STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CHELAN COUNTY DEPUTY SHERIFF'S ASSOCIATION, Complainant, vs. CHELAN COUNTY, Respondent.	CASE 132113-U-19 DECISION 13308 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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On September 18, 2019, the Chelan County Deputy Sheriff's Association (union) filed an unfair labor practice complaint against Chelan County (employer). The complaint, as amended on October 31, 2019, alleges that the employer discriminated against Jennifer Tyler by suspending her because of her activity protected under chapter 41.56 RCW.

On November 7, 2019, an unfair labor practice manager issued a preliminary ruling finding a cause of action. The undersigned conducted a hearing by videoconference on October 20, 2020. The parties filed briefs on December 18, 2020, to complete the record.

ISSUE

The sole issue in this proceeding is whether the employer discriminated against Tyler in violation of RCW 41.56.140(1) by suspending her for three days because of an email she sent to other union members in connection with an election.[1]

Tyler was engaged in internal union activity protected under chapter 41.56 RCW when she sent an email contesting the nomination of a member for a position on the union's executive board. The text of the email was not so unreasonable as to lose protection. By suspending her for three days because of the email, the employer discriminated against Tyler because of her protected activity and violated RCW 41.56.140(1).

BACKGROUND

The employer's sheriff's department is overseen by an independently elected sheriff. Reporting to the sheriff is an undersheriff. Reporting to the undersheriff are three chiefs. The patrol chief is responsible for supervising a number of deputy sheriffs.

The union represents a bargaining unit of deputy sheriffs through the rank of sergeant. The executive board is the union's governing body. It is composed of, among other positions, a president and several vice president positions. All members of the executive board are elected. When a position on the executive board becomes available, either because the incumbent's term has expired or because of a resignation, the union notifies the membership and solicits nominations. If multiple candidates are nominated, the union conducts an election to fill the position. All communications concerning the election process are conducted using members' private email addresses. It is not uncommon for discussions between union members regarding

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[1] The employer additionally argues that its conduct during the investigation leading to the suspension did not violate chapter 41.56 RCW. The preliminary ruling provided a cause of action only with respect to the discipline. Any other allegations are beyond the scope of the preliminary ruling and therefore not addressed here. *King County*, Decision 9075-A (PECB, 2007).

issues relating to the organization to become contentious. The employer was aware that these conversations sometimes become heated. On occasion, employees also have engaged in arguments with one another while on duty.

In October 2018, Sergeant Jeff Middleton stepped down from his role as a vice president for the union. The union's president sent an email to the membership asking for nominations to fill the vacant position. One of the union members nominated Sergeant Adam Musgrove. On October 12, 2018, Deputy Jennifer Tyler responded to Musgrove's nomination in an email sent to all of the union's membership. Tyler wrote, "I would like to contest the nomination of Adam Musgrove on the basis of evidence of workplace harassment and if need be I'll file these complaints with Katie Batson." Batson is the employer's Human Resources Director. Some of the union's membership expressed concerns about Tyler contesting Musgrove's nomination. Tyler replied to those concerns in another email sent on October 13, 2018, asking rhetorically "If someone will violate your civil rights why would you want them protecting your employment rights?"

Tyler and Musgrove had a troubled relationship. Prior to 2018, Musgrove had filed at least one complaint with the employer's Human Resources office regarding alleged conduct by Tyler. He also participated as a witness in at least two other investigations involving Tyler. None of these investigations resulted in discipline. Tyler felt that Musgrove's willingness to utilize and participate in the employer's internal investigation process constituted a form of harassment. Because of this personal history, Tyler believed that Musgrove would not effectively represent her if he was elected to a position on the union's executive board.

The relationship between Tyler and the employer was also contentious. She had been previously terminated but reinstated in 2013 with back pay, pursuant to an arbitrator's award. She subsequently filed a civil lawsuit against the employer. Following a jury trial she was awarded a substantial sum. The specifics of the conduct alleged in the lawsuit are not part of the record. Musgrove, however, testified that the internal complaints against Tyler in which he participated as a complainant or witness occurred, at least in part, after the lawsuit was filed.

