

Cause No. 316360-III

**FILED**

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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
BY \_\_\_\_\_

**COURT OF APPEALS  
STATE OF WASHINGTON  
(Div. III)**

**MICHAEL E. DORON, PH.D**

**Appellant,**

**v.**

**EASTERN WASHINGTON UNIVERSITY; UNITED  
FACULTY OF EASTERN WASHINGTON  
UNIVERSITY; UNITED FACULTY OF  
WASHINGTON STATE; WASHINGTON  
EDUCATION ASSOCIATION**

**Appellees.**

Superior Court No. 11-2-02403-7  
Spokane County  
Honorable Judge Moreno

**OPENING BRIEF**

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**Table of Contents**

I. INTRODUCTION ..... 1

II. ASSIGNMENTS OF ERROR ..... 1

III. STATEMENT OF THE CASE & PROCEEDINGS ..... 3

    A. Trial Court Proceedings ..... 3

    B. Factual Background ..... 4

IV. ARGUMENT ..... 29

    A. THE CBA DOES NOT ALLOW “CONTINGENT” REAPPOINTMENTS, NOR DOES IT ALLOW EWU TO WITHDRAW RE-APPOINTMENT NOTICE WITHOUT “JUST CAUSE” , NOR DOES IT ALLOW EWU TO STRIP DISCIPLINARY PROCEDURES. .... 29

    B. THE UNION VIOLATED ITS DUTY OF FAIR REPRESENTATION BY REFUSING TO FILE A GRIEVANCE AFTER EWU TERMINATED DORON’S RE-APPOINTMENT WITHOUT “JUST CAUSE.” ..... 32

    C. THE TRIAL COURT ERRED AS A MATTER OF LAW FINDING THAT THERE WAS NO EVIDENCE THAT WEA TORTIOUSLY INTERFERED WITH DORON’S LEGITIMATE BUSINESS EXPECTANCIES WITH HIS EMPLOYER EWU AND HIS UNION UFE. .... 36

    D. EWU WRONGFULLY DISCHARGED DORON IN VIOLATION OF PUBLIC POLICY AFTER DORON ASSERTED HIS COLLECTIVE BARGAINING RIGHTS. .... 39

    E. THE TRIAL COURT ERRED IN HOLDING THAT THAT EWU DID NOT BREACH A PROMISE TO DORON TO SUPPORT A PROMISSORY ESTOPPEL CLAIM. .... 43

    F. DORON IS ENTITLED TO HIS ATTORNEYS FEES AND COSTS PURSUANT TO RCW 49.48.030 AND RAP 18.1. .... 45

V. CONCLUSION ..... 46

## TABLE OF AUTHORITIES

### Cases

<i>Allen v. Seattle Police Guild</i> , 100 Wn.2d 361, 369 (1983).....	33
<i>Burchfiel v. Boeing Corp.</i> , 149 Wn. App. 468, 205 P.3d 145, 152 (Div. 3 2009) .....	41
<i>Dice v. City of Montesano</i> , 131 Wn. App. 675, 684 (Div. 2), <i>rev. den.</i> 158 Wn.2d 1017 (2006).....	29
<i>Dickson Co. v. Pierce County</i> , 128 Wn. App. 488, 493 (Div. 2, 2005).....	32
<i>Flower v. T.R.A. Industries, Inc.</i> , 127 Wn. App. 13, 31 (Div. 3 2005) <i>rev. den.</i> 156 Wn.2d 1030 (2006).....	44, 45
<i>Imperato v. Wenatchee Valley College</i> , 160 Wn. App. 353, 358 (Div. 3), <i>rev.</i> <i>den.</i> 171 Wn.2d 1033 (2011) .....	29
<i>Lindsey v. Metro. Seattle</i> , 49 Wn. App. 145, 149 (Div. 1, 1987) <i>rev. den.</i> 109 Wn.2d 1016 (1987).....	33
<i>McGinnity v. AutoNation Inc.</i> , 149 Wash. App. 277, 284 (Div. 3, 2009) .....	45
<i>Navlet v. The Port of Seattle</i> , 164 Wn.2d 818 (2008).....	29, 30
<i>Newton Ins. Agency &amp; Brokerage, Inc. v. Caledonian Ins. Group, Inc.</i> , 114 Wn. App. 151, 157-58 (Div. 1 2002), <i>rev. granted</i> 148 Wn.2d 1021 (2003).....	37
<i>Piel v. The City of Federal Way</i> , 177 Wn.2d 604, 610 (2013) .....	40
<i>Ross v. Harding</i> , 64 Wn.2d 231, 236 (1964) .....	32
<i>Womble v. Local 73, Int'l Brotherhood of Electrical Workers</i> , 64 Wn. App. 698, 701 (Div. 3), <i>rev. den.</i> 119 Wn.2d 1018 (1992).....	32, 33
<i>Womble v. Local Union 73</i> , 64, Wn. App. at 704.....	46

### Statutes

RCW 41.76 .....	39, 40
RCW 49.48.030 .....	45
RCW 49.60 .....	3

### Rules

CR 56(c).....	29
RAP 18.1.....	45

## I. INTRODUCTION

This appeal challenges the trial court's rulings that as a matter of law (1) a particular collective bargaining agreement ("CBA") allowed a public university to withdraw the reappointment of a non-tenured faculty member without "just cause" and without following the disciplinary procedures in the collective bargaining agreement, (2) the faculty union did not breach its duty of fair representation by failing to file a grievance on behalf of its aggrieved faculty member, (3) that a third party to the agreement was not tortiously interfering with the contract by advising the union to argue against its member's interests, and (4) that the university's termination was in retaliation for the faculty member's pursuit of collective action under the CBA, in violation of public policy.

## II. ASSIGNMENTS OF ERROR

Appellant Michael E. Doron, Ph.D, ("Doron") raises the following assignments of error.

1. The trial court erred as a matter of law when it interpreted the collective bargaining agreement ("CBA") between Eastern Washington University ("EWU") and the faculty's bargaining unit United Faculty of Eastern Washington University ("UFE") to allow EWU to reappoint faculty "contingent" upon an improvement plan allowing EWU to unilaterally withdraw an appointment without "just cause" and in violation of the CBA's disciplinary procedures. The record at summary judgment demonstrates that the CBA did not authorize contingent reappointment and, in fact, the reappointment

given Doron was not contingent on any action by him. Given his reappointment notice, Doron was entitled to the “just cause” procedures provided by the CBA prior to any action by EWU adverse to his contract right to employment.

2. The trial court erred as a matter of law in holding that defendant union UFE did not violate its duty of fair representation by refusing to file a grievance on the behalf Doron after EWU terminated his re-appointment without just cause.
3. The trial court erred as a matter of law in holding that there was no evidence that Washington Education Association (“WEA”) tortuously interfered with Doron’s legitimate business expectancies with his employer and his union. The record at summary judgment demonstrated that WEA recommended to the UFE that it argue a position against a UFE member on a matter wholly outside the province of the collective bargaining agreement.
4. The trial court erred as a matter of law in holding that that EWU did not breach its promise to Doron in connection with plaintiff’s promissory estoppel claim. The record at summary judgment demonstrated that EWU made key promises to Doron, upon which he relied, knowing that the promises could not be kept.
5. The trial court erred as matter of law in holding that EWU did not wrongfully discharge Doron in violation of public policy after Doron asserted his collective bargaining rights in the CBA.

### III. STATEMENT OF THE CASE & PROCEEDINGS

#### A. Trial Court Proceedings

On June 27, 2011, Plaintiff Doron filed a complaint against his former employer EWU, his union UFE, and a third party WEA. The complaint alleged, among other things, contract violations by the University, failure to represent by the Union, and tortious interference by WEA. CP 17-44. On September 24, 2012, Plaintiff Doron filed a First Amended Complaint, including claims of disability discrimination in violation of RCW 49.60 *et seq.* CP 162-194. Plaintiff Doron filed cross motions for summary judgment. CP 433-435, 1349 – 1351.

On March 28, 2013, the trial court entered an Order Granting EWU's Motion for Summary Judgment on Plaintiff's first and second causes of action, i.e., breach of contract and duty of fair dealing. CP 1356-1359.

On April 19, 2013, the trial court entered an order granting Defendants' motion for summary judgment on Plaintiff's sixth, seventh, eighth, tenth, and eleventh causes of action, i.e., claims alleging handicap discrimination, wrongful termination, promissory estoppel, and a claim for the wrongful withholding of wages. CP1382-1386.

On May 24, 2013, the trial court entered an order granting Defendant UFE's and WEA's motions for summary judgment on the third, fourth, fifth, eleventh, and thirteenth causes of action, i.e., claims alleging breach of duty of fair representation, and tortious interference with business expectancies, and disability discrimination. CP 1523-1528.

On April 29, 2013, Plaintiff Doron filed a Motion for Reconsideration on dismissal of Plaintiff's claim of promissory estoppel against Defendant EWU. CP  
OPENING BRIEF Page | 3

1411-1413. On June 19, 2013, the trial court entered an order denying Plaintiff Doron's Motion for Reconsideration. CP 1592-1593. This last order dismissed the remaining causes of action.

This timely appeal followed. CP 1400-1410, 1491-1509, 1530-1555, 1594-1622.

**B. Factual Background**

***EWU promises to Doron prior to hiring***

Doron earned a Master of Accountancy from Case Western University, and later earned a Doctor of Philosophy in History with his dissertation in accounting history from Texas A&M University. CP 317-318. Doron is a licensed certified public accountant (C.P.A.), and is a member of the American Accounting Association, the Academy of Accounting Historians, and the American Institute of Certified Public Accountants. CP 317-318. Doron's professional experience includes working for a major national accounting firm as an auditor, and as instructor of Intermediate Accounting, MBA Accounting, and Financial Accounting at universities other than EWU. 317-318.

Rex Fuller was the Dean of EWU College of Business and Public Administration ("College") in 2009 during the time Doron was applying for and interviewing for employment at EWU as an assistant professor of accounting. CP 1421-1422.

EWU Accounting Professors Arsen Djatej and Joe Dowd and Bill McGonigle were members of the hiring committee which interviewed Doron. CP 1422 - 1423, 1428-1429, 1433-1434, 1445-1446.

Djatej explicitly promised to train and help Doron to meet EWU's research expectations. CP 1436-1437, 1456-1457.

Fuller, Dowd and the other members of Doron's interviewing committee were aware that Doron was promised Djatej's assistance to meet EWU's academic research requirements. 1422-1424, 1427-1428, 1436-1437, 1446-1447, 1456-1457, 1458.

Djatej and Fuller agreed that Doron's academic research and dissertation in accounting history was a "related field" for academic qualification purposes under the Association to Advance Collegiate Schools of Business ("AACSB"). CP 1423. Fuller met with Djatej, Dowd, and each member of the interview committee on individual basis and agreed that Doron was academically qualified to teach accounting at EWU, and that Doron's dissertation in accounting history was a "related field" for AACSB accreditation purposes. CP 1422-1423, 1427-1428, 146. Based on Fuller's meetings with Djatej and McGonigle, all understood that Doron could meet EWU's academic research requirements by publishing accounting research in a peer review journal, in addition to co-authoring papers with Djatej. CP 1428-1429, 1463.

On February 28, 2009, McGonigle sent an email to Djatej indicating that Djatej's assurances to support Doron's research made a big difference in Doron's attitude, and that EWU should have an excellent chance to hire Doron. CP 1463, 1437. The email reiterated that Dean Fuller found Doron's research in accounting history acceptable at EWU provided that the research was accepted for publishing in a peer reviewed journal. CP 1463.

