

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ELIZABETH REIGLE,

Complainant,

vs.

PIERCE COUNTY,

Respondent.

CASE 133123-U-20

DECISION 13371 - PECB

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

Joan K. Mell, Attorney at Law, III Branches Law, PLLC, for Elizabeth Reigle.

Jana R. Hartman, Deputy Prosecuting Attorney, Civil Division, Pierce County
Prosecuting Attorney Mary E. Robnett, for Pierce County.

On November 2, 2020, Elizabeth Reigle (complainant) filed an unfair labor practice complaint against Pierce County (employer). The complaint alleges that the complainant was removed from her position as Asset Forfeiture Reviewer Detective because of her activity protected under the Public Employees' Collective Bargaining Act (PECBA).

On November 9, 2020, an Unfair Labor Practice Administrator issued a preliminary ruling finding a cause of action. The undersigned conducted a hearing via videoconference in the matter on April 1 and 2, 2021. The parties filed briefs on May 28, 2021, to complete the record.

ISSUE

The sole issue in this proceeding is whether the employer discriminated against Reigle in violation of RCW 41.56.140(1) by removing her from the Asset Forfeiture Reviewer Detective¹ position in reprisal for union activities protected by chapter 41.56 RCW.

The complainant established a prima facie case of discrimination. The employer, however, articulated a nondiscriminatory reason for its decision to remove her from her position, and the complainant was unable to prove by a preponderance of the evidence that the proffered reason was pretextual or that the decision was motivated by anti-union animus. The complaint is dismissed.²

BACKGROUND

The employer's sheriff's department is overseen by an independently elected sheriff. Paul Pastor served as the elected sheriff for Pierce County for a number of years until his retirement in fall 2020. Brent Bomkamp has worked as the undersheriff since 2017. He served as interim sheriff between Pastor's retirement and certification of the November 2020 election results. Bomkamp reports directly to the sheriff and is responsible for managing the budget and overseeing much of the department's daily operations.

The deputies, sergeants, lieutenants, and detectives employed by the employer within the sheriff's department are represented by the Pierce County Deputy Sheriffs' Independent Guild (union). *Pierce County*, Decision 1875 (PECB, 1984). The union and employer are party to a collective bargaining agreement effective January 1, 2018, through December 31, 2021.

¹ Reigle's former position title is referenced in a variety of ways throughout the record. For the purposes of this decision, Asset Forfeiture Reviewer Detective is the title used in reference to her position.

² The complainant also argues that the employer's removal of her asset forfeiture duties constituted unlawful independent interference. This allegation is outside the scope of the preliminary ruling and I cannot address it in this proceeding. *King County*, Decision 9075-A (PECB, 2007). Even if it were included in the preliminary ruling, independent interference violations cannot attach to facts where a discrimination claim is dismissed. *Reardan-Edwall School District*, Decision 6205-A (PECB, 1998).

The union endorsed Lieutenant Cynthia Fajardo in her campaign for sheriff in the 2020 election. The complainant also campaigned for Fajardo, along with a number of other sheriff's department employees. Ultimately, Fajardo lost the election. The record does not describe whether any employees coordinated their political advocacy with the union's electoral efforts.

The sheriff's department is divided into four bureaus: criminal investigations (CIB), patrol, corrections, and administrative services. Each bureau is overseen by a chief. The chiefs report to the undersheriff. Kevin Roberts began working as the CIB chief on September 21, 2020. In addition to managing the various specialty units within the CIB, the CIB chief oversees the Special Investigations Unit (SIU). Also referred to as the narcotics unit, the SIU is staffed by a number of detectives and deputies who conduct investigations into narcotics trafficking and related operations.

The Asset Forfeiture Reviewer Detective is included among the various positions within the SIU. The Asset Forfeiture Reviewer Detective is responsible for managing the process by which the employer seizes real and personal property used in connection with certain unlawful activities. Seizure is authorized pursuant to RCW 69.50.505. Following seizure by the employer, the owners have an opportunity to file a claim to seek the return of the property. In the event of a claim, the Asset Forfeiture Reviewer Detective engages in negotiations with the claimant concerning the terms under which the property will be returned. If the parties are unable to resolve the claim, the case is forwarded to a hearing examiner who is responsible for determining whether forfeiture is authorized. The claimant also has the opportunity to remove the matter to district court. During the process the detective is responsible for working closely with the assigned deputy prosecuting attorney from the office of the employer's independently-elected prosecutor.

