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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING**

DUANE STORTI, and a class of similarly  
situated individuals,

Plaintiffs,

v.

UNIVERSITY OF WASHINGTON,

Defendant.

No. 04-2-16973-9 SEA

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT  
AND DENYING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT**

THIS MATTER came before the undersigned judge on cross motions for summary judgment. Plaintiff filed a Motion for Summary Judgment re: University's Duty to Provide a 2% Merit Salary Increase in the 2002-03 Academic Year and Defendant filed a Motion for Partial Summary Judgment dismissing claims asserted as part of Plaintiff's contract claim. The court reviewed the following:

- Plaintiffs' Second Amended Complaint;
- Plaintiffs' Motion for Partial Summary Judgment re: University's Duty to Provide 2% Merit Salary Increase in the 2002-03 academic year;
- Stephen Festor's December 20, 2004 declaration and its attached exhibits;
- Stephen Festor's January 21, 2005 declaration and its attached exhibits;

- Stephen Festor’s March 16, 2005 declaration and its attached exhibits;
- Stephen Festor’s September 23, 2005 declaration and its attached exhibits;
- Excerpts from University Handbook;
- Brief of Plaintiff Class in Opposition to UW’s Motion for Summary Judgment;
- Stephen Strong’s October 10, 2005 declaration and its attached exhibits;
- Excerpts from University Handbook (Volume II);
- Plaintiffs’ Reply Brief on Summary Judgment;
- Stephen Festor’s October 17, 2005 declaration and its attached exhibits;
- Defendant’s Motion for Partial Summary Judgment;
- Declaration of David B. Robbins and its attached exhibits;
- Declaration of Gerry Philipsen;
- Declaration of Bradley Holt;
- Declaration of Sandra Silberstein and its attached exhibits;
- Declaration of Steven Olswang;
- Declaration of Michael Madden and its attached exhibits;
- Memorandum in Opposition to Plaintiff’s Motion for Summary Judgment;
- Declaration of Richard L. McCormick;
- Second Declaration of David B. Robbins and its attached exhibits;
- Defendants’ Reply Memorandum in Support of Motion for Summary Judgment;

and heard oral argument on October 21, 2005.

**Decision and Order**

After considering the pleadings and argument presented by the parties, the court finds that there are no material issues of fact and that the court can decide the issues presented as a matter of law. Summary judgment in a contract dispute is appropriate where the terms of a written contract are unambiguous or where reasonable minds could reach only one conclusion from all of the evidence presented. Therefore, for the following reasons,

IT IS HEREBY ORDERED that Plaintiff’s Motion IS GRANTED and Defendant’s Motion IS DENIED.

The University of Washington’s (“the University’s”) Faculty Salary Policy is contained in the Faculty Handbook §§24-70 and 24-71, and Executive Order 64. Plaintiff claims that the Faculty Handbook constitutes the employment contract between the University and its faculty.

1 The University does not dispute this claim for summary judgment purposes and indeed argued  
2 that principles of contract interpretation should apply (*see* Memorandum in Opposition to  
3 Plaintiff's Motion for Summary Judgment at p.6).  
4

5 The Faculty Salary Policy outlines the University's policy on faculty salary pay raises.  
6 The Faculty Salary Policy was the result of extensive negotiations between the University  
7 Administration and the faculty represented by the Faculty Senate. The issue presented on  
8 summary judgment is whether the Faculty Salary Policy regarding merit salary increases  
9 constitutes a contractual obligation for the University in the year 2002-03.<sup>1</sup>  
10

11 A preliminary question is whether the court should consider extrinsic evidence in order to  
12 interpret the contract. Both parties offered such evidence to support their respective  
13 interpretations.<sup>2</sup> While the contemporaneous material submitted by Plaintiff supports the court  
14 finding that the parties intended to bind themselves to funding a 2% meritorious salary increase,  
15 the court concludes that it is not necessary to consider this extrinsic evidence since the intent of  
16 the parties is ascertainable by reading the plain language of the agreement. *Hearst*  
17 *Communications v. Seattle Time Co.*, 154 Wn.2d 493 (2005).  
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20 The Faculty Handbook outlines principles and procedures for implementing promotion,  
21 merit based salary, and tenure considerations. It also discusses the purpose of the Faculty Salary  
22 Policy which is to "recruit and retain the best faculty" by rewarding faculty based on  
23 performance. "This new policy is designed to provide for a predictable and continuing salary  
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26 <sup>1</sup> The University provided at least 2% salary increases to meritorious faculty in 2000-01, 2001-02, and 2003-04. The  
only year in question is 2002-03.

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28 <sup>2</sup> The Plaintiff offered extensive contemporaneous material such as minutes, e-mails, and hard copy  
correspondence. The Defendant offered *post hoc* testimony of individuals who were directly involved in the  
development of the salary policy.  
29

1 progression for meritorious faculty.” §24-57, at p.10. The policy goes on to describe allocation  
2 categories and prioritizes the salary distribution plan. The first priority is to support regular  
3 merit and promotion awards to current faculty. *Id.*, at p. 11. It further states that all meritorious  
4 faculty shall receive a 2% merit salary increase:  
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6 All faculty shall be evaluated annually for merit and for progress towards reappointment,  
7 promotion and/or tenure, as appropriate. A faculty member who is deemed to be  
8 meritorious in performance shall be awarded a regular 2% merit salary increase at the  
9 beginning of the following academic year. Higher levels of performance shall be  
10 recognized by higher levels of salary increases as permitted by available funding.