On February 18, 2009, Dowd acknowledged Fuller's agreement with the committee that Doron was academically qualified to teach accounting at EWU, specifically that Doron's dissertation in accounting history was a "related field" for AACSB accreditation purposes. CP 1461<sup>1</sup>, 1446-1447, 1427-1428.

Fuller's meetings with Djatej and Doron explicitly concluded that Doron could meet EWU's academic research requirements with Djatej's help which help included Doron's co-authoring peer reviewed publications with Djatej. CP 1423-1424, 1436-1437, 1456-1458.

Unbeknownst to Doron, Djatej had other plans. During Doron's hiring process, Djatej informed Fuller and McGonigle that Djatej was interviewing for a teaching position at Colorado State University; however, Djatej never informed Doron as to such when Doron was interviewing for a teaching position at EWU. CP 1438, 1425-1426, 1465.

On or about March 5, 2009, College Dean Rex Fuller offered Doron verbally, and in writing, a probationary, six-year tenure-track position with EWU as an Assistant Professor of Accounting and Information Systems ("AIS"). CP 228. The written offer that Doron received from Dean Fuller was intended to "summarize the verbal offer of employment" and stated that his base salary would be increased upon the acceptance/publication of two peer reviewed journal articles "in accounting". CP 228. The offer further stated that Doron's Faculty Activity Plan ("FAP") would specify the levels of teaching and scholarly research required for tenure and promotion. CP 228.

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<sup>1</sup> Reproduced as Appendix A-2.  
OPENING BRIEF Page | 6

On or about March 17, 2009, EWU re-extended to Doron the same job offer with a greater nine-month academic salary. CP 230-231. Neither of EWU's written offers stated that Doron would be required to publish in accounting subjects other than accounting history, his area of expertise, nor withdrew EWU's previous determinations that Doron's past work in accounting history was an acceptable "related field." CP 228, 230-231. No communication put Doron on notice that Djatej's continued presence at EWU was tentative.

EWU's job offer stated it was subject to all conditions of employment set forth in the CBA between EWU and UFE. CP 230-231. Pursuant to the CBA § 1.1, as a full-time faculty member of EWU, Doron was a member of the bargaining unit exclusively represented by UFE. CP 235.

As of March 15, 2009, Fuller had been in negotiations with Djatej to make a counter-offer to keep Djatej on the faculty at EWU; and Fuller still failed to disclose to Doron during Doron's interview process that Djatej had intentions to leave EWU. CP 1425-1426, 1465.

On March 15, 2009, Dowd, a member of the hiring committee, expressed concern to Djatej that keeping Doron in the dark was unfair, stating, "Since Mike Doron agreed to come here mostly to work with you, you ought to let him know if/when you decide to accept the position at CO." CP 1465<sup>2</sup>, 1448, 1438. Doron was not included on the email.

Notwithstanding Doron's known decision to accept EWU's offer based on EWU's promise to support his access to Djatej, Fuller never considered notifying

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<sup>2</sup> Reproduced as Appendix A-3  
OPENING BRIEF Page | 7

Doron during or after Doron's interview that Djatej was considering leaving EWU. CP 1425-1426, 1430.

Doron relied upon Djatej's and Fuller's promises that Djatej would be available to coauthor academic papers with Doron (thereby helping Doron meet his research requirement). 1456-1457. In reliance, Doron turned down job offers from other colleges and accepted the EWU job offer and relocated to Spokane. CP 1456-1457.

About three weeks after Doron was hired by EWU, Djatej notified Doron that Djatej was resigning from EWU to take a job in Colorado. CP 1454.

#### ***EWU Promises to Doron After Hiring***

When Doron arrived on the EWU campus prior to beginning his employment, Fuller and Doron discussed the fact that Djatej would not be working for EWU, but Fuller told Doron that co-authorship with Djatej could continue given modern technology and the internet. CP 1426.

Doron expressed to Fuller concerns that Djatej would not have any incentive to work with Doron when Djatej was not working at EWU. CP 1426, 1454. Fuller never asked Djatej to continue to work with Doron on coauthoring academic research while Djatej was working in Colorado. CP 1426-1427.

In October 2009, while Djatej was teaching in Colorado, Doron sent to Djatej an email attaching an academic paper drafted by Doron, and Doron asked Djatej to review it and expand upon it. CP 1467, 1440-1441. Djatej ignored the request. CP 1457.

In December 2009 the EWU Administration, including then College Dean Fuller, approved Doron's FAP which set his forth goals and expectations for

performance in teaching, scholarship, and service for evaluation of faculty, as required by the CBA, the College Policies and Procedures (“P&P”), the AIS Department P&P, and his written job offer from EWU. CP 313-319<sup>3</sup>. Doron’s approved FAP sets forth in the “Quality of Research and Scholarship” section specifies academic research goals, all in the area of accounting history. CP 315.

The Department, Dean, and the Provost approved the FAP and after the approval, Doron continued working exclusively on several academic research projects in the area of accounting history. CP 313-319, 1291-1292.

On January 7, 2010, AIS Department Chair Elizabeth Murff a.k.a. Elizabeth Tipton (“Murff”) sent a memorandum to Dean Fuller recommending Doron for retention for the 2010-2011 academic year. CP 380. Murff noted that Doron had published a peer reviewed article on accounting history and was preparing two more, as described in his FAP. Murff stated, “At this rate, he is on track at this time towards meeting the requirements set forth in his FAP for attaining promotion and tenure.” CP 380.

On January 19, 2010, the AIS Department Personnel Committee (“DPC”) sent a memorandum to Dean Fuller recommending renewal of Doron’s probationary contract for the 2010-2011 academic year, stating Doron had “successfully satisfied all requirements of a first-year assistant professor.” CP 382.

On February 3, 2010, AIS Department Chair Murff, sent a peer evaluation of Doron’s classroom performance after observation of Doron’s auditing course with the summary as follows: “Dr. Doron is developing into an excellent instructor as he

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<sup>3</sup> Reproduced as Appendix A-4  
OPENING BRIEF Page | 9

is rigorous in his expectations, current in terms of course content, well organized in presenting this content and rapidly developing beyond the presentation and engagement skills of a new assistant professor.” CP 384-386.

On or about February 4, 2010, Dean Fuller sent a memorandum to the EWU Provost and Vice President for Academic Affairs John Mason concurring with the recommendations to renew Doron’s contract for academic year 2010-11, noting Doron’s aforementioned published accounting history journal article and stating:

*[Doron’s] scholarly works are directly related to his discipline and are appropriate in meeting accreditation expectations for academically qualified faculty. In addition, he has several works in progress, suggesting an on-going research agenda. At this juncture he is meeting expectations in this area of responsibility.*

CP 388.

On May 20, 2010, pursuant to the CBA and the College P&P, Doron submitted a written Faculty Workload Plan for academic year 2010-2011, which included Doron’s plans to present a research paper to the Sixth Accounting History International Conference in Wellington, New Zealand in August 2010 in the “Scholarship (Research/Creative Activity”) Section. CP 390-392. Doron’s Faculty Workload Plan also states he planned to complete an article for publication in the *Accounting Historians Journal*, as well as another article for the journal *Accounting History*, while teaching the Master of Business Administration (MBA) accounting course. CP 390-392. On May 20, 2010, AIS Department Chair Murff approved Doron’s Faculty Workload Plan. CP 392. On or about June 3, 2010, Dean Fuller approved Doron’s Faculty Workload Plan. CP 392.

Djatej returned to EWU in the summer of 2010 when EWU offered him tenure, new data bases for research, and a bigger office. CP 1439.

***EWU changes its mind***

On October 18, 2010, AIS DPC, which included Djatej, forwarded to AIS Department Chair Murff its second annual performance review of Doron. CP 394-398. For the first time EWU rejects Dr. Doron's discipline and urges him to conduct research on topics *other than accounting history*. The review recommends that Doron continue on probationary status but with an improvement plan, "*to address the shortcomings presented in teaching effectiveness and research.*" CP 397.

On October 25, 2010, AIS Department Chair Murff sent a memorandum to College Dean Niel Zimmerman ("Zimmerman") setting out her findings and recommendations. CP 400-404. Murff's findings and recommendations include "*I find that Doron is not currently on track for completing his research expectations and is in fact in danger of losing his academically qualified faculty status.*" CP 402. (emphasis added). Murff recommended that Doron be continued on probationary status and develop an improvement plan pursuant to CBA §5.3.1.(b) to address Doron's "deficiencies." CP 403.

In the fall of 2010, after Djatej returned to EWU, Doron offered to coauthor academic papers with Djatej, as originally agreed during a meeting with AIS Department Chair Elizabeth Murff and Djatej to discuss their concerns regarding Doron's academic research progress, but Doron's suggestion "goes nowhere." CP 1291-1292, 1452-1453, 1456, 1458-1459. Djatej never offered or identified a

specific research project Doron could coauthor with Djatej. CP 740, 1291-1292, 1458-1459.

On October 29, 2010, AIS Department Chair Defendant Murff and AIS DPC member Megaard met with Doron to present the second year evaluations of Doron. During the meeting Defendant Murff remarked to Doron, “There are problems with your teaching *and research*,” and Defendant Murff further remarked that Doron “may be a bad fit” for the AIS Department because “we don’t teach accounting history here.” Doron replied that if they didn’t want him doing accounting history work then “someone made a mistake in hiring me.” CP 173, 472.

After Murff and Megaard met with Doron on October 29, 2010, and provided him with his second year evaluation, Doron called EWU Provost Fuller (the former Dean of the Business College). CP 721. Doron told Provost Fuller concerns regarding his second year evaluations, in particular the portions of the evaluations stating that Doron was hired with the expectation that Doron’s academic research would be outside the area of accounting history. CP 721. Doron was concerned that the improvement plan demanded by EWU would change the direction of his academic research, which would effectively modify his approved FAP without Doron’s consent. CP 725. Modifications to an approved FAP are governed by the CBA §5.3.1 which states, “It is expected that the FAP will be in effect throughout the probationary period unless modified by the *mutual agreement* between the faculty member, chair, personnel committee, dean, and Chief Academic Officer.” CP 242-243 (emphasis added).

Provost Fuller recommended that Doron contact UFE President Krug to discuss any concerns over his second year evaluation. CP 718, 721.

On October 30, 2010, Doron sent an email to Krug seeking UFE advice on his rights regarding his FAP, reappointment at EWU, and his “strained relationship” with his department chair and colleagues. CP 1008-1009, 1052.

Doron provided Krug with a copy of Doron’s approved FAP during their first meeting. CP 1009-1010, 1020. Doron told Krug that he was concern was that the EWU administration was violating the terms of his FAP. CP 1010. Doron told Krug that he was concerned EWU was imposing upon him an improvement plan inconsisistent with the academeic research expectations in his approved FAP. CP 1042.

On November 9, 2010, Krug and UFE Chief Steward Chris Kirby (“Kirby”) met with AIS Department Chair Murff, College of Business Dean Zimmerman, and a representative of the AIS Department DPC without Doron being present to discuss Doron’s concerns that EWU was asking Doron to perform academic research duties not contained in his approved FAP. CP 1009, 1027-1028.

During the November 9, 2010, meeting Murff, Zimmerman, and DPC member Professor ADjatej told Krug that they wanted Doron to modify his FAP. CP 1027-1028. They all agreed that any changes to Doron’s FAP required Doron’s approval. CP 1028.

Doron met with Murff and Djatej on two separate occasions in November 2010 to discuss Doron’s proposal for his improvement plan. CP 719, 722, 725-726, 738. Doron’s proposal for his improvement plan included, *inter alia*, Doron and Djatej

would coauthor academic research papers, as originally agreed when EWU hired Doron and before Djatej left EWU. CP 719, 722, 725-726, 732-733, 736-738, 740, 1291—1292, 1452-1453, 1456, 1458-1459. Again, Djatej never identified a specific research project Doron could coauthor with Djatej. CP 740, 1458-1459.