The work of the Asset Forfeiture Reviewer Detective can expose the employer to substantial financial liability. If a claimant prevails at hearing they may be entitled to attorney fees. RCW 69.50.505(6). Under certain circumstances, the claimants may also recover the cost of attorney fees incurred in connection with their defense in a related criminal matter. *Olympic Peninsula Narcotics Enforcement Team v. Real Property*, 191 Wn.2d 654 (2018). The employer considers the process of civil asset forfeiture somewhat controversial. The employer also believed

that it was subject to greater public scrutiny than many other sheriff's department operations. Given the sensitivity of the position and the specialized nature of the work involved, substantial training is required. Only a small number of people have filled the Asset Forfeiture Reviewer Detective position since its creation.

The union and employer have negotiated various memoranda and letters of understanding covering issues not addressed by the collective bargaining agreement. They signed a letter of understanding in 2014 concerning the selection and rotation of detectives within the CIB.³ The letter of understanding, among other things, provides that

Position Rotation: *Generally*, detectives will service a maximum of 7 years in a position. Two years of service in a position will be considered standard for a completed assignment; however, detectives are not restricted from applying for other career advancing opportunities. Management reserves the right to move any individual before or after the 2 year mark, if necessary, based on the needs of the Department. These parameters are intended to protect the employee from "burnout" and career stagnation.

. . . . Detectives may serve beyond the general guideline of 7 years, if their performance is satisfactory and no other qualified detective is interested. The needs of the CID Division must also be met. The Polygraph, Computer Crime and Cellular Crime positions will not be constrained by these guidelines.

Assignment of Reigle to SIU and Conflict with DPA

Reigle was hired by the employer in 1998. She was eventually promoted to detective. In 2009 she was assigned as a property crimes/financial detective within SIU. The previous Asset Forfeiture Reviewer Detective retired in 2014 after 18 years in the position. Reigle was selected to fill the vacancy.

³ The letter of understanding refers to *CID* personnel. The parties executed the letter when the organizational unit was considered a division, headed by a captain, rather than a bureau, headed by a chief. At some point after 2014 the employer reorganized and elevated the unit to status of a bureau, renaming it CIB.

Reigle enjoyed the work and was committed to the position. Following her selection, she sought out training opportunities in order to ensure her success in the new position. Her performance appraisals were generally good. Consistent with her commitment to the job, Reigle worked substantial overtime. In 2019, the last full year in which she worked in the role, she estimated she accrued several hundred hours of overtime. The total cash value of the overtime in 2019 was over \$30,000.

Generally, Reigle had a good working relationship with the deputy prosecuting attorney (DPA) assigned to assist in asset forfeiture issues. This changed in 2018 when a new DPA, Chad Arceneaux, was assigned to work with Reigle. Arceneaux believed that Reigle was taking too hard of a line in negotiations with claimants. On April 11, 2019, he sent an email to Reigle, as well as several individuals in her chain of command, explaining his views. Reigle responded the same day defending her approach. Following internal discussions, in June 2019 Reigle was informed that then-CIB Chief Gerald Lawrence would be assuming responsibility for settlement negotiations concerning all asset forfeiture matters in which the claimant was represented by an attorney. The modifications to the settlement process were altered in September 2019 when Reigle's settlement authority was expanded to include all cases valued under \$50,000, regardless of whether the claimant was represented.

Reigle was frustrated with the changes to her role in settlement negotiations. She discussed the matter with individuals within her chain of command, including Fajardo, a lieutenant then assigned to SIU. Fajardo, who had previously served as the union's president several years prior, sent a lengthy memorandum to Bomkamp and Lawrence on October 29, 2019, listing her concerns with the changes to Reigle's role. Among the various concerns listed by Fajardo, including potential gender discrimination, was the possibility that the removal of certain work from Reigle constituted an unfair labor practice. The memo did not reference any provisions of the collective bargaining agreement. There is no evidence that Fajardo sent the memorandum in a role as a representative of the union. Rather, it was authored as an individual within Reigle's chain of command reporting "any and all assumptions of mis-treatment."

Reigle also brought the matter directly to the attention of the union's then-president, Vance Tjossem. The union addressed the issue with Bomkamp during a regularly scheduled

labor-management meeting in November 2019. The union explained that it viewed the removal of certain work from Reigle as skimming. It informed the employer that if the work was not restored, it intended to file an unfair labor practice complaint.

The employer reviewed the matter and in December 2019 returned all settlement authority regarding asset seizure cases to Reigle.

Reigle also filed an internal complaint with the employer's human resources staff alleging that certain conduct toward her, and other female employees, constituted discrimination. The complaint does not reference the antidiscrimination provisions of the collective bargaining agreement. There is no evidence that Reigle informed the employer she consulted with the union prior to filing the complaint, or that the union took action to represent her in the internal EEO process.