Musgrove was upset by Tyler's email accusing him of harassment. As a new sergeant, he was also concerned the accusations could affect his reputation among his squad. In response, on October 17, 2018, he filed a complaint with the employer's Human Resources Director. Titled "EMPLOYEE CONCERNS OF WORKPLACE BULLYING AND COERCION," Musgrove's complaint alleged he would "be targeted if [he did] not remove [his] name from the ballot."

The employer initiated an internal affairs investigation after it received the complaint. In order to avoid an appearance of partiality given Tyler's history with the employer, an outside attorney was contracted to perform the investigation. The investigator interviewed Musgrove and Tyler, among others, and sent his report to the employer on February 27, 2019.[2] The investigator concluded that Tyler's allegations of harassment by Musgrove stemmed entirely from his past complaints against her. He went on to note that

> [i]f, as Deputy Tyler alleges, she was merely addressing a potential conflict issue, she should have said so; if, as Deputy Tyler alleges, she was referring to past, resolved allegations, she should have said so. She did not and, as a result, I find that this constituted a willful falsehood by Deputy Tyler . . .[,]

which violated several employer policies.

Chief Jason Reinfeld reviewed the investigator's report. His conclusions, which are based entirely on the work of the investigator, are set forth in a March 13, 2019, memorandum.[3] Reinfeld determined that, by her October 12, 2018, email, Tyler failed to comply with Articles 3.02.00 (Code of Ethics), 7.07.00 (Truthfulness), 7.14.02 (Workplace Harassment Policy), and 7.17.00 (Teamwork and Cooperation) of the employer's policy and procedure manual. He pointed out that "Deputy Tyler's email was a willful falsehood claiming future harassment complaints when she was actually referring to past, resolved issues." In response to this conduct, Reinfeld proposed a

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[2] The report also contained his conclusions with respect to two other, unrelated, internal affairs investigations concerning Tyler. The issues raised in those investigations are not relevant to the instant proceeding.

[3] The memorandum incorrectly states it was issued March 13, 2018.

three-day suspension. Following a *Loudermill* hearing on May 14, 2019, Reinfeld issued his final decision on June 13, 2019, and suspended Tyler for three days. Reinfeld noted in the final disciplinary decision that "[t]hrough interviews, [the investigator] determined Deputy Tyler did not feel Sergeant Musgrove would represent her fairly as a board member of the association due to past complaints he filed against her. Deputy Tyler did not relay this information in her email to the association body." The sole factual basis for the discipline imposed by the employer was Tyler's October 12, 2018, email.

After the employer initiated its investigation, Tyler filed a lawsuit in federal district court alleging, among other things, harassment in violation of Title VII of the Civil Rights Act of 1964 and the Washington Law Against Discrimination. I take administrative notice that the case in *Tyler v. Chelan County et al* (2:19-cv-00172) was filed on May 17, 2019. It is currently pending before the U.S. District Court for the Eastern District of Washington.

ANALYSIS

Applicable Legal Standard

An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee's exercise of statutorily protected rights. *Educational Service District 114*, Decision 4361-A (PECB, 1994). The complainant maintains the burden of proof in a discrimination case. To prove discrimination, the complainant must first establish a prima facie case by showing that:

1. [t]he employee participated in an activity protected by the collective bargaining statute, or communicated to the employer an intent to do so;

2. [t]he employer deprived the employee of some ascertainable right, benefit, or status; and

3. [a] causal connection exists between the employee's exercise of a protected activity and the employer's action.

City of Vancouver, Decision 10621-B (PECB, 2012), *aff'd, in part*, *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. 333, 348–349 (2014); *Educational Service District 114*, Decision 4361-A.

