CBA also provides a mechanism through which peer faculty may provide to the committee their insights and experiences with a probationer so that the committee might consider that information in formulating its recommendation.
21. On February 27, 2023, Tracy emailed his concerns to Muhammad’s pre-tenure committee regarding Muhammad’s responses during the February 9, 2023, email exchange and

indicated to the committee that Tracy had “serious reservations about someone who behaves this way being offered a tenured position at WVC.”

22. Tracy had not spoken with Muhammad or discussed the nature of Muhammad’s emails since February 9, 2023.
23. On February 28, 2023, Holly Bringman, the Dean of Math and Sciences, responded to Tracy’s submission to Muhammad’s pre-tenure committee. She was “struggling to see what [was] offensive about [Muhammad’s] question” and asked if Tracy had attempted to follow up with Muhammad “to find common ground.”
24. Since Tracy had not had a conversation with Muhammad following the February 9 exchange, Tracy reached out to Muhammad, via email, on March 6, 2023. In that email, Tracy did not offer to discuss the matter or seek common ground but explained his justification to Muhammad for submitting the complaint.
25. At the time Muhammad received Tracy’s March 6, 2023, email, a typical employee in Muhammad’s circumstances could reasonably conclude that Tracy was only willing to get involved in conflict when that conflict called Tracy’s representational abilities into question. Thus, a reasonable employee could conclude that Tracy’s complaint to the tenure committee was in reprisal for challenging Tracy as a union representative, a protected activity.
26. Upon receipt of Muhammad’s unfair labor practice complaint, Tracy realized that Muhammad may have been confused as to the role in which Tracy was submitting his concerns to the committee. Based upon that realization, he contacted Muhammad’s pre-tenure committee and asked that his concerns no longer be considered moving forward. The committee acknowledged receipt of Tracy’s redaction request and confirmed that it was to be disregarded in the future.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under chapter 28B.52 RCW and 391-45 WAC.

2. By submitting a complaint to Muhammad's pre-tenure committee, as described in findings of fact 6 through 25, Patrick Tracy, union president, acted in reprisal for Muhammad's protected activities in violation of RCW 28B.52.073(2)(a).

ORDER

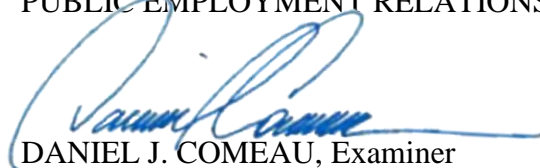
The Association for Higher Education, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:
  - a. Submitting complaints to Muhammad's pre-tenure committee regarding the tone of his communications in reprisal for his protected activity without first offering to discuss the issue with him or attempt to find common ground.
  - 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 28B.52 RCW:
  - a. Retract any and all complaints by Patrick Tracy to Muhammad's pre-tenure committee in regard to Muhammad's communications dated February 9, 2023.
  - b. 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.

- c. Read the notice provided by the compliance officer into the record at a regular meeting of the governing body or board of the Association for Higher Education 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.
- d. 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.
- e. 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 8th day of April, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DANIEL J. COMEAU, 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