On November 18, 2010, Krug and Doron met with Murff and Djatej to discuss Doron's assertion that his approved FAP remained "viable" and should be enforced as part of any improvement plan. CP 1011. At the November 18, 2010, meeting Doron told Murff, Djatej, and Krug that he wanted his FAP enforced, and the requirements being placed upon him by the DPC and Murff were unwarranted because they were not in compliance with his FAP. CP 1017.

During the November 18, 2010, meeting with with Doron, Murff, and Zimmerman, Krug stated that he "represents everyone in the room." CP 1012, 1058. During the November 18, 2010, meeting Krug proposed that Doron should re-write his FAP, however Doron wanted his existing FAP enforced. CP 1018.

#### ***UFE Abandons Doron's Grievance***

On November 19, 2010, Doron sent an email to Krug expressing Doron's disappointment with Krug's statements during the November 18, 2010, meeting with Murff, Zimmerman, and Djatej. CP 1058. Doron wrote, in part, "because they obviously do not understand that their evaluations need to be based on my progress in meeting my FAP, it appears they do not intend to rewrite their evaluations. If I am able to change their minds, we can move forward from there. If not, *I need to know that you are willing to help me file a formal grievance stating that the evaluations are in violation of the CBA.*" CP 1058 (emphasis added).

On November 21, 2010, Krug sent a reply email to Doron stating, “I strongly advise against your unilateral action in your case. You are always free to conduct your own case if you so, but UFE cannot represent you once you begin to do so. You are further advised that the filing of a grievance is solely the decision of the UFE based on our assessment of a case.” CP 1057-1058. Krug further wrote in his email, “I work for the CBA.” CP 1058. Krug concluded his email by stating that he had “deep concerns regarding your FAP as a document,” because parts of it are vague and, “we are currently taking advice regarding the best way to proceed.” CP 1058.

Krug copied this email to WEA organizer Gary McNeil and UFE’s President of Bargaining Suzanne Milton. CP 1012, 1057-1058. McNeil is employed by the WEA as a state organizer, and gives advice to UFE on bargaining and employee grievances. CP 1004-1005, 1007. McNeil was the Chief Negotiator and leader on behalf of UFE’s bargaining team for the drafting and approval of the EWU CBA. CP 288, 1007-108. As such, Krug considered McNeil familiar with the terms of the CBA. CP 1008. Krug consulted with McNeil from time to time because, “He sometimes has some very good ideas.” CP 1012.

On November 21, 2010, Krug wrote to Doron, “UFE cannot continue to represent you,” although Krug understood that the UFE’s duty of fair representation owed to Doron does not terminate if Doron does not follow the UFE’s advice. CP 1014-1015, 1061.

Krug understood that Doron had requested the UFE to file a grievance because Murff’s demands that Doron agree to an improvement plan which changed his

academic research expectations unilaterally modified Doron's FAP, which contravenes the terms of the CBA. CP 1016. *See* CBA § 5.3.1. CP 242-243.

Krug and the UFE committee decided against filing a grievance on behalf of Doron for his concerns that his FAP had been violated because Krug and the UFE Executive Committee concluded that Doron's FAP was "non-complaint" and "in our opinion no FAP existed." CP 1016-1017, 1023. The other members of the UFE Executive Board were Suzanne Milton and Chris Kirby who did not express concerns regarding Krug's approach or handling of Doron's dispute with EWU. CP 1016.

Krug consulted with the WEA, through Gary McNeil regarding Doron's circumstances. Krug explained, "Gary McNeil is someone I will consult with from time to time regarding cases from time to time. He sometimes has some very good ideas." CP 1012-1013. Krug kept McNeil apprised throughout the development of Doron's case "to hear what he had to say about my plans and my read of the case, bounce ideas off." CP 1013. Furthermore, Krug kept McNeil apprised of the dispute between Doron and EWU "because I valued his advice and I found him—I found him to be a good person to sound ideas from, particularly the—of understanding the role of the FAP in all this." CP 1014. Krug consulted with McNeil as to whether Doron's FAP was enforceable, and Krug could not recall McNeil ever objecting to Krug's opinion that Doron's FAP was not enforceable. CP 1023-1024.

On November 22, 2010, Krug sent a reply email to Doron, *with a copy to McNeil*, stating in part, "As such, if the FAP does not meet the CBA it is not a valid

document. It does not matter who signed this document. This is the first time UFE has seen it and has had opportunity to study it in detail. UFE will recommend that the existing FAP be rejected and that a new one that meets the requirements of the CBA be drafted by end of Winter quarter.” CP 1060-1061.

According to Krug, the UFE President has the discretion to determine whether a FAP is “valid,” even after it has approved by the faculty member and the EWU administration. CP 1018-1019.

McNeil never advised Krug that the UFE was wrong, or that an FAP is a valid document once it has been signed by the faculty member and the EWU administration. CP 1018-1019.

On November 22, 2010, Krug sent an email to McNeil, “Here’s what I’m planning to send to everyone from God down. Let me know what you think.” CP 1063. The email contained a draft of the email Krug send an hour later to the EWU administration, that it was the opinion of the UFE that Doron’s FAP “is flawed, indefensibly vague, and not in compliance...with the Collective Bargaining Agreement.” CP 1063.

On November 22, 2010, one hour later, Krug sent his email to Doron, Murf, Fuller, Zimmerman, McNeil, and Milton beginning with the statement, “It is the opinion of the UFE that the Faculty Activity Plan for Michael Doron, dated November 20, 2009, is flawed, indefensibly vague, and not in compliance with the requirements for an FAP in the Collective Bargaining Agreement in effect 2009-2013.” CP 1065, 1020.

The CR 30(b)(6) representative of EWU testified at deposition that the CBA between EWU and UFE does not allow the UFE to declare a faculty member's FAP as invalid. CP 998.

UFE did not have a template FAP to provide faculty and EWU administration in the drafting of FAPs. CP 1022. Krug has never seen EWU provide a template to faculty to use in drafting a FAP. CP 1022. Krug, like other faculty at EWU, used sample FAPs drafted by other faculty in drafting his individual FAP. CP 1022.

***EWU Demands Changes to Doron's FAP***

On November 24, 2010, Murff sent an e-mail to Doron indicating, in part, requesting that Doron "move forward" on development of an improvement plan, and "as department chair I am requesting a modification to your current FAP . . . ." Murff's e-mail attached a revised Workload Plan for Doron with new class assignments and new academic research requirements. CP 784-787. Doron's revised Workload Plan "Scholarship (Research/Creative Activity)" Section, prepared by Murff, changed the direction of Doron's academic research from accounting history as provided in his FAP, to "current accounting/auditing practice." CP 787.

On December 1, 2010, EWU Provost Fuller sent a notice to Doron reappointing Doron to a third year "with an improvement plan" pursuant to CBA §5.3.1.b. CP 793<sup>4</sup>. Provost Fuller's reappointment notice to Doron further states, "the CBA enables you to revise your Faculty Activity Plan for consistency with these expectations." CP 793. The December 1, 2010, letter of reappointment does not

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<sup>4</sup> Reproduced as Appendix A-5  
OPENING BRIEF Page | 18

contain language putting Dr. Doron on notice that his reappointment was “conditional” upon on Dr. Doron agreeing to an improvement plan (with or without changes to the FAP), or that his formal acceptance was required for the reappointment to be effective. CP 793.

On December 1, 2010, Doron replied to Murff’s email of November 24, 2010, requesting that Murff not change his Workload Plan teaching assignments to include teaching Accounting 252 (Managerial Accounting) because Doron would be more comfortable teaching a course which he had taught before. CP 796. On December 1, 2010, Murff e-mailed Doron, denying Doron’s request not to be assigned to teach Accounting 252 (Managerial Accounting). CP 796.

On December 6, 2010, Doron e-mailed UFE President Krug requesting UFE to file a grievance against EWU for revising Doron’s Workload Plan without his consent in violation of the CBA, assigning Doron to teach a course he had never taught, and effectively “forcing” a modification of Doron’s approved FAP without his consent by changing the direction of Doron’s academic research topic. CP 799-800. Doron further requested UFE President Krug to refer this Work-plan dispute to the Faculty Review Committee (“FRC”) pursuant to CBA §7.5.6. CP 799-800.

Krug refused to file any grievance on behalf of Doron after Murff unilaterally changed Doron’s Workload Plan and class schedule without the proper notice pursuant to the CBA. CP 1024. Krug refused to refer Doron’s Workload and Work-plan dispute to the FRC, because, “it would be a waste of time and wouldn’t lead to a satisfactory resolution.” CP 1025.

### ***EWU's Continued Pressure to Modify FAP***

On December 10, 2010, UFE President Krug met with AIS Department Chair Murff, Dean Zimmerman, and Provost Fuller. All agree that it was “impossible” to change Doron’s FAP without Doron’s consent. CP 803, 804, 809-812. Krug warned EWU administration that if EWU changed Doron’s FAP without Doron’s consent, the UFE will file a grievance. CP 803, 804, 809-812. It never occurred to Krug that Doron needed to know that Krug, Fuller, and Zimmerman all agreed that any changes to Doron’s FAP would be impossible without Doron’s consent. CP 1033. The CR 30(b)(6) representative of EWU testified at deposition that EWU interprets CBA as not allowing EWU to modify an existing FAP without the faculty member’s consent. CP 790-791.

On December 21, 2010, Doron e-mailed Murff and Zimmerman, indicating that Murff’s unilateral revision Doron’s Workload Plan was a violation of the CBA § 7.5.5(g) without six (6) week notice. CP 795. Murff sent Doron his revised Workload on November 24, 2010, to be effective for classes beginning January 3, 2011. CP 795. Doron points out that CBA requires any changes to an approved Workload Plan and FAP to be a “collaborative process.” CP 795. Doron’s December 21, 2010, email further indicated that Murff dismissed Doron’s concerns over being assigned to teach Accounting 252 (Managerial Accounting), a course Doron had never taught before, without any attempts on Murff’s part to find a compromise or “equitable solution.” CP 795.

Doron’s December 21, 2010, email to Murff and Zimmerman further set forth his concern that the Scholarship Section in his revised Workload Plan changed the

area of Doron's academic research in accounting history, as set out in Doron's previously approved FAP and Workload Plan, and replaced it with a vague standard in "current accounting/auditing practice," which violates the CBA. CP 795.

Doron further pointed out in his December 21, 2010, email to Murff that it would be impossible for him to change the direction of his research in time to meet the standards set out in his revised Workload Plan. CP 795, 727, 740.

Doron concluded his December 21, 2010, email setting forth his position that if he is forced to teach the Accounting 252 (Managerial Accounting) course without his consent it would be a violation of the CBA, and that *he was not waiving his rights to pursue legal remedies*. CP 795.

On December 22, 2012, Doron sent a copy of his protest to Krug so that the Union would be aware of Murff's unilateral changes to Doron's Workplan and FAP. CP 1080-1082. Krug admitted that did not bother to ask EWU administration representatives why Murff changed Doron's Workplan without consulting with Doron. CP 1034. It never crossed Krug's mind after reviewing Doron's December 22, 2010, email whether the EWU administration had crossed the line by changing Doron's Workplan without Doron's consent and whether UFE should file a grievance on behalf of Doron. 1034-1035.

On Saturday January 1, 2011, Zimmerman e-mailed Doron to confirm that Doron was expected to teach the Accounting 252 (Managerial Accounting) course, which began the next Monday, and that Doron was "free to continue to dispute this assignment," but Doron was required to teach the Managerial 252 course, and if

Doron failed to show Doron would be subject to discipline. CP 820. Doron agreed to teach the class. CP 820.

