

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AMALGAMATED TRANSIT UNION  
LOCAL 587,

Complainant,

vs.

KING COUNTY,

Respondent.

CASE 136581-U-23

DECISION 13831 - PECB

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER

*Ellicott Dandy and Michael Subit*, Attorney at Law, Frank Freed Subit & Thomas LLP, for the Amalgamated Transit Union Local 587.

*Susan Slonecker*, Senior Deputy Prosecuting Attorney, for King County.

On May 4, 2023, the Amalgamated Transit Union Local 587 (union) filed an unfair labor practice (ULP) complaint against King County (employer). A cause of action statement issued on June 6, 2023, finding that the complaint stated a cause of action for employer discrimination under RCW 41.56.140(1) by its removal of Chuck Lare from the Atlantic Base Operations Safety Committee (safety committee). The employer filed an answer on July 11, 2023. I held a hearing on December 18, 2023. The parties submitted post-hearing briefs to complete the record.

ISSUE

The issue presented is whether the employer discriminated against Chuck Lare in violation of RCW 41.56.140(1) by removing Lare from the Atlantic Base Operations Safety Committee after he had been elected to the position.

The union established a prima facie case for discrimination. The employer articulated a nondiscriminatory reason for its decision to reduce the number of members on the safety

committee. However, the union was able to prove by a preponderance of evidence that the reason given by the employer was pretextual, and the timing of the event further showed union animus by the employer.

### BACKGROUND

Lare works for King County Metro as a bus driver and a safety committee member. He operates out of the Atlantic Base for his driving and safety committee duties.<sup>1</sup> He has been a driver for 18 years and first joined the safety committee in 2020.

The safety committee is where employees and management meet on a monthly basis to discuss safety issues and how to resolve problems occurring in the workplace. All rank-and-file members of the safety committee are in the bargaining unit. The safety committee is mandated by WAC 296-800-13020, which states that the number of employee-elected members must equal or exceed that of the employer-selected members. The committee members are compensated for the time spent performing committee work. The length of a term for a committee member is one year.

Lare was elected to his first term in October 2020 and was reelected in fall 2021. Lare was the chair of the safety committee for the 2021-2022 term. Lare testified that he spent about six to seven hours a month performing his duties. For both Lare's terms, 2020 and 2021, eight employees were elected to the safety committee, and before that, from 2018-2020, at least seven employee members were on the committee.

The safety committee meets every month, with scheduling initiated by the employer representative. At the beginning of 2022, the committee was not convening regularly for their monthly meetings and did not meet until April 2022. At that time the Atlantic Base Chief, who is responsible for scheduling the meetings, was Darryl Butler. Lare reached out to Butler and asked

---

<sup>1</sup> The employer runs six other bases in addition to the Atlantic Base.

to continue meeting every month. The meetings resumed a regular monthly schedule in July 2022 when Sidney Richards became the new Atlantic Base Chief. Superintendent Aiyana Brown, Richards' superior and a regular attendee at the safety committee meetings, sent a copy of the safety committee's charter to Lare on July 29, 2022. The charter is a document created by the employer outlining all the logistics behind the safety committee: purpose, requirements for meeting, and membership.

On August 9, 2022, Lare sent a letter to Brown expressing his concern that the safety committee was not meeting monthly and received signatures on the letter from other bus drivers of the committee requesting that meetings proceed every month. Brown responded to the letter and communicated that the meetings would return to a monthly schedule.

Before the election in October 2022, Brown and Richards discussed reducing the size of the committee, but took no action in reducing numbers until after the results of the election were known. Initially, after the election results came in, Richards told the outgoing members of the committee that the number of members would be reduced from eight to five and that the top five employees receiving the most votes would serve. Lare was the fifth highest on the list and believed he would be on the committee for that term. On November 3, 2022, Lare emailed Brown, concerned that the employer was interfering with the election in violation of the law. Lare copied other employees on the email, including the other seven people who had been elected to serve on the safety committee.

The next day, on November 4, 2022, Brown reduced the number of safety committee members further to three positions on the committee. Brown responded to Lare's email by informing him that she had reviewed the safety committee charter, that the employer was only required to allow three non-management members on the committee, and that, since the third and fourth place finalists tied in the vote, they would have four members on the safety committee. This meant that Lare, who had placed fifth, would no longer be a member of the safety committee. In October 2023, Lare was re-elected to the safety committee. Currently the safety committee has five employee representatives, four regular members and one alternate.