SIU Internal Affairs Investigations

In February 2020 SIU officers engaged in several operations that caused concern among staff at the Pierce County Prosecutor's Office and within the Pierce County Sheriff's Department. In light of these concerns, Pastor referred the matter to, among others, the U.S. Attorney's Office for investigation as to whether any criminal conduct occurred. After the U.S. Attorney determined that there were no criminal violations, Pastor initiated an internal affairs (IA) investigation. The purpose of this investigation was to decide whether the SIU officers violated the employer's policies or procedures. The matter was referred to the Kitsap County Sheriff's Office in order to ensure an impartial investigation.

The employer temporarily suspended all SIU operations while the Kitsap County Sheriff's Office conducted its investigation. Employees within the SIU were informed of the action via email on March 20, 2020. SIU staff, including Reigle, were reassigned to other units within the employer. Because of the specialized and ongoing nature of Reigle's work, in contrast to other SIU employees, she continued to perform many of her normally assigned duties. Some of the concerns Pastor had with the actions of SIU employees were memorialized in a July 10, 2020, email he sent to Arceneaux. The email also expressed his concern with the manner in which Reigle handled her asset forfeiture duties. The investigation into the SIU led to the prosecutor's office placing the

names of 10 SIU staff, including Reigle, on a list of sheriff's department employees for whom there was known to be potential impeachment information.

Reigle was interviewed by employees of the Kitsap County Sheriff's Office on May 26, 2020. She was accompanied during the meeting by a union representative, Detective Sergeant Lynelle Anderson. During the interview she was asked a number of general questions regarding SIU operations as well as specific questions regarding the conduct of SIU employees. The interview was audio recorded and later transcribed.

Reigle was notified on May 6, 2020, that she had been identified as a potential witness in a separate IA investigation. She was interviewed on June 4, 2020. As the interview began, Reigle was informed that she was being questioned as a potential subject, rather than just a witness. Anderson again accompanied Reigle as a union representative for the interview.

In addition to representing Reigle, Anderson also served as a union representative for a number of other employees within SIU concerning various administrative investigations during spring and summer 2020. Bomkamp testified that it is common for employees to exercise their right to representation.

The union filed a grievance on June 10, 2020, on Reigle's behalf, alleging that the notification and interview process utilized for the June 4 IA interview violated Article 19 of the parties' collective bargaining agreement. The employer denied the grievance on August 4, 2020. On August 20, 2020, the union notified the employer it was advancing the grievance to arbitration.

The employees affected by the shutdown of the SIU also sought the union's assistance as a group during summer 2020. The union in turn brought up the employees' concerns during regularly scheduled labor-management meetings. There is no evidence establishing the precise nature of the communications between the employer and union regarding the issue. Although Reigle testified that she took a leadership role in bringing the concerns of SIU employees to the attention of the union, the record does not contain evidence that her level of advocacy was conveyed to the employer. The union's advocacy on behalf of SIU members regarding the shutdown was primarily

informal. It did not file a grievance or unfair labor practice complaint on their behalf regarding the cessation of operations.

The employer reactivated the SIU on July 13, 2020. On July 14, DPA Fred Wist met with members of the SIU to discuss some of the ongoing issues. The DPA made a claim during the meeting that Reigle believed was inaccurate. In an email the following day, Reigle explained her view to the SIU staff in attendance. The email did not reference the union or the collective bargaining agreement. Instead, it focused on the extent to which confidential informants had historically been asked to testify at trials. On the same morning that Reigle sent the email, a local newspaper published an article covering the dispute. The elected prosecuting attorney sent a letter to Pastor later that day criticizing the comments made by the SIU members in the article, as well as the email sent by Reigle. The letter concluded by noting that the prosecutor's office would not work with the SIU until some point in the future. On July 20, 2020, Pastor once again shut down SIU operations.

Reigle Removed as Asset Forfeiture Reviewer Detective

The Kitsap County Sheriff's Office investigators reviewed Reigle's May 26 interview transcript prior to the completion of their report. They believed Reigle's answers to some of their questions raised concerns regarding her truthfulness. In early July they provided two copies of the audio recording and transcript of the interview to the employer. One copy was intended for the Pierce County Sheriff's Department and the other for the Pierce County Prosecutor's Office.

Lawrence reviewed Reigle's interview. On August 17, 2020, he sent an email to Bomkamp summarizing potential problems with statements made by Reigle. His email stated, "Take a look at this. I pulled the comments that seemed to be specifically in conflict but it seems to lose something when the rest of the circular, non-responsive and vague comments are not included."