On January 3, 2011, Murff e-mailed Doron, demanding Doron to “move forward on the development of an improvement plan.” CP 822.

On or about January 5, 2011, Doron sent an email with attachments to Murff, with a copy to Zimmerman, explaining that Doron had met all of the progress standards set forth in his existing FAP and that that he would not participate in a process which violated the spirit and letter of the CBA. CP 822, 411.

On January 12, 2011, Krug sent an email to Doron, stating in part, “your FAP is deeply flawed. *UFE has found nothing to grieve in your case with the exception of the FAP itself*, and as neither you nor the administration has expressed any interest in this solution, *there is no action for UFE to take.*” CP 1084-1085.

EWU persisted in demanding modification to the FAP despite the absence of any authority under the CBA to insist on unilateral changes. On or about January 20, 2011, College Dean Niel Zimmerman sent a warning to Doron:

If a revised FAP in accord with CBA 3.6.1, and 7.3.1 and AACSB Standard 10 is not prepared by this date, then your existing FAP will be revised by the department chair and the department personnel committee such that it meets the approval of the dean and the Chief Academic Officer [CBA 7.3.3(b)].

CP 413-414.

Zimmerman’s January 20, 2011, email also threatened that if Doron did not cooperate in developing an improvement plan by February 18, 2011, it could lead to formal discipline of Doron pursuant to CBA §13.2. CP 413-414. Zimmerman further warned Doron that if he failed to revise his FAP by February 28, 2011, Doron’s

existing FAP would be revised pursuant to CBA §7.3.3(b) by the AIS Department Chair. CP 413-414.

Dean Zimmerman wanted both an improvement plan and a changes to Doron's FAP "nailed down" despite Doron's objections to any changes in his FAP. CP 780. Zimmerman's intent and desire to require Doron to develop *both* an improvement plan and to agree to changes to his approved FAP. CP 799.

Zimmerman's January 20, 2011, email to Doron, demanding Doron to revise his FAP by February 28, 2011, was sent with Provost Fuller's advice and knowledge and with the expectation that an improvement plan would "trigger revisions in the FAP." CP 1268-1269, 413-414.

On January 25, 2011, Doron sought assurances from Dean Zimmerman that any meetings between Doron and Murff to develop an improvement plan would include good faith negotiations to avoid creating a pretense to disciplinary action. CP 416.

On January 27, 2011, Interim Dean Zimmerman sent a letter to Doron warning that if Doron did not develop an improvement plan *by February 18, 2011*, Doron would be disciplined *pursuant to Article 13 of the CBA*. CP 848-849.

Zimmerman testified at deposition that he "felt" EWU could "go ahead" with changes Doron's FAP if Doron did not agree to revising his FAP. CP 780-781. Zimmerman further testified that if "push came to shove" EWU would revise Doron's FAP without Doron's consent. CP 781. Zimmerman further testified at deposition that he was not willing to provide Doron with assurances that EWU would not change Doron's FAP anytime it sees fit in the future. CP 781.

On February 2, 2011, Doron sent an email to Zimmerman stating that Zimmerman had failed to provide any assurances that EWU would negotiate in good faith and that further meetings were merely a pretense for disciplinary action, and therefore Doron would not participate in any further discussions which required changes to his approved FAP. CP 851.

***EWU Terminates Doron Claiming He Defaulted on Reappointment***

On February 7, 2011, EWU Provost Rex Fuller sent a letter to Doron via email, notifying Doron of Provost Fuller's "conclusion that you have rejected the conditions of your reappointment for the 2011-2012 academic year" by Doron's failure to prepare an improvement plan; therefore, Doron's employment at EWU would terminate at the end of the current term of appointment as of June 15, 2011. CP 853-854. EWU Provost Fuller terminated Doron's reappointment without finding "just cause" or following the discipline procedures in Article 13 of the CBA. CP 853-854.

Doron did not make the decision to end his employment at EWU. Rather, Doron was "fighting to save his job" when EWU made the decision to end Doron's employment. CP 1455.

***WEA Advises UFE Not to Grieve Doron's Termination***

On February 9, 2011, Doron sent an email to Krug forwarding a copy of Fuller's February 7, 2011, notifying Doron EWU had "concluded" that Doron had rejected his third year appointment by not agreeing to an improvement plan. CP 1087. Doron wrote in his February 9, 2011, email to Krug, "Gary: The university

has terminated me effective June for not writing a new FAP. *This is something the union will have to act on.* Let me know.” CP 1087. (Emphasis added).

On February 9, 2011, Krug sent an email to McNeil forwarding Doron’s email of the same date with the comments by Krug, “Have the procedural, contractual steps been followed here? Is just causes [sic] for dismissal shown? I’ll look at this later tonight and tomorrow, but please review and share your thoughts in the meantime.” CP 1089-1090.

On February 9, 2011, McNeil replied to Krug’s email by writing, “Gary, the CBA covers both progressive discipline and just cause. Has this faculty person been disciplined before?” CP 1089. Krug never bothered to send McNeil’s email to Doron. CP 1036.

Krug never bothered to verify with Doron whether what Fuller wrote in his February 7, 2011, letter was true. CP 1037. Namely, Krug never asked Doron whether Doron had met with Murff and Djatej to discuss an improvement plan for Doron. CP 1037.

On February 11, 2011, McNeil sent an email to Krug providing McNeil’s assessment of Doron’s termination, and concluded with, “Termination is a stretch. We could grieve progressive discipline .... *The union does not have to file a grievance.*” CP 1092-1093.

On February 16, 2011, Krug responded to Doron’s February 9, 2011, email and copied McNeil writing, “We will review these regarding procedures of just cause, discipline, dismissal, and related matters . . . . We will advise you of our findings regarding your case.” CP 1095.

After February 7, 2011, McNeil became personally involved taking a leadership role on behalf of UFE in dealing with the university administration on Doron's case and deciding whether to file a grievance. CP 1107-1108. After taking over a leadership role in handling Doron's case McNeil did not think there were any grounds for filing a grievance on Doron's behalf. CP 1108. McNeil did not think Fuller's February 11, 2011, letter notifying Doron of his termination was a violation of the CBA. CP 1107-1108.

On February 17, 2011, Krug sent an emailed Fuller to request confirmation on the timeline for UFE to file a grievance in Doron's case. CP 1097. On February 17, 2011, Fuller replied to Krug's email and indicated that UFE had until February 28 or March 1, 2011, to file a grievance on behalf of Doron. CP 1097.

Krug asked McNeil "to step up" in handling case and consult with a WEA attorney after reviewing Fuller's letter terminating Doron's reappointment without using the discipline process. CP 1107.

On March 11, 2011, McNeal sent an email to Krug and Kissling stating in part:

I spoke with a WEA attorney on this issue today. His initial reaction to the situation is as follows:

1. Get Doron to accept the contract; *management has the right to terminate him for not agreeing to the proposed contract*. Without a contract, no work. Doron's refusal does not leave a status quo FAP—it leaves him without a contract.
2. If he signs . . . we could pursue grieving the actual improvement plan that is devised or initiate meetings with Fuller to explore ways to have a coherent FAP/improvement plan. Can an improvement plan become a new FAP—is that doable? Of course Professor Doron would have to agree to work with this reality.
3. Now my reflections. Management does have a solid argument. He is probationary status. They have the right under the CBA to offer a contact with an improvement plan.

4. Crafting an improvement plan based on a flimsy FAP does impose a problem. If Professor Doron wants to work at EWU, he will have to see the opportunity to work here by crafting a plan that re-writes the FAP. His one solid point is that how can you have specifics in an improvement plan when there are little specifics in the FAP. Of course, if you want a job, you can bend a good bit.
5. So we meet with him and tell him the “facts on the ground.” His argument—no need for an improvement plan—does not recognize that he is an [sic] probationary employee working on probationary contracts.

Comments?

CP 1102.

McNeil’s March 11, 2011, email to Krug and Kissling conveys his advice from the WEA to UFE that EWU Provost Fuller had the authority under the CBA to “conditionally” reappoint Doron, and terminate Doron’s reappointment if Doron does not accept an improvement plan. CP 1102, 1106-1108.

At this point in time when McNeil wrote his March 11, 2011, email to Krug, McNeil had taken a direct leadership role on behalf of the UFE in dealing with the EWU on Doron’s case and deciding whether to file a grievance. CP 1107-1108. McNeil did not think there was a basis for UFE to file a grievance on behalf of Doron. CP 1108; 1110. McNeil did not see anything wrong with how UFE handled Doron’s case. CP 1107. After taking the “lead” on Doron’s case, McNeil took no action to file a grievance on behalf of Doron. CP 1110.

On March 16, 2011, McNeil met with Doron and Kissling to draft a “Counter-Improvement Plan” to present to EWU administration on behalf of Doron. CP 1107, 1113. McNeil delivered the “Counter-Improvement Plan” to Hawkins and Connelly during a meeting in Connelly’s office. CP 1114, 856. McNeil telephoned Fuller and discussed Doron’s “Counter-Improvement Plan.” CP 841-842.

Provost Fuller consulted with EWU Associate President Connelly regarding Doron's Counter Improvement Plan Proposal; however, Fuller did not forward it to AIS Department Chair Murff, AIS DPC member Professor Djatej, or Dean Zimmerman. CP 841, 843-844. Fuller did not invite Doron to meet and discuss Doron's Counter Improvement Plan Proposal. CP 843. Instead Provost Fuller dismissed Doron's "Counter Improvement Plan Proposal" out of hand as "lacking" and "insufficient" without a response. CP 841-843.

On March 17, 2011, Hawkins sent an email to McNeil, Kissling, Fuller, and Connelly, thanking McNeil for meeting with Connelly and Hawkins "yesterday" and notifying McNeil that Fuller had reviewed the "Counter-Improvement Plan" proposal McNeil had delivered on behalf of Doron, but Fuller had decided to go forward with terminating Doron's reappointment and "proceed with the non-renewal." CP 1120.

At no point did Professor Doron state he refused or rejected the notice of reappointment. At no point did EWU state that a formal acceptance was required. At no point did EWU explicitly refer to their notice of reappointment as a contingent offer requiring action by Professor Doron. CP 793 The notice stated, in a paragraph separate from the reference to the reappointment that the DPC required an "improvement plan," and that the CBA "enabled" Doron to revise his FAP to keep it consistent with a new plan. CP 793.

#### IV. ARGUMENT

A. **THE CBA DOES NOT ALLOW “CONTINGENT” REAPPOINTMENTS, NOR DOES IT ALLOW EWU TO WITHDRAW RE-APPOINTMENT NOTICE WITHOUT “JUST CAUSE” , NOR DOES IT ALLOW EWU TO STRIP DISCIPLINARY PROCEDURES.**

**Standard of Review** The appellate court reviews summary judgment *de novo*, engaging in the same inquiry as the trial court. *Navlet v. The Port of Seattle*, 164 Wn.2d 818, 827 (2008) “Summary judgment is appropriate when ‘there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law.’” *Id.* (citing CR 56(c)). “All reasonable inferences are made in favor of the nonmoving party. Summary judgment is proper when a reasonable person could come to only one conclusion based on the evidence.” *Imperato v. Wenatchee Valley College*, 160 Wn. App. 353, 358 (Div. 3), *rev. den.* 171 Wn.2d 1033 (2011). This standard applies to all issues argued below.