ANALYSISApplicable Legal Standard(s)*Discrimination*

An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee's exercise of statutorily protected rights. RCW 41.56.140(1); *Educational Service District 114*, Decision 4361-A (PECB, 1994). The complainant maintains the burden of proof in a discrimination case. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. 333, 348(2014) (citing *Wilmot v. Kaiser Aluminum & Chemical Corp.*, 118 Wn.2d 46 (1991)). To prove discrimination, the complainant must first establish a prima facie case by showing the following: 1. The employee participated in protected activity or communicated to the employer an intent to do so; 2. The 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. *Id.*

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. *Wilmot v. Kaiser Aluminum and Chemical Corp.*, 118 Wn.2d at 69. 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 (AFGE Local 1170)*, Decision 1911-C (PECB, 1984).

If the complaining party establishes a prima facie case, the burden of production shifts to the respondent. *Port of Tacoma*, Decision 4626-A (PECB, 1995). The respondent may articulate a legitimate, nondiscriminatory reason for the adverse employment action. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. at 349. The respondent bears the burden of production, not of persuasion. *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 pretext or that union animus was a substantial

motivating factor for the employer's actions. *Id.* That may be done by showing, either through direct or circumstantial evidence, that (1) the reasons given by the employer were pretextual or (2) although the employer's stated reason is legitimate, union animus was nevertheless a substantial motivating factor behind the employer's action. *Educational Service District 114*, Decision 4361-A.

#### Application of Standard(s)

In order for the union to establish a prima facie case for a discrimination charge, three elements must be met. First, the employee must have participated in protected union activity. The union meets this element. Lare was the chair of the safety committee during the events that occurred in 2022, and rank and file members of the safety committee were in the bargaining unit. This ULP complaint was filed on behalf of the union representing its members. Lare contacted management in 2022 to verify that meetings would continue to be held on a monthly basis. In August 2022, he gathered signatures from the other bus drivers on the committee requesting that the meetings continue monthly and sent this correspondence to Superintendent Brown. On November 3, 2022, after the election, Lare emailed Brown, on behalf of the committee, questioning Brown's decision to reduce the safety committee employee members from eight to five. These actions taken by Lare, and specifically Lare's correspondence to Brown on November 3, 2022, on behalf of the safety committee, demonstrate that Lare was engaged in union activity.

The next element for a prima facie case requires showing that the employer deprived the employee of an ascertainable right, benefit, or status. In this case, the employer deprived Lare of a benefit when it removed him from the safety committee. First, Lare held the title of chair of the safety committee, which denotes a position of status. Second, the members of the safety committee were compensated for the time spent performing committee work, which, for Lare, was about six to seven hours per month. Over the span of a year, this is roughly 70-84 hours of pay that Lare did not receive.

The last element that the union needs to establish a discrimination case is a causal connection between the employee's exercise of a protected activity and the employer's action. The timing of

an adverse action can serve as circumstantial evidence of a causal connection between the employer's actions and the employee's union activity. Reducing the number of positions on the committee from five to three (ultimately four because of the tie) the day after Lare sent the email to Brown about the first reduction was incredibly poor timing and serves as circumstantial evidence of a causal connection.

In *City of Winlock*, Decision 4784-A (PECB, 1995), the Commission found that, because of the timing of the employer's sudden change to the police officers' work schedule, a connection could be inferred between the adverse action and the employee's previous exercise of a protected right. Similarly, in *Mansfield School District*, Decision 5238-A (EDUC, 1996), the Commission determined that anti-union animus combined with suspicious timing of events supported an inference of a causal connection between the employees' union activities and actions taken against them. In *Oroville School District*, Decision 6209-A (PECB, 1998), an employee received a negative performance evaluation following his selection as president of a newly certified union. The timing of adverse actions in relation to protected union activity can serve as circumstantial evidence of a causal connection. See *Kennewick School District*, Decision 5632-A (PECB, 1996) (finding discrimination when discipline was issued to an employee within three months of the employee filing a grievance and within a month and a half of filing an unfair labor practice charge).

Next, the burden shifts to the employer to provide a legitimate, nondiscriminatory reason for its actions. See *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. 333. In the present case, the employer asserts that the reasons behind the reduction in safety committee members mainly relate to staffing issues and that it is problematic for staffing to have eight employees unavailable each month due to their work on the committee. The impact of COVID has contributed to the employer's staffing issues for at least the past few years. Brown states that the safety committee was not always productive with their time, that the safety committee charter only requires three employees to serve on the committee, and that she did not read the charter until after the results of the election. Brown also notes that other bases only had three employee members on their committees.

Because the employer was able to articulate a legitimate, non-pretextual reason, the complainant bears the burden of persuasion to show that the employer's stated reason was either pretext or that union animus was a substantial motivating factor for the employer's actions. *See City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. 333. Here, the employer's response was pretextual because reducing the number of positions on the safety committee from five to four does not seem to make a consequential difference for the employer's staffing levels. The employer only removed Lare in the second set of reductions. Looking at the totality of the evidence, the union met its burden of persuasion by showing that the employer's stated reason was a pretext.