The document attached to Lawrence's August 17 email further noted:

This document contains excerpts from the 113 page transcript of Detective Elizabeth Reigle's interview by Kitsap County Sheriff's Office Sgt. Jay Kent and Lt. Jon VanGesen, in which Detective Reigle appears to make several inconsistent statements. For better context I encourage the reviewer of this document to refer to the complete interview transcript.

Bomkamp reviewed the material sent by Lawrence, including the underlying transcript. He credibly testified that he found some of Reigle's answers to questions during the interview with Kitsap County to be inconsistent. Bomkamp forwarded Lawrence's email to Pastor on August 24, 2020.

The investigators from the Kitsap County Sheriff's Office completed a report of their investigation. The report is dated September 1, 2020. With respect to Reigle's interview, the investigators explained:

Due to possible Brady (truthfulness) issues related to Detective Elizabeth Reigle's interview, I had advised Undersheriff Bomkamp we would be providing him with the audio recording of the interview and the transcript to be independently reviewed by the PCSD and the Pierce County Prosecuting Attorney's Office. When the transcript was completed, two binders were prepared with the audio recording and the transcript.

The report was presented to the sheriff, undersheriff, and various other staff during a meeting on September 2, 2020.⁴

Pastor sent an email on September 28, 2020, to Arceneaux outlining his concerns with Reigle serving as the Asset Forfeiture Reviewer Detective. The email states in relevant part:

After reading a document provided by Chief Lawrence containing excerpts of the interview between our Detective Elizabeth Reigle and Kitsap Co. Sheriff's Office investigators, I am concerned about issues of understand [sic] and following procedures / managerial direction preferences in this area. I know that we have DPA's involved but I am concerned about some of the roundabout answers given to the Kitsap Co. questions by Det. Reigle.

What I saw made me uncomfortable as to her understanding of what can and cannot be properly considered in making decisions as our seizure and forfeiture hearings officer. Her answers to questions about procedures seemed to be vague and /or

⁴ After receiving the Kitsap County report, the employer and union agreed to have the Clark County Sheriff's Office review the matter in order to determine whether SIU employees violated any of the employer's policies. The Clark County review does not address the Kitsap County investigators' suggestion that Reigle's testimony be reviewed for *Brady* violations or potential impeachment material.

reliant on the word of others as opposed to established procedures / requirements in serving in her hearings capacity.

For this reason, to assure that we are following established procedures and seeking to assure fairness in decisions, I want to have someone other than Det. Reigle handle this function.

Please know that it is not my intention to indicate that I have any knowledge of misconduct or infraction of policies and procedures - - - only that I want to be doubly sure that we handle this area in a fair and equitable as well as a consistent manner.

We are in the process of re-evaluating how we will proceed with reorganizing the SIU functions of the agency and it may be advisable to make a clean break with past practice / former decision makers to assure clear and consistent re-start of the process.

Plus, could we check and see how long Det. Reigle has been in this assignment and the general process for assignment / reassignment.

Again, at this time, I do not see this as a disciplinary action but rather an approach to clearly setting guidelines and wondering, based on her somewhat convoluted testimony, Det. Reigle would have a clear and independently conforming approach to her current assignment, [sic]

Please also discuss with Brent Bomkamp similar issues that I have raised with him re the seizure and forfeiture process and its relationship to agency credibility and best practices.

Roberts was a lieutenant prior to his promotion to chief of CIB on September 21, 2020. He also briefly served on the executive board of the union during part of summer 2020. On September 29, 2020, Bomkamp informed Roberts of Pastor's decision to reassign Reigle from the Asset Forfeiture Reviewer Detective position.

Roberts met with Reigle on the morning of September 30, 2020. He provided her a copy of the letter of agreement between the union and employer concerning detective rotations and informed her she was being assigned to the CIB's Robbery/Assault unit.

In spite of her reassignment, Reigle continued to perform many of the functions of her previous position. She had a number of cases in the forfeiture process and the employer did not have a suitable replacement trained. New asset seizures also continued to come in from patrol-based units.

Pursuant to the statutory rules for civil asset forfeiture, there are specific timelines for the employer to provide certain notices to potential claimants. The employer did not have the option of simply placing the work on hold until a new Asset Forfeiture Reviewer Detective was selected. The employer solicited applicants for the position in December 2020. Detective Franz Helmcke was selected in January 2021 to fill the vacancy.

Reigle's new position is substantially different from her asset forfeiture role. She no longer utilizes some of the training she took in connection with that role. As was the case with other former SIU personnel, her overtime opportunities also decreased substantially. Finally, Reigle credibly testified that she finds the work involved in her prior position more desirable than that involved with other positions.

Reigle was not the only employee removed from SIU in 2020. Detectives Shaun Darby and Darrin Rayner were also transferred out of the SIU in June 2020.