**Argument** CBA Section 5.3.1(c)(ii) does not expressly state or imply that EWU has the authority to re-appoint a faculty member on a “contingent” or “conditional” basis. CP 243. No does the CBA expressly provide or imply that a reappointment notice by EWU is an “offer” which must be “accepted” or “reject” by the faculty member. CP 243. This issue turns on routine contract interpretation.

“Contract interpretation is only a question of law when ‘(1) the interpretation does not depend on the use of extrinsic evidence, or (2) only one reasonable inference can be drawn from the extrinsic evidence.’” *Dice v. City of Montesano*, 131 Wn. App. 675, 684 (Div. 2), *rev. den.* 158 Wn.2d 1017 (2006).

A contract is ambiguous if its terms are uncertain or they are subject to more than one meaning. A provision is not ambiguous simply

because the parties suggest opposing meanings. Interpretation of an unambiguous contract is a question of law, thus summary judgment is appropriate.

*Id.* Washington courts apply contract law to the interpretation and construction of collective bargaining agreements. *Navlet v. The Port of Seattle*, 164 Wn.2d at 233.

The purpose of contract interpretation is to determine the intent of the parties. We search for intent through the objective manifest language of the contract itself. We attempt to determine the parties' intent by focusing on the objective manifestations of the agreement. Contract construction involves the application of legal principles to determine the legal effect of contract terms.

*Id.* at 234 (internal citations and quotations omitted).

Once EWU gave Doron notice of his reappointment<sup>5</sup> (even with the notice that he was required to enter into "an improvement plan") Doron's right vested under the CBA. Doron had a vested right under Article 13 not to be disciplined or discharged without "just cause." In other words, the improvement plan was not a condition to the reappointment. Doron's compliance in meeting the improvement plan would be reviewed within the CBA's rights and responsibilities.

Generally, a "vested right" in the public employment context cannot be taken away once created. *Id.* at 828. "Upon vesting, such a right becomes a proprietary interest, even though created by contract." *Id.* A vested right cannot be altered once created. *Id.* at 844. Nothing in the CBA allows EWU to rescind or withdraw a reappointment because a faculty member failed to meet independent requirements. *See Zuelsdorf v. University of Alaska, Fairbanks*, 794 P.2d 932 (Alaska 1990) (the relationship between non-tenured faculty and the university is created by contract and governed by principles of contract law; once a faculty

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<sup>5</sup> Reproduced as Appendix A-5  
OPENING BRIEF Page | 30

member acquires vested rights under the contract, the university cannot unilaterally deprive the faculty member of his vested and accrued rights under the employment contract).

EWU argued below that the notice of reappointment was simply a conditional or contingent offer. The words “conditional” and “contingent” do not appear anywhere in the notice, nor in the CBA. Nothing in the CBA provides that a probationary faculty member reappointed with the requirement that he prepare an improvement plan strips him of his due process rights under Article 13 of the CBA. CP 279-280. Once EWU exercised its authority under the CBA Section 5.3.1(c) to reappoint Doron the reappointment was final. EWU’s argument below, that Doron had to accept the reappointment by some formal act is

Nothing in the December 1, 2010, reappointment letter required Doron to “accept” the reappointment for it to become effective. CP 793. Doron’s reappointment was effective and vested when it was sent to Doron on December 1, 2010.

If EWU believed “just cause” existed showing that Doron had failed to cooperate in developing an improvement plan, then EWU’s power to discharge Doron was limited to the “Discipline” provisions set forth in Article 13 of the CBA. CP 279-280. However, EWU was without power to unilaterally rescind or withdraw Doron’s reappointment.

In the alternative, if Doron’s reappointment was an “offer” which required Doron to formally “accept” to become binding and effective, then a question of fact exists whether Doron “rejected” his reappointment. Whether a provision in a

contract is a condition, the nonfulfillment of which excuses performance, depends upon the intent of the parties, to be ascertained from a fair and reasonable construction of the language used in the light of all the surrounding circumstances. *Ross v. Harding*, 64 Wn.2d 231, 236 (1964) (citing 5 Williston, Contracts (3d ed.) §663). The parties' contractual intentions are questions of fact. *Dickson Co. v. Pierce County*, 128 Wn. App. 488, 493 (Div. 2, 2005). See also *FDIC v. Uribe, Inc.*, 287 P.3d 694, 697 (Div. 3, 2012) (issues of mutual assent to the contract are generally regarded as issues of fact). Under either interpretation, EWU was not entitled to summary judgment.

**B. THE UNION VIOLATED ITS DUTY OF FAIR REPRESENTATION BY REFUSING TO FILE A GRIEVANCE AFTER EWU TERMINATED DORON'S RE-APPOINTMENT WITHOUT "JUST CAUSE."**

The uncontroverted facts together with the settled law clearly show that Doron's union, UFE, had a irrational basis in refusing to process Doron's repeated requests for a grievance. UFE, never filed a grievance on behalf of Dr. Doron. CP 1035. UFE breached its duty of fair representation owed to Doron when it irrationally and repeatedly refused to file a grievance on Doron's behalf. In addition, UFE President Krug did not act with good faith and honesty in exercising his discretion to not file a grievance on behalf of Doron.

"Courts have imposed a duty of fair representation on unions because of their status as the exclusive bargaining agent for their members." *Womble v. Local 73, Int'l Brotherhood of Electrical Workers*, 64 Wn. App. 698, 701 (Div. 3), *rev. den.* 119 Wn.2d 1018 (1992) (citations omitted). "A union breaches its duty of fair representation when its conduct is discriminatory, arbitrary, or in bad faith."

*Id.*(citations omitted). “A union breaches this duty when it arbitrarily ignores a meritorious grievance or processes it in a perfunctory fashion. Negligence alone is not sufficient.” *Id.* (citations omitted).

In the context of grievance processing, “the duty of fair representation prohibits a union from ignoring a meritorious grievance or processing that grievance perfunctorily.” *Lindsey v. Metro. Seattle*, 49 Wn. App. 145, 149 (Div. 1, 1987) *rev. den.* 109 Wn.2d 1016 (1987) (citations omitted). Additionally, a “union must exercise *special care* in handling a grievance that concerns a discharge, because it is the most serious sanction an employer can impose.” *Id.* (emphasis added). “Our State Supreme Court has indicated that the duty of fair representation demands that [union] decision making be rational.” *Id.* at 152. In serving the bargaining unit, *a bargaining representative is always subject to good faith and honesty of purpose in the exercise of discretion.* *Allen v. Seattle Police Guild*, 100 Wn.2d 361, 369 (1983)(emphasis in original).

Doron complained to UFE President Krug that EWU administration was violating the CBA by imposing an improvement plan upon Doron which required him to modify his FAP which had been earlier approved by EWU. CP 1009-1010, 1020, 1042. During their meeting on December 10, 2010, UFE President Krug and EWU Provost Fuller both agreed that it was “impossible” under the CBA to change Doron’s approved FAP without Doron’s consent. CP 812, 1029, 1033-1034. EWU’s CR 30(b)(6) representative testified at deposition that EWU interprets the CBA between EWU and UFE as not allowing EWU to modify an existing FAP without the faculty member’s consent. CP 995-996, 998.

Recognizing that the FAP was off limits for modification, UFE took a new ploy: simply deny the *original* FAP was valid. As shown below, however, the union has no authority to declare an FAP valid or not.

Thus, on November 22, 2010, UFE President Krug sent an email to Doron and the EWU administration stating, “It is the opinion of the UFE that the Faculty Activity Plan for Michael Doron, dated November 20, 2009, is flawed, indefensibly vague, and not in compliance with the requirements for an FAP in the Collective Bargaining Agreement in effect 2009-2013.” CP 1065, 1020. No language in the CBA expressly or impliedly allows the UFE to declare a faculty member’s FAP as “flawed,” or “indefensibly vague,” or “not in compliance” after it has been approved by EWU administration. CP 233-310. Moreover, EWU’s CR 30(b)(6) representative testified at deposition that the CBA does not allow the UFE to declare a faculty member’s FAP invalid. CP 995-996, 998. The union’s ploy was inherently in bad faith.

With the union safely on management’s side, EWU moved aggressively forward against Doron. On November 24, 2010, AIS Department Head Murff sent an e-mail to Doron indicating, in part, “your teaching schedule for the rest of the academic year is being changed,” and further requesting to “move forward” on development of an improvement plan, and “as department chair I am requesting a modification to your current FAP . . . .” CP 784. Murff’s e-mail attached a revised Workload Plan for Dr. Doron with new class assignments and new academic research requirements. CP 785-787. Seemingly innocuous, Murff’s emails were in violation of Doron’s standing valid FAP: Murff wanted a unilateral change in

Doron's academic research goals and expectations from accounting history — as provided in his approved FAP — to “current accounting/auditing practice.” CP 313-319, 785-787.

Doron sought union support to resist the unilateral change and begged UFE President Krug to file a grievance on his behalf. CP 1067-1069. Krug refused. 1068, 1024. Doron was being forced to accept an unnegotiated FAP modification without his consent, a plain violation of CBA §5.3.1(a). CP 242-243. Further, UFE President Krug denied Doron's request to refer dispute to the Faculty Review Committee (“FRC”), pursuant to the CBA §7.5.6, because Krug believed Dr. Doron's FAP was “fatally flawed” and it would be a “waste of time.” CP 1025.

Next, UFE refused to grieve EWU's decision terminating Doron's reappointment despite the lack of “just cause” and without following the disciplinary procedures in Article 13 of the CBA. CP 853-854, 427-428. Doron was explicit in asking for union support. He wrote “Gary: The university has terminated me effective June for not writing a new FAP. *This is something the union will have to act on.* Let me know.” CP1087.

Plainly, the union knew it was on shaky ground. The February 9, 2011, Krug forwarded email to WEA Organizer McNeil and members of the UFE Executive Board concluded, “have the procedural steps been followed here?” CP 1087. “Is just cause for dismissal shown? I'll look at this later tonight and tomorrow, but please review and share your thoughts in the meantime.” CP 1087. Nevertheless, the union sidestepped the “just cause” requirement, along with the disciplinary procedures in CBA Article 13. It failed to file a grievance on Doron's

behalf. CP 1035. UFE President Krug did not even bother to contact Doron to verify whether Provost Fuller's allegations were true that Doron had "refused to meet" with EWU to discuss his improvement plan as set out in Fuller's February 7, 2011, termination letter to Doron. CP 1037. In fact, UFE President Krug himself attended a meeting with Doron, Murff, and Djatej on November 18, 2010, at which they discussed the problem associated with the proposed improvement plan conflicting with the goals and expectations in Doron's approved binding FAP. CP 1011, 1017.

The uncontroverted facts show that UFE breached this duty of fair representation owed to Doron when it arbitrarily and irrationally<sup>6</sup> ignored Doron's meritorious requests for a grievance. UFE failed to exercise *special care* in handling Doron's request for grievance concerning his discharge- the most serious sanction an employer can impose.

C. **THE TRIAL COURT ERRED AS A MATTER OF LAW FINDING THAT THERE WAS NO EVIDENCE THAT WEA TORTIOUSLY INTERFERED WITH DORON'S LEGITIMATE BUSINESS EXPECTANCIES WITH HIS EMPLOYER EWU AND HIS UNION UFE.**

**Argument**

Under Washington law, a claim for tortious interference with a business expectancy with a business relationship requires five elements:

the existence of a valid contractual relationship or business expectancy, (2) that the defendant had knowledge of that expectancy, (3) an intentional interference inducing or causing a breach or termination of the relationship or expectancy, (4) that the defendant interfered for an improper purpose or used improper means, and (5) resulting damage.