If the complaining party establishes a prima facie case, the burden of production shifts to the respondent. *City of Vancouver*, 180 Wn. App. 333, 349; *Port of Tacoma*, Decision 4626-A (PECB, 1995). The respondent may articulate a legitimate, nondiscriminatory reason for the adverse employment decision. *Id*. If the respondent meets its burden of production, the complainant bears the burden of persuasion to show that the employer's stated reason was either a pretext or that union animus was a substantial motivating factor for the employer's actions. *Id*.

Employees engaged in activity normally protected by a collective bargaining statute may, under certain circumstances, lose that protection. When determining whether activity is protected, the Commission first looks at whether the activity was taken on behalf of the union. *University of Washington*, Decision 11199-A (PSRA, 2013). If the activity appears to be union activity on its face, a "reasonableness" standard is applied. *Vancouver School District No. 37 v. Service Employees International Union, Local 92 (Vancouver School District)*, 79 Wn. App. 905 (1995), *review denied*, 129 Wn.2d 1019 (1996); *City of Vancouver v. Public Employment Relations Commission*, 107 Wn. App. 694 (2001). "[E]mployee activity loses its protection when it is unreasonable--but reasonableness is gauged by what a reasonable person would do in the midst of industrial strife, and not by what a reasonable person would do in the more ordinary affairs of life." *Vancouver School District*, 79 Wn. App. at 922. "[C]onduct may fall outside of the protections of labor statutes if the conduct is irresponsible and abusive." *City of Vancouver*, 107 Wn. App. at 711 (showing even when it was claimed the actions were taken as part of union duties, actions that amounted to a conspiracy to retaliate against a fellow employee were unprotected). If behavior becomes too disruptive or confrontational, it loses the protection. *Pierce County Fire District No. 9*, Decision 3334 (PECB, 1989).

Application of Standard

The employer unlawfully discriminated against Tyler in violation of RCW 41.56.140(1) by suspending her because of her union activity.

Internal Union Activity Is Protected by the Relevant Collective Bargaining Statute

Tyler's email contesting Musgrove's nomination for a position on the union's executive board constitutes internal union activity that is protected under chapter 41.56 RCW. Although the Public Employment Relations Commission (PERC) has rarely been asked to determine the extent to which purely internal union activity is protected, the issue has been frequently addressed by the National Labor Relations Board.[4] As the Board explained in *General Motors Corp.*, 211 NLRB 986, 988 (1974),

> We have long held that the right to oppose the reelection of incumbent union officials is protected activity within the meaning of Section 7 of the Act. Furthermore, in a very real sense, the identity of the officers of a labor organization substantially influence the nature of the organization as a bargaining agent.

Given the parallels between the Public Employees' Collective Bargaining Act (PECBA) and the National Labor Relations Act (NLRA), this analysis is instructive. *Nucleonics Alliance v. Washington Public Power Supply System*, 101 Wn.2d 24 (1984). The purpose of the PECBA is to provide "a uniform basis for implementing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in matters concerning their employment relations with public employers." RCW 41.56.010. Consistent with the goal articulated by the legislature, the statute guarantees public employees the right to organize and designate representatives of their own choosing for the purpose of collective bargaining without interference. RCW 41.56.040. Participating in internal union politics for the purpose of choosing who will serve in an elected position quite literally involves designating a representative for the purpose of collective bargaining.

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[4] *See, e.g., Nationsway Transport Service*, 327 NLRB 1033 (1999); *Wenner Ford Tractor Rentals, Inc.*, 315 NLRB 964 (1994); *Avon Roofing & Sheet Metal Co.*, 312 NLRB 499 (1993); *Aztech Electric, Inc.*, 244 NLRB 924 (1979); *Falstaff Brewing Corporation*, 128 NLRB 294 (1960); *Operating Engineers Local 138 (A. Cestone Co.)*, 118 NLRB 669 (1957).