There is no direct evidence that the employer harbored anti-union animus.

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.

Ordinarily, an employee may use circumstantial evidence to establish the prima facie case because respondents do not typically announce a discriminatory motive for their actions. *Clark County*, Decision 9127-A (PECB, 2007). Circumstantial evidence consists of proof of facts or circumstances that according to common experience give rise to a reasonable inference of the truth of the fact sought to be proved. *See Seattle Public Health Hospital*, Decision 1911-C (PECB, 1984).

If the complaining party establishes a prima facie case, the burden of production shifts to the respondent. *City of Vancouver*, 180 Wn. App. at 349. 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.*

Application of Standard

Reigle established a prima facie case of discrimination. The employer provided a legitimate, nondiscriminatory reason for its action. Reigle was unable to adduce sufficient evidence to meet her ultimate burden of persuasion. She did not prove that the employer's asserted reason was either a pretext or that anti-union animus was a substantial motivating factor in the reassignment. The complaint is thus dismissed.

I do not address Reigle's argument that the employer's conduct in January 2021 also constituted unlawful discrimination. There are no allegations regarding the employer's failure to reassign Reigle to the asset forfeiture position contained in the preliminary ruling. The Commission is also typically confined to adjudicating cases based on facts alleged within the four corners of a complaint. *Bellevue School District*, Decision 10868-A (PECB, 2011). The purpose of the notice pleading requirement is to place a respondent party on notice of the specific allegations to which

it must respond or defend. *Bethel School District (Public School Employees of Washington)*, Decision 6847-A (PECB, 2000). Allegations that are arguably within the scope of the preliminary ruling but not alleged in the complaint itself are properly excluded. *East Valley School District – Spokane (Public School Employees of Washington)*, Decision 13114 (PECB, 2019). Here, Reigle does not plead facts postdating the employer's September 30, 2020, action. She did not move to amend the complaint. Analyzing the employer's conduct in January 2021 is beyond the relatively narrow scope of this proceeding.

Reigle Participated in Protected Activities

Reigle engaged in various activities protected by the PECBA. Reigle sought the union's assistance to restore the status quo after the employer removed certain job responsibilities in 2019. She asked for representation during various IA interviews in 2020 and also requested the union file a grievance on her behalf regarding one of the interviews. Finally, Reigle, along with other SIU members, approached the union about intervening on their behalf regarding the employer's decision to suspend their unit's operations. It is well established that seeking assistance from a union and filing grievances are protected activities. *City of Pasco*, Decision 3804-A (PECB, 1992).

Reigle's other conduct is not protected by chapter 41.56 RCW. To determine whether activity is protected under the statute, the Commission first looks at whether, on its face, the activity was taken on behalf of the union. *University of Washington*, Decision 11199-A (PSRA, 2013). Absent some connection to a union, advocacy on behalf of other employees regarding workplace disputes is not protected by the PECBA. *Dieringer School District*, Decision 8956-A (PECB, 2007); *City of Seattle*, Decision 489-A (PECB, 1979). There is no evidence that Reigle's email to the sheriff's department employees on July 15, 2020, regarding comments made by a DPA was undertaken on behalf of, or in conjunction with, the union. Similarly, although the union endorsed Fajardo and Reigle campaigned for her, there is no evidence that Reigle did so in conjunction with the union, rather than on her own behalf. The record also does not support finding that these actions were the logical outgrowth of other union activity. *Cf. Renton Technical College*, Decision 7441-A (CCOL, 2002) (finding employee's individual letter to a legislator protected when it was intimately related to prior union activity and ongoing contract negotiations). Finally, Reigle's EEO complaint did not involve the union, nor did it reference the collective bargaining agreement. Although Reigle

raised certain issues with Fajardo, who formerly served as a union representative, Fajardo was not one in 2019; rather, she was a lieutenant in Reigle's chain of command. Given the nature of this relationship and the lack of other union involvement, I find that Reigle's EEO complaint regarding gender discrimination was not protected under the PECBA.

Reigle's Reassignment Constitutes a Deprivation of an Ascertainable Right, Benefit, or Status

Reigle established that she was denied an ascertainable right, benefit, or status. The Commission has previously found a transfer, even without a reduction in salary, to constitute a deprivation of a right, benefit, or status. *Mansfield School District*, Decision 5238-A (EDUC, 1996); *Seattle School District (Seattle Education Association)*, Decision 9355-C (EDUC, 2010). Reigle testified that she found the work as the Asset Forfeiture Reviewer Detective enjoyable and rewarding. She invested considerable time in undergoing training to gain and improve necessary skills for the role. In contrast, she described the work in her new position as emotionally exhausting. She is also unable to utilize the knowledge and experience gained in connection with her previous position. Finally, the opportunities to work overtime have significantly decreased. The foregoing is sufficient to establish that Reigle's reassignment away from the position of Asset Forfeiture Reviewer Detective meaningfully affected her terms and conditions of employment.