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<sup>6</sup> The only rational arguments in support of UFE's acts would be in support of its arbitrary application of its rules and bad faith in using "special care."  
OPENING BRIEF Page | 36

*Newton Ins. Agency & Brokerage, Inc. v. Caledonian Ins. Group, Inc.*, 114 Wn. App. 151, 157-58 (Div. 1 2002), *rev. granted* 148 Wn.2d 1021 (2003) (citations omitted).

The undisputed evidence in the record shows that WEA Organizer McNeil advised, encouraged, and caused Doron's union, UFE, to breach its duty of fair representation owed to Doron which resulted in the termination of Doron's reappointment with his employer EWU.

UFE President Krug copied WEA Organizer McNeil on Krug's emails to Doron because, "*Gary McNeil is someone I will consult with from time to time regarding cases from time to time. He sometimes has some very good ideas.*" CP 1-12. 1057-1058, 1060-1061, 1071-1072. Before responding to Doron's December 6, 2010 email requesting a grievance, Krug first sent an email checking with McNeil and writing, "*Attached is the exchange...let me know your thoughts.*" CP 1071-1072. Krug copied McNeil on Krug's emails to the UFE officers regarding Doron's case. CP 1077, 1087. McNeil sent emails directly to UFE President Krug and other UFE officers providing interpretation of the CBA in Doron's case. CP 1089-1090. Krug also consulted with McNeil by phone and face-to-face regarding Doron's case. CP 1013. Krug kept McNeil apprised throughout the development of Doron's case "to hear what he had to say about my plans and my read of the case, bounce ideas off." CP 1013. Furthermore, Krug kept McNeil apprised of the dispute between Doron and EWU "because I valued his advice and I found him—I found him to be a good person to sound ideas from, particularly the—of understanding the role of the FAP in all this." CP 1014.

Krug sent to McNeil his November 22, 2010, email declaring Doron's FAP "flawed, indefensibly vague, and not in compliance with [the CBA]" before Krug sent it to the EWU administration "*for consultation and advice on the wording and contractual accuracy of the letter.*" CP 1021. Krug has no recollection of McNeil ever advising Krug that UFE had no authority under the CBA to declare an approved FAP as "unenforceable" or "indefensibly flawed" or advising Krug not to send the November 22, 2010, email to EWU administration and Doron. CP 1021-1022. McNeil never expressed any concerns to Krug regarding Krug's decision that Doron's FAP was unenforceable or that UFE had no authority to declare it unenforceable. CP 1023-1024.

On February 7, 2011, Doron's reappointment was terminated by EWU Provost Fuller. CP 427-428. On February 9, 2011, WEA's McNeil recognized that the CBA requires progressive discipline. CP 1089-1090. However, on February 11, 2011, McNeil sent an email to Krug commenting, "[Doron's] termination is a stretch. We could grieve progressive discipline . . . if there is an evaluation process and shortcomings are identified, then there has to be an improvement plan. Not a rubber stamp or forced . . . . *The union does not have to file a grievance.*" CP 1092-1093 (emphasis added).

After Fuller terminated Doron's reappointment on February 7, 2011, WEA's McNeil had taken a direct role persuading the UFE not to file a grievance. CP 1107-1108. After taking over a leadership role in handling Doron's case WEA's McNeil did not think there were any grounds for filing a grievance. CP 1108. McNeil did not think terminating Doron was a violation of the CBA. CP 1107-1108. In a post-hoc

maneuver, Fuller consulted with WEA and advised UFE President Krug and UFE Executive Board Member Kissling that EWU had the authority under the CBA to “conditionally” reappoint Doron, and terminate Doron’s reappointment if Doron does not accept an improvement plan. CP 1106-1108. This despite the fact that the reappointment notice had been sent months before without any clear notice of a conditional term.

The above *uncontroverted facts* clearly show that WEA Organizer McNeil advised, encouraged and caused UFE President Krug to declare Doron’s FAP flawed and unenforcible. McNeil’s advice to Krug improperly interfered with the duty of fair representation UFE owed to Doron. McNeil’s advice to Krug interfered with Doron’s business expectancies with Doron’s union and thereby his employer. WEA is vicariously liable for the torts of its employee McNeil acting within the scope of his employment. *Id.* at 159-60.

**D. EWU WRONGFULLY DISCHARGED DORON IN VIOLATION OF PUBLIC POLICY AFTER DORON ASSERTED HIS COLLECTIVE BARGAINING RIGHTS.**

The record shows that a substantial factor in EWU’s decision to terminate Dr. Doron’s contract was because he engaged in the protection of his rights under a CBA executed pursuant to RCW 41.76 *et seq.*

To prevail on a claim for wrongful discharge against public policy, a plaintiff must satisfy a four-factor test: “(1) the existence of a “clear public policy” (“clarity” element), (2) whether “discouraging the conduct in which [the employee] engaged would jeopardize the public policy” (“jeopardy” element), (3) whether the “public-policy-linked conduct caused the dismissal” (“causation” element), and (4) whether

the employer is "able to offer an overriding justification for the dismissal" ("absence of justification" element)." *Piel v. The City of Federal Way*, 177 Wn.2d 604, 610 (2013).

The "clarity" element is satisfied in Doron's case with a judicially recognized mandate of public policy that an employee protected by a collective bargaining agreement may bring a common law claim for wrongful discharge. *Id.* at 607. A public employee's pursuit of a grievance is a protected legal right. *Smith*, 139 Wn.2d at 807. *See also* RCW 41.76 *et seq.*

The administrative and contractual remedies allowed to public employees protected by a bargaining agreement are inadequate to vindicate public policy, thereby satisfying the "jeopardy" element for a wrongful discharge tort claim. *Piel*, 177 Wn.2d at 615-17 (citing *Smith*, 139 Wn.2d at 805). EWU has not cited any justification for Doron's dismissal which overrides the public policy of protecting a public employee's pursuit of a grievance as a protected legal right. As set forth above, EWU's termination of Doron's reappointment without "just cause" and failure to follow the disciplinary procedures is a violation Article 13 of the CBA. Therefore the "absence of justification" element of a wrongful discharge tort claim is satisfied in Doron's case. Here, only the "causation" element is at issue.

"[I]n establishing the prima facie case, the employee need not attempt to prove the employer's *sole motivation* was retaliation . . . ." *Wilmont v. Kaiser Aluminum & Chem. Corp.*, 118 Wn.2d 46, 70 (1991) (emphasis added). In wrongful discharge cases, the plaintiff's ultimate burden of proof is that by a preponderance of the evidence that retaliation was a "substantial" or "important" factor motivating the

discharge. *Id.* at 71-73. Further, a temporal nexus between an employee engaging in protected activity and the adverse employment action suggests retaliation.

*Burchfiel v. Boeing Corp.*, 149 Wn. App. 468, 205 P.3d 145, 152 (Div. 3 2009).

There is sufficient evidence for a jury to infer that a “substantial factor” in EWU’s decision to terminate or withdraw Doron’s reappointment was Doron’s efforts to resist any modification of his previously approved FAP without his consent as required by CBA §5.3.1(a). Here, there is a close proximity in time between Doron’s complaints about the pressure to agree to an improvement plan which modifies his FAP without his consent, and EWU’s decision to withdraw Doron’s reappointment on February 7, 2011.

On December 6, 2010, Doron e-mailed UFE President Krug requesting UFE to grieve EWU revising Doron’s Workload Plan without his consent in violation of the CBA and effectively “forcing” a modification of Doron’s approved FAP without his consent by changing the direction of Doron’s academic research topic. CP799-800. Doron explicitly requested UFE President Krug to refer his Workplan dispute to the FRC pursuant to CBA §7.5.6. CP 799-800. In response, he was told his vested reappointment was withdrawn.

Each time Doron asserted his legal rights under the contract, he was promptly given more resistance. Thus Doron’s careful preservation of his rights provoked more headaches for him. For example, Doron concluded his December 21, 2010, email setting forth his position that he was not waiving his rights to pursue legal remedies. CP 795. On January 5, 2011, Doron sent an email to AIS Chair Murff and Dean Zimmerman complaining that it would be a violation of the CBA §5.3.1(a) and

5.3.1(b) for EWU to unilaterally require to modify his existing FAP as part of an improvement plan. CP 411-12. Doron notified the EWU administration that he would not participate in a process of developing an improvement plan which required Doron to modify his FAP in violation of the CBA. CP 1319-1320.

The response from EWU? Threats that the University would force compliance with its extra-contractual demands. On, January 20, 2011, Zimmerman sent an email to Dr. Doron, stating in part: “If a revised FAP in accord with CBA 3.6.1, and 7.3.1 and AACSB Standard 10 is not prepared by this date, *then your existing FAP will be revised by the department chair and the department personnel committee such that it meets the approval of the dean and the Chief Academic Officer [CBA 7.3.3(b)].*” CP 833-834. Zimmerman wanted Doron to agree to an improvement plan with changes to Doron’s FAP as a “test.” CP 1244.

Next Doron asked Dean Zimmerman for assurances that any meetings between Doron and AIS Department Chair Murff to develop an improvement plan would include good faith negotiations and not simply be a pretense leading to disciplinary action. CP 846. Doron further asked Dean Zimmerman for assurance that if his FAP and workplan were revised they would remain in effect the remainder of Doron’s probationary period, or could EWU unilaterally change the terms of his employment whenever it saw fit. CP 846.

Again, EWU retaliated with more threats: On January 27, 2011, Dean Zimmerman sent a letter to Doron warning that if Doron did not develop an improvement plan by February 18, 2011, Dr. Doron would be disciplined pursuant to Article 13 of the CBA. CP 848-849. Then EWU dropped its bomb: not waiting for

the passage of its threatened deadline (February 18, 2011), to start disciplinary proceedings, on February 7, 2011, Fuller notified Doron that the reappointment to a probationary contract had been “rejected” and EWU did not initiate any disciplinary proceedings pursuant to Article 13 of the CBA. CP 853-854.

There is sufficient evidence for a jury to conclude that Doron’s efforts to protect his rights under the CBA was a *substantial factor* in EWU’s decision to “withdraw” Doron’s reappointment. Discharge of an employee may be based upon a legitimate reason, however, a common law tort action for wrongful discharge may proceed despite an legitimate reason if the worker nevertheless can show that a retaliatory or discriminatory motive, based on the worker's protected activity was also a substantial factor motivating the discharge decision. *Wilmont*, 118 Wn.2d at 73 and 75.

**E. THE TRIAL COURT ERRED IN HOLDING THAT THAT EWU DID NOT BREACH A PROMISE TO DORON TO SUPPORT A PROMISSORY ESTOPPEL CLAIM.**

The trial court erred as a matter of law finding that there is no evidence that EWU broke any promise to Doron. EWU Provost Fuller and Professor Djatej promised Doron during the interview and hiring process Doron could meet any academic research requirements and be successful at EWU with Djatej’s help by allowing Doron to co-author with Djatej. This promise was independent and distinct from the promises contained in the CBA.

“There are five recognized elements of a promissory estoppel claim: ‘(1) a promise, (2) that promisor should reasonably expect to cause the promisee to change his position, and (3) actually causes the promisee to change his position, (4) justifiably relying on the promise, (5) in such a manner that injustice can be avoided

only by enforcement of the promise.” *Flower v. T.R.A. Industries, Inc.*, 127 Wn. App. 13, 31 (Div. 3 2005) *rev. den.* 156 Wn.2d 1030 (2006) (quoting *Klinke v. Famous Recipe Fried Chicken, Inc.*, 94 Wn.2d 255, 259, (1980)). Promissory estoppel is an alternative legal claim for damages if there is not valid contract between the parties. *Id.* Here, only the “promise” element is at issue.