Protections for this type of activity are also written into other state collective bargaining laws where the statute safeguards employees' right to, *inter alia*, assist labor organizations.[5] The expressed purpose of chapter 41.56 RCW is to provide "a uniform basis for implementing" the right to organize and collectively bargain. Similarly, the legislature's goal in creating PERC was, among other things, to "provide, in the area of public employment, for the more uniform and impartial . . . adjustment and settlement of complaints, grievances, and disputes arising out of employer-employee relations . . . ." RCW 41.58.005(1). Interpreting the PECBA to exclude a certain type of union activity from protection that is covered by other, similar, statutes runs contrary to the intent of the legislature. Pursuant to this statutory goal, given the similarities in language and absent any specific legislative intent to the contrary, the language concerning what constitutes protected activity must be harmonized. *State – Natural Resources*, Decision 8458-B (PSRA, 2005). Tyler's email opposing Musgrove's nomination for a position on the union's governing body constitutes internal union activity of the type protected by statute.

The Union Established a Prima Facie Case of Discrimination

Generally, an employee engaged in protected activity must go to extremes before his or her activity loses protection. *Vancouver School District*, 79 Wn. App. 905 (explaining that approaching children at the bus stop was not a reasonable exercise of the union's right to investigate a grievance); *City of Pasco*, Decision 3804 (PECB, 1991), *aff'd*, Decision 3804-A (PECB, 1992) (holding that an employee's offer to settle a grievance "out in back of the warehouse" was unreasonable and unprotected). Reasonableness is gauged by "what a reasonable person would do in the midst of industrial strife, and not by what a reasonable person would do in the more ordinary affairs of life." *Vancouver School District*, 79 Wn. App. at 922. Although this analytical framework is often applied to exchanges between employer and union representatives, it is

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[5] RCW 41.59.060 ("Employees shall have the right to self-organization, to form, join, or assist employee organizations, to bargain collectively through representatives of their own choosing . . . ."); RCW 41.80.050 ("[E]mployees shall have the right to self-organization, to form, join, or assist employee organizations, and to bargain collectively through representatives of their own choosing for the purpose of collective bargaining free from interference, restraint, or coercion."); RCW 28B.52.025 ("Employees have the right to self-organization, to form, join, or assist employee organizations, to bargain collectively through representatives of their own choosing . . . ."); RCW 54.04.170 (adopting the NLRA's definition of employee rights).

similarly applicable to other types of activity protected under Washington's collective bargaining statutes. *See City of Vancouver*, 107 Wn. App. 694; *State – Washington State Patrol*, Decision 11863-A (PECB, 2014).

Citing California Public Employment Relations Board (PERB) and NLRB precedent, the union argues that an employer taking disciplinary action against an employee for untruthfulness in the context of protected union activity must establish knowing dishonesty or a reckless disregard for the truth. As an initial matter, the federal precedent upon which this analysis was based, *Atlantic Steel Co.*, 245 NLRB 814 (1979), was overruled in *General Motors LLC*, 369 NLRB No. 127 (2020). The extent to which employee statements are knowingly false may be a factor in determining whether, under the totality of the circumstances, the purportedly protected conduct was reasonable. The Commission, however, has not articulated the *Vancouver School District* test in the same manner as the framework utilized by the California PERB in comparable factual situations. To the extent a change or clarification of PERC case law is required in order to do so, it is a job for the Commission, not a hearing examiner. I therefore apply only existing Commission precedent. Considering the totality of the circumstances, the text of Tyler's October 12 email was not so unreasonable as to lose statutory protection. As an initial matter, Tyler had a good faith belief that Musgrove had harassed her in the past.[6] Musgrove had previously initiated at least one internal complaint against Tyler and had participated as a witness in the investigation of two more. None of the investigations resulted in disciplinary action against Tyler. She credibly testified that she viewed the investigations, initiated when another employee made (in her opinion) meritless complaints about her to the employer, to be harassing. Tyler's statement in the October 12 email that she objected to Musgrove's nomination "on the basis of evidence of workplace harassment" was based on her belief that it was true. The employer concluded in its investigation that Tyler's statement involved "a willful falsehood claiming future harassment complaints when she was actually referring to past, resolved issues." The conclusion is only partially correct. As Tyler