There Is a Causal Nexus between Reigle's Protected Activity and the Employer's Action

Reigle established a causal connection between her union activity and the employer's decision to move her out of the Asset Forfeiture Reviewer Detective position. The timing of an adverse action in relation to protected union activity can serve as circumstantial evidence of a causal nexus. *City of Winlock*, Decision 4784-A (PECB, 1995). Here, Reigle engaged in protected activity throughout the summer of 2020 by seeking assistance from the union for a number of reasons. The union also filed a grievance on her behalf on June 10, 2020. The grievance was referred to arbitration on August 20. Only four days later, Bomkamp forwarded an email to Pastor that was critical of Reigle's testimony in the Kitsap County IA investigation. The decision to remove her from the position she had held for years was made a little over a month later. The close timing of the events is sufficient to infer a causal connection between Reigle's union activity and the decision to reassign her. *Kennewick School District*, Decision 5632-A (PECB, 1996).

The Employer's Nondiscriminatory Reason for the Reassignment

The employer articulated a nondiscriminatory reason for its decision to reassign Reigle. The employer's rationale is summarized in the email Pastor sent to Arceneaux on September 28, 2020. The reasons for her removal include both the answers she gave to the Kitsap County investigators as well as previous issues that managers had with Reigle's general approach to asset forfeiture.

The Complainant Cannot Meet Her Ultimate Burden of Persuasion

Reigle is unable to prove by a preponderance of the evidence that the employer's asserted reasons for removing her were pretextual, or that they were motivated by anti-union animus. The employer was alerted to potential issues with Reigle's testimony in an IA investigation by a disinterested third party. It reviewed the matter and developed a good faith belief that her testimony could be problematic. When combined with previously expressed concerns regarding her overall approach to asset forfeiture, the employer believed she was no longer an appropriate fit for the particularly sensitive position. It then reassigned her in a manner generally consistent with past practice and established procedures.

The employer believed that Reigle's testimony to the Kitsap County investigators was at times inconsistent and indicated that she may not have been following certain department procedures. Reigle strongly contests this conclusion in her brief. A review of the excerpts cited by Lawrence in his email to Bomkamp, as well as the underlying transcript, do not establish that the employer's belief was entirely inaccurate or unreasonable. Although some of the alleged inconsistencies mentioned in Lawrence's August 17, 2020, email were explained upon close examination of the transcript, others were not. An articulated reason is a pretext when it is not the real reason for the adverse action and there is no legitimate business justification for the action. *Snohomish County*, Decision 12723-B (PECB, 2018) (citing *Educational Service District 114*, Decision 4361-A). There is sufficient ambiguity in Reigle's testimony to the Kitsap County investigators to conclude that the employer's concerns were not unreasonable. Ultimately, it is the complainant's burden to prove that an asserted reason is pretextual. I am not persuaded that Reigle has done so here by a preponderance of the evidence.

In addition to concerns regarding Reigle's IA testimony, Pastor also cited differences with her general approach to asset forfeiture as a reason for her reassignment. Reigle points to her exemplary track record in contested cases to rebut any concerns that she may have placed the department in danger of incurring financial liability in the event a claimant prevailed. But no evidence disputes that Reigle's approach to asset forfeiture was not necessarily in line with that of sheriff's department management or the DPAs in the prosecutor's office. It cannot be said that this articulated reason was pretextual. Pastor's communication to Arceneaux outlining his concerns regarding Reigle's approach in July 2020, before her grievance was advanced to arbitration, strengthens this conclusion.

The fact that a third party initially flagged Reigle's conduct as potentially problematic also supports the conclusion that the employer's asserted rationale was not pretextual. There is no evidence that the Kitsap County investigators were aware of Reigle's 2019 union activity or her June 2020 grievance, which involved a separate IA investigation conducted by the employer's own internal affairs staff. Even if the Kitsap County investigators were aware of Reigle's union activity, there is no evidence of anti-union animus on their part. It is unclear why the union activities of an employee employed by another employer would have any significance to them. If a disinterested third party viewed Reigle's conduct as problematic, it is difficult to conclude that a similar conclusion by the employer was merely a pretext.