11 *Id.*, at p.11-12.

12 The Faculty Salary Policy states that a “salary increase . . . shall be granted to provide an  
13 initial minimum equal-percentage salary increase to all faculty following a successful merit  
14 review.” §24-70.B.1, at p. 13. Section 24-71.A.1 states that the University President “shall each  
15 year make available funds to provide an initial minimum equal percentage salary increase to all  
16 faculty deemed meritorious . . .” Executive Order 64, incorporated by reference into the Faculty  
17 Salary Policy, states an express commitment by the University to support a salary adjustment  
18 based on performance evaluations for those faculty deemed meritorious; that “[a] faculty  
19 member who is deemed to be meritorious in performance shall be awarded a regular 2% merit  
20 salary increase at the beginning of the following academic year.”  
21

22 After reviewing all of the relevant portions of the Faculty Salary Policy, the court  
23 concludes that the plain language creates a mandatory duty that requires the University to  
24 provide meritorious faculty an annual merit increase of at least 2%. The court cannot find any  
25 language that makes the merit salary increase contingent on funding.  
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1 The University argues that it retained discretion to fund or not fund the 2% meritorious  
2 raise and that such an increase was conditioned upon Legislative appropriations. The Faculty  
3 Salary Policy does contain a concern about funding and is noted at page 12 in the Handbook as  
4 *Funding Cautions*. It states:

6 This Faculty Salary Policy is based upon an underlying principle that new funds from  
7 legislative appropriations are required to keep the salary system in equilibrium. Career  
8 advancement can be rewarded and the current level of faculty positions sustained only if  
9 new funds are provided. Without the infusion of new money from the Legislature into  
10 the salary bases, career advancement can only be rewarded at the expense of the size of  
11 the University faculty. Without the influx of new money or in the event of decreased  
12 State support, a *reevaluation* of this Faculty Salary Policy may prove necessary.  
13 (*emphasis added*)

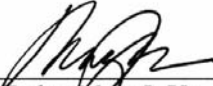
14 The relevant word is “reevaluation” and the critical issue is whether it means that the  
15 President retained discretion to recommend implementation of the policy on an annual basis.  
16 Under the “objective manifestation” theory of contracts the words themselves should be given  
17 their ordinary meaning and the ordinary meaning of the word “reevaluation” is “the act or result  
18 of evaluating again.” *Webster’s Third New Intern. Dict. Unabridged, p. 1907 (1976)*. “Evaluate”  
19 means “to examine and judge concerning the worth, quality, significance, amount, degree, or  
20 condition of.” *Id.*, p. 786.

21 This funding caution also must be read in the context of the entire salary policy  
22 document, especially the allocation priorities and the commitment to use resources other than  
23 legislative appropriations to support the policy. After such review, the court is persuaded by  
24 Plaintiff’s argument that the word “reevaluation” reserves the right of the University to change  
25 the policy at some future date. The terms of the Handbook were extensively negotiated between  
26 the University Administration and Faculty Senate and absent any other language which grants  
27 the University the right to unilaterally disregard the meritorious raise provision, reevaluation  
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1 must mean that if funding became an issue, the parties would subject the Faculty Salary Policy to  
2 further evaluation or review. It does not say that the Faculty Salary Policy will be rescinded,  
3 cancelled, or repealed and this court cannot transpose such a meaning to the word  
4 “reevaluation.” One might assume that reevaluation would require a re-opening of discussions  
5 with the Faculty Senate and resubmitting the Salary Policy for review and consideration by all of  
6 the stakeholders. However, the court need not reach the question of what process would have  
7 been utilized to repeal, evaluate, or modify the Faculty Salary Policy. The Faculty Salary  
8 Policy’s plain language creates a mandatory duty that requires the University to provide  
9 meritorious faculty an annual 2% merit salary increase in the year 2002-03.  
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12 In regard to Defendant’s Motion for Partial Summary Judgment, the court denies the  
13 Motion in its entirety. For the above stated reasons, the court denies Defendant’s Motion to  
14 dismiss plaintiff’s contract claims. The court also rejects Defendant’s assertions that the court  
15 does not have jurisdiction to consider Plaintiff’s claims. The court has original jurisdiction over  
16 this contract dispute in which the relief sought is monetary damages. Moreover, the University  
17 rejected Plaintiff’s attempts to adjudicate the dispute on the basis that the adjudication process of  
18 the University was “not the proper forum” to review the faculty salary issue.  
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21 IT IS SO ORDERED this 25<sup>th</sup> day of October, 2005.

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25 Judge Mary I. Yu  
26 KING COUNTY SUPERIOR COURT  
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Case Number: 04-2-16973-9  
Case Title: STORTI VS UNIVERSITY OF WASHINGTON  
Document Title: OTHER  
User's Name: Mary Yu  
Filed Date: 10/25/2005 1:38:43 PM

Judge Signed

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