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[6] I do not draw any conclusions with respect to whether Tyler was actually the victim of unlawful harassment within the meaning of Title VII of the Civil Rights Act of 1964 or the Washington Law Against Discrimination, chapter 49.60 RCW. Instead, consistent with the testimony, the word harassment is used in the colloquial sense as understood by Tyler.

explained during the internal affairs investigation, she was indeed referring to past issues involving Musgrove. Although the employer may have completed its investigation into the complaints and considered the matters resolved, from Tyler's perspective the issue of whether Musgrove's behavior was harassing was not. The employer cannot also claim that the issues underlying her complaints were addressed in her previous lawsuit in which she prevailed. Musgrove testified that the complaints, at least in part, were initiated after the first lawsuit was filed. These facts distinguish the instant case from *City of Pullman*, Decision 11148 (PECB, 2011), *aff'd*, Decision 11148-A (PECB, 2012), where the employer lawfully disciplined a number of employees who, while purporting to be engaged in union activity, submitted willfully false statements intended to defame and discredit other employees. As the Commission noted in *University of Washington*, Decision 11199-A, "[M]otive matters. If activity appears, on its face, to be union activity, then it is likely protected. If it is proven that there was an improper intent to harass or intimidate, then the activity is likely unprotected." Tyler's credible testimony establishes that she sincerely believed Musgrove's conduct toward her in the past had been harassing and that he would not effectively represent her in the event he was elected to a position on the union's executive board. Her emails on October 12 and 13 to this effect constitute participation in electoral union politics—an activity that I find is generally protected under the PECBA.

Many of the employer's other critiques of Tyler's conduct are without merit. The employer's investigator correctly noted that Tyler could have been clearer about the harassment she was referring to and its relationship to her objection to Musgrove's candidacy. Under the circumstances, her failure to more specifically articulate the basis of her complaints about Musgrove was not so unreasonable as to lose protection, especially in the context of what can be heated internal union electoral activity. The employer's conclusion that she failed to specify her concern regarding a potential conflict of interest is also factually inaccurate. In response to several emails from the membership regarding her initial statement, Tyler replied with her concerns regarding Musgrove, asking rhetorically, "If someone will violate your civil rights why would you want them protecting your employment rights?" Her email therefore did not contain the type of willfully false statements or accusations that may render otherwise protected conduct unprotected.

It is true that the tone of Tyler's email was confrontational. It accused Musgrove of harassment and included a threat to report the conduct to the employer's Human Resources department. This, however, does not render it unprotected. Depending on the context and delivery, confrontational statements may or may not be protected activity. *King County*, Decision 12582-B (PECB, 2018). Here, the statement was made via email, an inherently less confrontational method of communication than face-to-face statements. *Lewis County*, 4691-A (PECB, 1994). It was also made in a climate where, at times, disagreements became heated and individual union members engaged in arguments. The fact that Tyler's email threatened to take action against Musgrove and may have affected other members' views of him is not determinative of whether her statement was protected. Instead, provided that the conduct is part of the *res gestae* of protected activity, "[i]t is not strictly unreasonable to question a supervisor's veracity or even make unsubstantiated allegations, as long as these are relevant to union activity." *University of Washington*, Decision 11199-B. Tyler's email was sent in the course of union activity and was not so unreasonable as to lose protection. I therefore find that Tyler participated in activity protected under the PECBA.

The complainant has met the other elements required to establish a prima facie case under *Educational Service District 114*, Decision 4361-A. The employer's three-day suspension of Tyler constitutes a denial of an ascertainable right or benefit. There is also no doubt that a causal connection exists between her October 12 email, which I have found to be statutorily protected, and her subsequent discipline. It is, in fact, the only reason for the personnel action.

The Employer's Defenses Fail

The employer attempts to meet its burden to show a legitimate, nondiscriminatory reason for its actions by framing its decision to discipline Tyler as being imposed solely because she violated several employer policies. I find this argument is unpersuasive. The sole factual basis for the discipline was Tyler's protected activity. This is not a nondiscriminatory reason, but instead represents discipline imposed for a reason prohibited by PECBA. The employer cannot cloak a discriminatory disciplinary decision in the guise of a rule violation. In doing so, the employer has failed to meet its burden under *Educational Service District 114* to articulate a legitimate nondiscriminatory reason for the discipline.