Reigle's continued performance of some asset forfeiture duties after her formal removal from the position does not support a finding of a pretext. The employer notified Reigle that she was being reassigned on September 30, 2020. It was not until January 2021 that a replacement was selected. This delay can be explained by two factors. First, there were a number of leadership changes within the sheriff's department at the end of 2020. The long-term sheriff retired in September. He was replaced by an acting sheriff for a short period of time until the results of the November 2020 election were certified. Additionally, the negotiated process by which detective assignments are made takes a number of weeks. While this process played out, asset forfeiture cases continued to come in from patrol-based units. There are specific statutory timelines associated with civil forfeiture so the work could not be simply placed on hold. Reigle was the only individual within

the department trained to perform the job. I therefore do not find her continued performance of statutorily mandated duties after her formal reassignment to be evidence of a pretext.

The transfer of Reigle out of the Asset Forfeiture Reviewer Detective position was also generally done in line with established procedures. The agreement between the employer and union regarding detective rotations reserves for the employer the right to move any individual based on the needs of the department. It does not provide any due process protections for employees subject to reassignment. There is also no evidence that the other two detectives reassigned in 2020, Rayner and Darby, were afforded any form of procedural safeguards. The process involved with Reigle's reassignment thus was handled in the same manner as other employees.

Finally, there is no evidence that the employer expressed or harbored animus towards Reigle's protected activity. Absent some evidence of animus, I cannot conclude that it was a motivating factor in the decision.⁵

CONCLUSION

Reigle engaged in a range of activity in response to conduct by the employer that she perceived as unfair. Some of her actions were protected by the PECBA, while others were not. She was later removed from her position in asset forfeiture, the timing of which is sufficient to establish a causal nexus to her protected activity. The employer, however, articulated a legitimate, nondiscriminatory reason for its action. Ultimately, the complainant was unable to prove by a preponderance of the evidence that the reason was pretextual, or that the underlying decision was motivated by anti-union animus. The complaint is dismissed.

⁵ Reigle sought to introduce evidence at hearing purporting to establish that the employer had a pattern of not promoting union advocates. She argues this proves the employer exhibited bias against union activity. The instant complaint does not contain allegations regarding the employer's promotion decisions. Nor does the preliminary ruling. The theory is thus beyond the scope of the preliminary ruling. Moreover, without a finding from this agency or a court of competent jurisdiction that the facts relating to those promotional decisions were in violation of chapter 41.56 RCW, no inferences regarding the employer's motivation can be made or used against the employer as demonstrating a pattern of retaliatory conduct against employees. *City of Yakima*, Decision 10270-B (PECB, 2011).

FINDINGS OF FACT

1. Pierce County (employer) is a public employer within the meaning of RCW 41.56.030(13).
2. The Pierce County Deputy Sheriffs Independent Guild (union) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The employer's sheriff's department is overseen by an independently elected sheriff. Paul Pastor served as the elected sheriff for Pierce County for a number of years until his retirement in fall 2020. Brent Bomkamp has worked as the undersheriff since 2017.
4. The deputies, sergeants, lieutenants, and detectives employed by the employer within the sheriff's department are represented by the Pierce County Deputy Sheriffs' Independent Guild (union).
5. The union endorsed Lieutenant Cynthia Fajardo in her campaign for sheriff in the 2020 election. The complainant also campaigned for Fajardo, along with a number of other sheriff's department employees.
6. The sheriff's department is divided into four bureaus: criminal investigations (CIB), patrol, corrections, and administrative services. Each bureau is overseen by a chief. In addition to managing the various specialty units within the CIB, the CIB chief oversees the Special Investigations Unit (SIU). Also referred to as the narcotics unit, the SIU is staffed by a number of detectives and deputies who conduct investigations into narcotics trafficking and related operations.
7. The Asset Forfeiture Reviewer Detective is included among the various positions within the SIU. The Asset Forfeiture Reviewer Detective is responsible for managing the process by which the employer seizes real and personal property used in connection with certain unlawful activities.
8. The work of the Asset Forfeiture Reviewer Detective can expose the employer to substantial financial liability.