In this case, the irrefutable evidence shows that there was a promise by EWU College Dean Fuller and Professor Djatej that Doron could meet any academic research requirements and be successful at EWU with Djatej’s help by allowing Dr. Doron to co-author with Djatej. CP 1423-1424, 1456-1458. Doron justifiably relied to his detriment upon Provost Fuller’s and Professor Djatej’s promises that Djatej and Doron could coauthor academic papers together to help Dr. Doron meet EWU’s research requirements. 1456-1457. Doron turned down job offers from other colleges and moved to Spokane to teach at EWU. 1456-1457.

Dr. Doron, for his part, acted in good faith: he sent to Djatej an email attaching an academic paper drafted by Dr. Doron, and Dr. Doron asked Djatej to review it and expand upon it. 1439-1440, 1467. Djatej never followed up or responded to Doron’s request to expand on the paper Doron sent to Djatej. CP 1457.

After Djatej returned to EWU, Doron met with AIS Department Chair Elizabeth Murff and Djatej to discuss their concerns in his second annual evaluation, and Doron offered to coauthor academic papers with Djatej, as originally agreed to when Doron was hired by EWU, but Doron’s suggestions went “nowhere.” CP 1452-1453, 1456, 1458-1459. Djatej never offered or identified a specific research project Doron could coauthor with Djatej. CP 1458-1459. Injustice can be avoided only by

enforcement of this promise made to Doron by EWU Provost Fuller and Professor Djatej.

Provost Fuller's and Professor Djatej's promise that Doron could meet any academic research requirements and be successful at EWU with Djatej's help by allowing Doron to co-author with Djatej are promises independent and distinct from the contractual promises contained in the collective bargaining agreement. EWU walked away from its promise to help Doron succeed in meeting his academic research requirements when EWU Provost withdrew Doron's reappointment. CP 1322-23.

**F. DORON IS ENTITLED TO HIS ATTORNEYS FEES AND COSTS PURSUANT TO RCW 49.48.030 AND RAP 18.1.**

Doron also respectfully requests the Court to award attorney fees and costs under RCW 49.48.030 which provides for the award of attorney fees and costs in "any action which any person is successful in recovering judgment for wages or salary owed to him." *McGinnity v. AutoNation Inc.*, 149 Wash. App. 277, 284 (Div. 3, 2009); *see also Mega v. Whithworth College*, 138, Wash. App. 661, 673 (Div. 3, 2007)(Court awarded attorney fees and costs on appeal in favor of a professor who was granted wages as a matter of law and entitled to attorney fees and costs under RCW 49.48.030).

Attorneys fees under RCW 49.48.030 are recoverable for lost wages for breach of contract. *Flower*, 127 WN. App. at 34. Attorneys' fees are awarded to an employee under RCW 49.48.030 as damages against the employer when the employee brings hybrid claims against the employer for breach of a collective

bargaining agreement and the union for breach of the duty of fair representaiton.

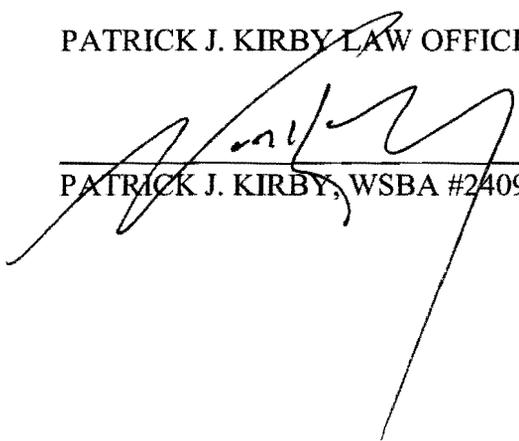
*Womble v. Local Union 73, 64, Wn. App. at 704.*

## V. CONCLUSION

For the reasons set forth above, Michael E. Doron, Ph.D., respectfully asks this Court to reverse the trial courts judgment in favor of Respondents EWU, *et al.* and grant summary judgment in favor of appellant, Dr. Doron.

DATED THIS 30<sup>th</sup> day of September, 2013.

PATRICK J. KIRBY LAW OFFICE, PLLC



\_\_\_\_\_  
PATRICK J. KIRBY, WSBA #24097

**CERTIFICATE OF SERVICE**

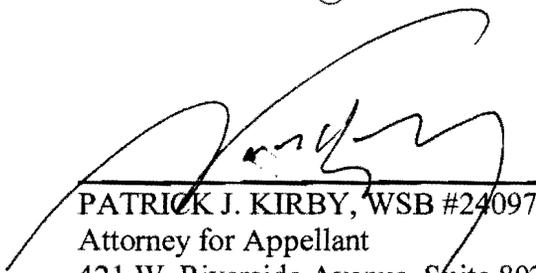
I HEREBY CERTIFY that on the 30<sup>th</sup> day of September, 2013, I  
Caused to be served a true and correct copy of the foregoing document to  
the following:

- HAND DELIVERY
- U.S. MAIL
- OVERNIGHT MAIL
- FACSIMILE
- EMAIL

Jason Brown, Asst. Attorney General  
Amy C. Clemmons, Asst. Attorney General  
Attorney General of Washington  
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Spokane, WA 99201  
Fax (509) 458-3548  
jasonB@atg.wa.gov  
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- HAND DELIVERY
- U.S. MAIL
- OVERNIGHT MAIL
- FACSIMILE
- EMAIL

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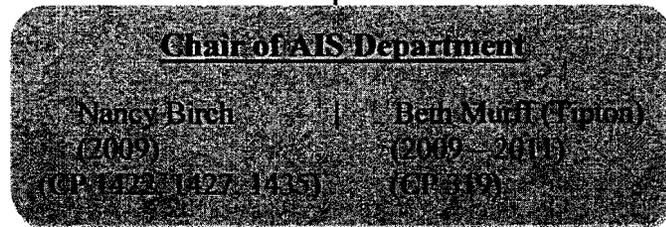
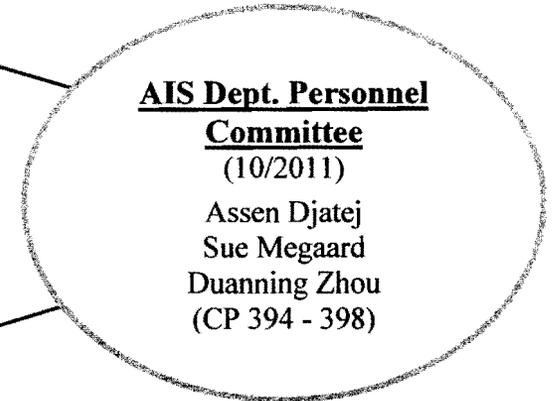
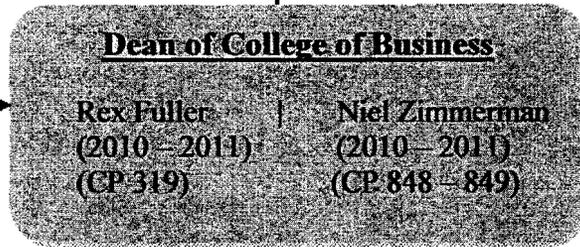
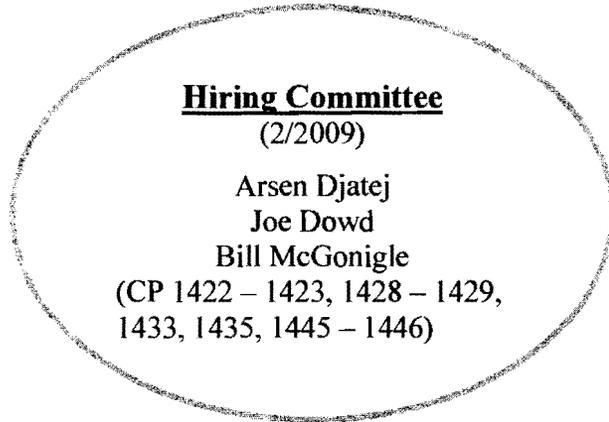
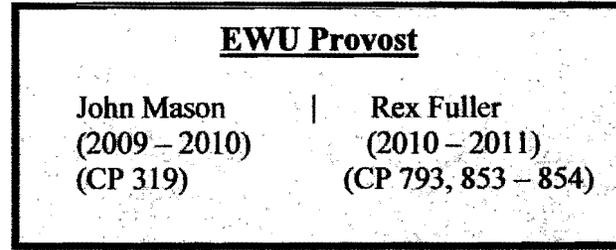


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Email: [pkirby@pkirbylaw.com](mailto:pkirby@pkirbylaw.com)

## **Appendix A-1**

## EWU Organization Chart



## **Appendix A-2**

Re: Doron Visit

Subject: Re: Doron Visit

From: Joe Dowd <joe@the-dowds.com>

Date: Wed, 18 Feb 2009 09:32:51 -0800

To: slopez@mail.ewu.edu

CC: Nancy Birch;

At 08:30 AM 2/18/2009, you wrote:

Exactly what do you want in this copy? The 'whole' file would include a 75 page AACSB eligibility and accreditation standards brochure which he so graciously sent for our edification. There's also a transcript page? Multiple emails between you and him? What do you want included?

Susan,

I would prefer everything, including this email which has pasted below the case we made for why Doron's AQ to teach accounting with which Dean Fuller agreed:

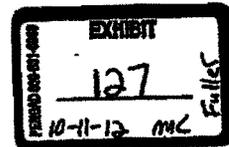
5. (Doron) - Applicant has a non-business PhD (History), so to be AQ to teach accounting - "A doctoral degree outside of business and primary teaching responsibilities that do not incorporate the area of academic preparation," the applicant "must have completed additional coursework or personal study sufficient to provide a base for participation in the mix of teaching, intellectual contribution, and service sought by the school."

The committee has evaluated that the candidate has demonstrated such "additional coursework or personal study," is AQ to teach accounting, and thus satisfies the ad's "preferred selection criteria" for "Strong research potential" as:

- (a.) The PhD coursework includes an accounting department PhD research seminar course.
- (b.) The PhD coursework includes a non-accounting department PhD research seminar courses indirectly related to accounting, e.g., "American Business History."
- (c.) The dissertation is directly related to accounting, e.g., "The End of the Disinterested Profession: American Accounting 1927-62."
- (d.) The applicant has one accounting PRJ in the past year.
- (e.) In the past year the applicant has participated in an accounting professional meeting, including presenting the results of an accounting research project with an accompanying peer-reviewed conference proceeding abstract publication.
- (f.) The applicant has completed a Masters of Accountancy program (2000), including eighteen (18) semester-credit hours of graduate accounting courses.
- (g.) The applicant has significant professional accounting work experience in sub-disciplines of accounting most in need by the department.

Thanks,

-Joe Dowd



469

## **Appendix A-3**

from Joe Dowd

-----  
Subject: from Joe Dowd  
From: Joe Dowd <joe@the-dowds.com>  
Date: Sun, 15 Mar 2009 10:11:37 -0700  
To: Arsen Djatej <adjatej@mail.swu.edu>

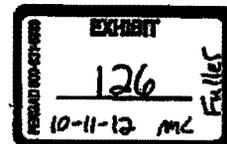
Arsen,

Two things:

1. Since Mike Doran agreed to come here mostly to work with you, you ought to let him know if/when you decide to accept the position at CO.
2. As Rex already knows about your offer, is it ok with you if I let Sue M. and Bill know you've got a \$120K/yr offer with tenure? I'd like to see if we might be able to match the \$ and tenure. I know there's nothing I can do about the balcony factor at SWU...

Thanks,

-Joe



66

1 of 1

3/5/2011 10:29 AM



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HUMAN RESOURCES

**Faculty Activity Plan**

**Michael E. Doron**

**Fall, 2009**

**November 20, 2009**

12/18/09

C: R. FULLER  
P. STANLEY-WEIGAND  
E. MURPHY  
M. DORON

DORON  
01020042

**1. Academic Credentials**

I am required to obtain my Ph.D. by August, 2010 in order to remain eligible for employment at EWU.