Assuming, *arguendo*, that the employer's asserted basis for the discipline constituted a nondiscriminatory reason, I find the union met its burden of persuasion to show that the reason is pretextual. First, the reason proffered by the employer for the discipline—that Tyler engaged in dishonest conduct—is inaccurate. As noted previously, Tyler expressed a good faith belief that Musgrove had engaged in behavior she felt to be harassing in nature. The conclusion of the employer to the contrary is simply incorrect. The employer's rule regarding "Teamwork and Cooperation" was also disparately enforced. A number of witnesses, including Reinfeld, testified that discussions during union meetings were at times heated, with employees engaged in what could be considered quarreling. Similar types of arguments also occurred on occasion while employees were on duty. There is no evidence the employer has previously disciplined other employees for such conduct. The asserted nondiscriminatory basis for the discipline, to the extent it could be considered such, is pretextual. The union met its burden of persuasion to prove that the employer's Tyler's protected activity was a substantial motivating factor in her discipline.

CONCLUSION

Tyler was engaged in internal union activity protected under chapter 41.56 RCW when she sent an email contesting the nomination of another employee for a position on the union's executive board. The text of the email was not so unreasonable as to lose statutory protection. The employer's subsequent decision to suspend Tyler for three days because of this protected activity constitutes discrimination in violation of RCW 41.56.140(1).

FINDINGS OF FACT

1. Chelan County (employer) is a public employer within the meaning of RCW 41.56.030(13).

2. The Chelan County Deputy Sheriff's Association (union) is a bargaining representative within the meaning of RCW 41.56.030(2).

3. The union represents a bargaining unit of deputy sheriffs through the rank of sergeant. The executive board is the union's governing body. It is composed of, among other positions,

a president and several vice president positions. All members of the executive board are elected. When a position on the executive board becomes available, either because the incumbent's term has expired or because of a resignation, the union notifies the membership and solicits nominations. If multiple candidates are nominated, the union conducts an election to fill the position.

4. All communications concerning the election process are conducted using members' private email addresses. It is not uncommon for discussions between union members regarding issues relating to the organization to become contentious.

5. The employer was aware that these conversations sometimes become heated. On occasion, employees also have engaged in arguments with one another while on duty.

6. In October 2018, Sergeant Jeff Middleton stepped down from his role as a vice president for the union. The union's president sent an email to the membership asking for nominations to fill the vacant position. One of the union members nominated Sergeant Adam Musgrove. On October 12, 2018, Deputy Jennifer Tyler responded to Musgrove's nomination in an email sent to all of the union's membership. Tyler wrote, "I would like to contest the nomination of Adam Musgrove on the basis of evidence of workplace harassment and if need be I'll file these complaints with Katie Batson." Batson is the employer's Human Resources Director.

7. Some of the union's membership expressed concerns about Tyler contesting Musgrove's nomination. Tyler replied to those concerns in another email sent on October 13, 2018, asking rhetorically "If someone will violate your civil rights why would you want them protecting your employment rights?"

8. Tyler and Musgrove had a troubled relationship. Prior to 2018, Musgrove had filed at least one complaint with the employer's Human Resources office regarding alleged conduct by Tyler. He also participated as a witness in at least two other investigations involving Tyler. None of these investigations resulted in discipline. Tyler felt that Musgrove's willingness

to utilize and participate in the employer's internal investigation process constituted a form of harassment.

9. Because of this personal history, Tyler believed that Musgrove would not effectively represent her if he was elected to a position on the union's executive board.

10. The relationship between Tyler and the employer was also contentious. She had been previously terminated but reinstated in 2013 with back pay, pursuant to an arbitrator's award. She subsequently filed a civil lawsuit against the employer. Following a jury trial she was awarded a substantial sum. The specifics of the conduct alleged in the lawsuit are not part of the record. Musgrove, however, testified that the internal complaints against Tyler in which he participated as a complainant or witness occurred, at least in part, after the lawsuit was filed.