9. The employer considers the process of civil asset forfeiture somewhat controversial. The employer also believed that it was subject to greater public scrutiny than many other sheriff's department operations.
10. The union and employer have negotiated various memoranda and letters of understanding covering issues not addressed by the collective bargaining agreement. They signed a letter of understanding in 2014 concerning the selection and rotation of detectives within the CIB.
11. Reigle was hired by the employer in 1998. She was eventually promoted to detective. In 2009 she was assigned as a property crimes/financial detective within SIU. The previous Asset Forfeiture Reviewer Detective retired in 2014 after 18 years in the position. Reigle was selected to fill the vacancy.
12. Generally, Reigle had a good working relationship with the deputy prosecuting attorney (DPA) assigned to assist in asset forfeiture issues. This changed in 2018 when a new DPA, Chad Arceneaux, was assigned to work with Reigle. Arceneaux believed that Reigle was taking too hard of a line in negotiations with claimants. Following internal discussions, in June 2019 Reigle was informed that then-CIB Chief Gerald Lawrence would be assuming responsibility for settlement negotiations concerning all asset forfeiture matters in which the claimant was represented by an attorney.
13. Reigle was frustrated with the changes to her role in settlement negotiations. She discussed the matter with individuals within her chain of command, including Fajardo, a lieutenant then assigned to SIU. Reigle also brought the matter directly to the attention of the union's then-president, Vance Tjossem. The union addressed the issue with Bomkamp during a regularly scheduled labor-management meeting in November 2019. The employer reviewed the matter and in December 2019 returned all settlement authority regarding asset seizure cases to Reigle.
14. In February 2020 SIU officers engaged in several operations that caused concern among staff at the Pierce County Prosecutor's Office and within the Pierce County Sheriff's Department. In response, Pastor initiated an internal affairs (IA) investigation. The matter

was referred to the Kitsap County Sheriff's Office in order to ensure an impartial investigation.

15. Some of the concerns Pastor had with the actions of SIU employees were memorialized in a July 10, 2020, email he sent to Arceneaux. The email also expressed his concern with the manner in which Reigle handled her asset forfeiture duties. The investigation into the SIU led to the prosecutor's office placing the names of 10 SIU staff, including Reigle, on a list of sheriff's department employees for whom there was known to be potential impeachment information.
16. Reigle was interviewed by employees of the Kitsap County Sheriff's Office on May 26, 2020. She was accompanied during the meeting by a union representative, Detective Sergeant Lynelle Anderson. In addition to representing Reigle, Anderson also served as a union representative for a number of other employees within SIU concerning various administrative investigations during spring and summer 2020. Bomkamp testified that it is common for employees to exercise their right to representation.
17. Reigle was notified on May 6, 2020, that she had been identified as a potential witness in a separate IA investigation. She was interviewed on June 4, 2020. The union filed a grievance on June 10, 2020, on Reigle's behalf, alleging that the notification and interview process utilized for the June 4 IA interview violated Article 19 of the parties' collective bargaining agreement. The employer denied the grievance on August 4, 2020. On August 20, 2020, the union notified the employer it was advancing the grievance to arbitration.
18. The employees affected by the shutdown of the SIU also sought the union's assistance as a group during summer 2020. The union's advocacy on behalf of SIU members regarding the shutdown was primarily informal. It did not file a grievance or unfair labor practice complaint on their behalf regarding the cessation of operations.
19. The Kitsap County Sheriff's Office investigators reviewed Reigle's May 26 interview transcript prior to the completion of their report. They believed Reigle's answers to some of their questions raised concerns regarding her truthfulness. In early July they provided

two copies of the audio recording and transcript of the interview to the employer. The Kitsap County investigators explained the information was being provided due to possible *Brady* issues related to Reigle's interview.

20. Lawrence reviewed Reigle's interview. On August 17, 2020, he sent an email to Bomkamp summarizing potential problems with statements made by Reigle. Bomkamp reviewed the material sent by Lawrence, including the underlying transcript. He credibly testified that he found some of Reigle's answers to questions during the interview with Kitsap County to be inconsistent. Bomkamp forwarded Lawrence's email to Pastor on August 24, 2020.
21. Pastor sent an email on September 28, 2020, to Arceneaux outlining his concerns with Reigle serving as the Asset Forfeiture Reviewer Detective.
22. On September 29, 2020, Bomkamp informed Roberts of Pastor's decision to reassign Reigle from the Asset Forfeiture Reviewer Detective position. Roberts met with Reigle on the morning of September 30, 2020. He provided her a copy of the letter of agreement between the union and employer concerning detective rotations and informed her she was being assigned to the CIB's Robbery/Assault unit.
23. Reigle was not the only employee removed from SIU in 2020. Detectives Shaun Darby and Darrin Rayner were also transferred out of the SIU in June 2020.
24. There is no direct evidence that the employer harbored anti-union animus.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to chapter 41.56 RCW and chapter 391-45 WAC.
2. By its actions described in findings of fact 3–24, the employer did not interfere with employee rights in violation of RCW 41.56.140(1) by removing Elizabeth Reigle from her Asset Forfeiture Reviewer Detective position in reprisal for union activities protected by chapter 41.56 RCW.

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED.

ISSUED at Olympia, Washington, this 1st day of July, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in blue ink, appearing to read 'Michael Snyder', is written over the printed name.

MICHAEL SNYDER, Examiner

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



RECORD OF SERVICE

ISSUED ON 07/01/2021

DECISION 13371 - 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 133123-U-20

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