I received my Ph.D. from Texas A&M University in August, 2009.

**2. Quality of Teaching**

I must demonstrate acceptable levels of quality in teaching effectiveness, curriculum development, and student advising.

I am currently in the eighth week of my first quarter at EWU. I am teaching ACCT 450, Auditing I, and BADM 560, MBA Accounting. My goal this quarter, in addition to competently teaching the material, is to develop a familiarity with the skills and needs of the students in these courses. This will provide me with the perspective to develop these courses further in the future.

The CBPA prioritizes excellence in the classroom. When I interviewed for this position, I was impressed with the dedication and coordination among the faculty to preparing both undergraduate accounting majors for careers in accounting and future managers in the MBA program to understand and evaluate accounting information they confront in their work. I intend to contribute to this commitment to our students. To assess my teaching effectiveness, my plan is to use the metric built into the IDEA instrument; in particular Question 41 on the IDEA form, "Overall, I rate this instructor as an excellent teacher" which has a five point scale. My objective is to maintain an average of median ratings of 3.0 for my classes over the plan period.

I hope to teach all sections offered of ACCT 450, Auditing I, and BADM 560 and 505, the MBA Accounting courses. This will require a thorough understanding of the CBPA's and the AIS department's objectives for these courses and the skills and needs of our students. This quarter, I am relying both on my experience of the objectives of these courses and on the advice of my colleagues in the CBPA. In the Winter 2010 quarter, I will be teaching ACCT 450 again as well as BADM 505, and in Spring 2010 I will be teaching BADM 560. By the end of my first year, based on my experiences along with feedback from students and my colleagues, my goal is to prepare a comprehensive plan of how to meet the objectives of these courses and have a procedure in place to stay current on topics relevant to these courses.

Currently, I stay current on relevant topics through a subscription to the *Journal of Accountancy*, the official journal of the AICPA, as well as the *Wall Street Journal* and *New York Times*. Through the university's library, I stay current on research in the leading academic accounting journals. I also frequently scan [www.aicpa.org](http://www.aicpa.org), as well as *Issues in Accounting Education*, a journal of the American Accounting Association that includes case material and discussion of pedagogic issues.

My workload has been set via the EWU Collective Bargaining Agreement, so that it may not exceed 36 credit hours. The College of Business and Public Administration Assigned Time Policy allows a reduction of teaching load for appropriate research activities that assist the College. Under this policy, I

DORON  
01020043

expect a teaching load no greater than 28 credit hours, provided I meet the eligibility requirements set forth in the College Policy.

I understand that I must be available to my students for career advising and for assistance with their coursework. The currently accepted norm is to be available to students and faculty in my offices for at least five hours per week. I will also be regularly available via email and voice mail.

### **3. Quality of Research and Scholarship**

I must demonstrate an acceptable level of research and scholarship centered on the business aspects of my areas of interest. Minimally, five journal articles must be published during the six years prior to my tenure consideration. These must be in blind-refereed journals or in journals of national stature, with the provision that up to two may be replaced by publications in refereed conference proceedings at a rate of two proceedings for one refereed article. Equivalencies other than conference proceedings will be determined under the AIS Department Plan.

I currently have one publication in a blind-refereed journal, *Accounting History*, in August, 2009. In September, 2009, I published a paper, adapted from my dissertation, in the refereed conference proceedings of the *Accounting, Business, and Financial History* conference in Cardiff, Wales.

Based on the suggestions I received at the ABFH conference, I plan to revise this paper and submit it to the *Accounting Historians Journal*, a blind-refereed journal, before the beginning of academic year 2010-11, with the expectation that it will be accepted during the 2010-11 year.

I am currently writing a third paper adapted from my dissertation. I hope to submit this in March, 2010, for presentation at the *Accounting History* conference in Wellington, New Zealand in August, 2010. This is also a refereed conference proceeding. My goal would be to submit this paper to a blind-refereed accounting history journal in 2011, with the expectation that it would be accepted during the academic year 2011-12.

If I am able to meet the above goals, I will have three sole-authored publications in blind-refereed journals and two presentations at conferences with referred proceedings at the end of my third academic year at EWU.

I have plans for a second project upon completion of the above work. I have identified the sources to be used. These include trade journals from the nineteenth century that span several decades and have never been utilized for accounting history research. I expect this work to yield multiple sole-authored publications in blind-refereed accounting history journals, which I can begin to submit before my probationary status at EWU ends in 2015.

### **4. Quality of Service to the University and Community**

I must maintain an acceptable level of service to the University and Community. For the university, this involves activity on appropriate committees – one university-level and one College-level committee. For the community, this involves appropriate service activities.

I have been appointed to the Graduate Affairs Committee. I have attended two meetings of this committee. I am also sitting in on the meetings of the MBA Committee as the representative of the accounting faculty.

I believe it is important for me to develop relationships with the accounting community in Spokane. My goal is to better understand the needs and expectations of employers in this area, in order to better prepare my students for the workforce. The major firms in Spokane regularly recruit on the Riverpoint campus, so this should be readily achievable.

**5. Professional Development and Interaction**

I am currently a member of the American Institute of Certified Public Accountants, the American Accounting Association, and the Academy of Accounting Historians. I plan to continue my involvement, but have no current plans to become an officer in these organizations.

**DORON  
01020045**

**Michael E. Doron**  
College of Business and Public Administration  
Assistant Professor – Accounting and Information Systems  
Date of Hire: 2009  
RPT003  
Spokane, WA 99224  
mdoron@ewu.edu

RECEIVED  
DEC 7 8 2009  
HUMAN RESOURCES

**EDUCATION**

Ph.D., Texas A&M University	2009
Dissertation: "The End of the Disinterested Profession: American Public Accountancy 1927-62" (Advisor: Harold Livesey)	
Master of Accountancy, Case Western Reserve University	2000
Bachelor of Arts, Miami University	1993

**PUBLICATIONS**

"The End of the Disinterested Profession: The A.I.C.P.A. and the Union Corruption Scandals 1957-62," <i>Accounting History</i> , Volume 14	2009
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**WORKING PAPERS**

"I Ask the Profession to Stand Still: The Evolution of American Public Accountancy," presented at <i>Accounting, Business, and Financial History</i> Conference, Cardiff, Wales, UK	2009
"The Use of Temporary Workers By Accounting Firms and the Trend Towards the Natural Business Year," to be presented at <i>Accounting History</i> Conference, Wellington, New Zealand	2010

**MEMBERSHIPS**

American Accounting Association  
Academy of Accounting Historians  
American Institute of Certified Public Accountants

**TEACHING EXPERIENCE**

Assistant Professor, Eastern Washington University	2009-
Taught Auditing I, Financial Accounting, MBA Accounting	
Instructor, Franklin University	2003-2005
Taught Intermediate Accounting II and Financial Accounting	
Instructor, Ohio Dominican University	2003-2005
Taught MBA Accounting & Finance.	

DORON  
01020046

Instructor, SUNY-Buffalo 2003  
Taught Introductory Financial and Managerial Accounting  
Teaching Assistant, Texas A&M University 2005-9

**PROFESSIONAL EXPERIENCE**

CPA (inactive), Ohio 2000-  
Auditor, Ernst & Young, Columbus, Ohio 1998-99  
Accountant, Chute Gerdeman Retail Design, Columbus, Ohio 1995-97

**GRANTS AND FELLOWSHIPS**

Economic History Association Exploratory Data and Travel Grant 2008  
College of Liberal Arts Dissertation Fellowship, Texas A&M University 2008  
Eisenhower Presidential Library Travel Grant 2006

**PRESENTATIONS**

"I Ask the Profession to Stand Still: The Evolution of American Public  
Accountancy," *Accounting, Business and Financial History* Conference,  
Cardiff, Wales, UK 2009

"The End of the Disinterested Profession: American Public  
Accountancy 1927-62," *Accounting History* Conference,  
Banff, Alberta 2007

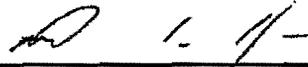
**SERVICE**

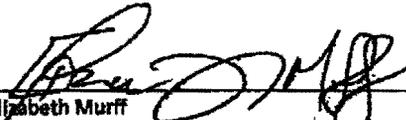
Graduate Committee, Eastern Washington University 2009-

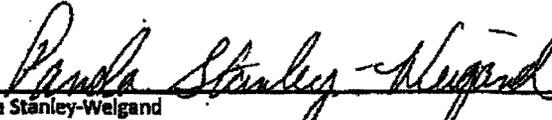
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HUMAN RESOURCES

Signatures:

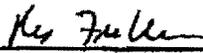
  
Michael Doron  
Assistant Professor, Accounting – AIS Department

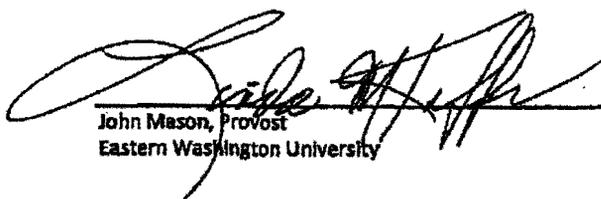
  
Elizabeth Murr  
Chair, Accounting and Information Systems Department  
11-25-09

  
Pamela Stanley-Weigand  
Chair, Department Personnel Committee – AIS Department  
11-18-09

  
Duanning Zhou  
Department Personnel Committee – AIS Department  
11-20-09

  
Susan Megaard  
Department personnel Committee – AIS Department  
11-20-09

  
Rex Fuller, Dean  
College of Business & Public Administration  
12/3/09

  
John Mason, Provost  
Eastern Washington University  
12/17/09

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## **Appendix A-5**



**EASTERN**  
WASHINGTON UNIVERSITY  
start something big

Rex D. Fuller, Ph.D.  
Interim Provost and Vice President for Academic Affairs

December 1, 2010

To: Dr. Michael Doron, Assistant Professor  
Department of Accounting and Information Systems

From: Dr. Rex Fuller, Interim Provost and Vice President for Academic Affairs *RDF*

Re: Reappointment for year three of your probationary appointment

I am pleased to inform you that I concur with the recommendations of your departmental colleagues, your department chair, and your dean and approve you for appointment, with an improvement plan, to an additional year in your probationary period through the 2011-2012 academic year. You will be reviewed for tenure and promotion during your final year of your probationary appointment.

As noted by the DPC, department chair, and dean, you are required to develop an improvement plan by no later than the end of the first week of Winter Quarter 2011, pursuant to section 5.3.1.b of the *Collective Bargaining Agreement*. You should focus this plan on ways to improve your teaching effectiveness and demonstration of scholarly activities related to the expectations outlined in the department and college policies and procedures and your FAP. As you know, the CBA enables you to revise your Faculty Activity Plan for consistency with these expectations. In order for you to be eligible for tenure and promotion, you will need to demonstrate effective teaching and produce appropriate peer-reviewed scholarly works as outlined in your department and college policies and procedures.

In summary, I wish you continued success as you approach your tenure and promotion decision in 2014-15.

c: Dr. Niel Zimmerman, Interim Dean, College of Business and Public Administration  
Dr. Duanning Zhou, Chair, Department of Accounting and Information Systems Personnel Committee  
Dr. Beth Murff, Chair, Department of Accounting and Information Systems  
Faculty Personnel File, Office of Human Resources

Office of Academic Affairs  
220 Strowalter Hall • Cheney, WA 99004-3445 • 509.359.2201 • www.evu.edu  
Eastern Washington University is committed to equal opportunity and affirmative action in employment.

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