11. Musgrove was upset by Tyler's email accusing him of harassment. As a new sergeant, he was also concerned the accusations could affect his reputation among his squad. In response, on October 17, 2018, he filed a complaint with the employer's Human Resources Director.

12. The employer initiated an internal affairs investigation after it received the complaint. In order to avoid an appearance of partiality given Tyler's history with the employer, an outside attorney was contracted to perform the investigation. The investigator interviewed Musgrove and Tyler, among others, and sent his report to the employer on February 27, 2019. The investigator concluded that Tyler's allegations of harassment by Musgrove stemmed entirely from his past complaints against her.

13. Chief Jason Reinfeld reviewed the investigator's report. His conclusions, which are based entirely on the work of the investigator, are set forth in a March 13, 2019, memorandum. Reinfeld determined that, by her October 12, 2018, email, Tyler failed to comply with Articles 3.02.00 (Code of Ethics), 7.07.00 (Truthfulness), 7.14.02 (Workplace Harassment Policy), and 7.17.00 (Teamwork and Cooperation) of the employer's policy and procedure manual.

14. In response to this conduct, Reinfeld proposed a three-day suspension. Following a *Loudermill* hearing on May 14, 2019, Reinfeld issued his final decision on June 13, 2019, and suspended Tyler for three days.

15. Reinfeld noted in the final disciplinary decision that "[t]hrough interviews, [the investigator] determined Deputy Tyler did not feel Sergeant Musgrove would represent her fairly as a board member of the association due to past complaints he filed against her. Deputy Tyler did not relay this information in her email to the association body."

16. The sole factual basis for the discipline imposed by the employer was Tyler's October 12, 2018, email.

17. After the employer initiated its investigation, Tyler filed a lawsuit in federal district court alleging, among other things, harassment in violation of Title VII of the Civil Rights Act of 1964 and the Washington Law Against Discrimination. I take administrative notice that the case in *Tyler v. Chelan County et al* (2:19-cv-00172) was filed on May 17, 2019. It is currently pending before the U.S. District Court for the Eastern District of Washington.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has statutory jurisdiction in this matter pursuant to chapter 41.56 RCW and chapter 391-45 WAC.

2. By the actions described in findings of fact 4–16, the employer discriminated against Jennifer Tyler in violation of RCW 41.56.140(1) by suspending her for three days for activity protected under chapter 41.56 RCW.

ORDER

CHELAN COUNTY, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Discriminating against Jennifer Tyler because she engaged in activity protected under chapter 41.56 RCW.

   b. In any other manner interfering with, restraining, or coercing its employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of chapter 41.56 RCW:

   a. Make Jennifer Tyler whole by rescinding the three-day suspension found unlawful here and by paying Tyler any wages and benefits in the amounts Tyler would have earned or received during the suspension. Back pay shall be computed in conformity with WAC 391-45-410.

   b. Contact a compliance officer at the Public Employment Relations Commission to receive official copies of the required notice for posting. Post copies of the notice provided by the compliance officer in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

   c. Read the notice provided by the compliance officer into the record at a regular public meeting of the Board of County Commissioners of Chelan County, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

d. Notify the complainant, in writing, within 20 days following the date of this order as to what steps have been taken to comply with this order and, at the same time, provide the complainant with a signed copy of the notice provided by the compliance officer.

e. Notify the compliance officer, in writing, within 20 days following the date of this order as to what steps have been taken to comply with this order and, at the same time, provide the compliance officer with a signed copy of the notice the compliance officer provides.

ISSUED at Olympia, Washington, this 11th day of February, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MICHAEL SNYDER, Examiner

This order will be the final order of the agency unless a notice of appeal is with the Commission under WAC 391-45-350.

RECORD OF SERVICE

ISSUED ON 02/11/2021

DECISION 13308 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 132113-U-19

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