### CONCLUSION

The employer discriminated against Chuck Lare in violation of RCW 41.56.140(1) by removing Lare from the Atlantic Base Operations Safety Committee because of Lare's protected union activities. The safety committee is a part of the CBA and is considered protected activity. Lare was deprived of an ascertainable benefit when he was removed from the committee, thereby losing the additional compensation associated with the role on the committee. The union was able to show that the timing of Lare's removal established a causal connection through circumstantial evidence. Although the employer was able to articulate a legitimate, non-discriminatory reason for this removal, the union met its ultimate burden to show that the employer's stated reason was pretextual.

### REMEDY

"Appropriate remedial orders" are those necessary to effectuate the purposes of the statute and to make the Commission's lawful orders effective. *University of Washington*, Decision 11499-A (PSRA, 2013), *citing Municipality of Metropolitan Seattle v. Public Employment Relations Commission*, 118 Wn.2d 621, 633 (1992). The standard remedy for an unfair labor practice violation includes ordering the offending party to cease and desist and, if necessary, to restore the status quo, make employees whole, post notice of the violation, publicly read the notice, and order

the parties to bargain from the status quo. *State – Department of Corrections*, Decision 11060-A (PSRA, 2016), *citing City of Anacortes*, Decision 6863-B (PECB, 2001).

In this case, the standard remedy involves a finding of discrimination, a notice posting, and a make whole remedy for the economic loss Lare suffered as result of his removal from the committee. The employer must issue Lare 6.5 hours of pay at his hourly rate for each month, starting November 2022 and ending November 2023, where the safety committee held meetings and members were performing committee work.

#### FINDINGS OF FACT

1. King County is a public employer within the meaning of RCW 41.56.030(13).
2. Amalgamated Transit Union Local 587 is a bargaining representative within the meaning of RCW 41.56.030(2).
3. Lare works for King County Metro as a bus driver and a safety committee member. He operates out of the Atlantic Base for his driving and safety committee duties. He has been a driver for 18 years and first joined the safety committee in 2020.
4. The safety committee meets on a monthly basis with management and employee participation to discuss safety issues and how to resolve problems occurring in the workplace.
5. The employer runs six other bases in addition to the Atlantic Base.
6. The safety committee is mandated by WAC 296-800-13020, which states that the number of employee-elected members must equal or exceed that of the employer-selected members.
7. Lare was the chair of the safety committee during the events that occurred in 2022, and all rank-and-file members of the safety committee were in the bargaining unit. This ULP complaint was filed on behalf of the union.



8. The safety committee meets every month, with scheduling initiated by the employer representative. At the beginning of 2022, the committee was not convening regularly for their monthly meetings and did not meet until April 2022.
9. Lare reached out to Darryl Butler, the Atlantic Base Chief, responsible for scheduling the meetings, and asked to continue meeting every month. The meetings resumed a regular monthly schedule in July 2022 when Sidney Richards became the new Atlantic Base Chief.
10. Superintendent Aiyana Brown was a regular attendee at the safety committee meetings.
11. Brown sent a copy of the safety committee's charter to Lare on July 29, 2022.
12. The charter is a document created by the employer outlining all the logistics behind the safety committee: purpose, requirements for meeting, and membership.
13. On August 9, 2022, Lare sent a letter to Brown expressing his concern that the safety committee was not meeting monthly and received signatures on the letter from other bus drivers of the committee requesting that meetings proceed every month. Brown responded to the letter and communicated that the meetings would return to a monthly schedule.
14. Before the election in October 2022, Brown and Richards discussed reducing the size of the committee but took no action in reducing numbers until after the results of the election were known.
15. After the election results came in, Richards told the outgoing members of the committee that the number of members would be reduced from eight to five and that the top five employees receiving the most votes would serve. Lare was the fifth highest on the list and believed he would be on the committee for that term.
16. On November 3, 2022, Lare emailed Brown, concerned that the employer was interfering with the election in violation of the law. Lare copied other employees on the email, including the other seven people who had been elected to serve on the safety committee.

17. On November 4, 2022, Brown reduced the number of safety committee members further to three positions on the committee.
18. Brown responded to Lare's email by informing him she had reviewed the safety committee charter, that the employer was only required to allow three non-management members on the committee, and that, since the third and fourth place finalists tied in the vote, they would have four members on the safety committee.
19. Lare, who had placed fifth, would no longer be a member of the safety committee.
20. In October 2023, Lare was re-elected to the safety committee.
21. Currently the safety committee has five employee representatives, four regular members and one alternate.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to chapter 41.56 RCW and chapter 391-25 WAC.
2. By the actions described in finding of facts 3-20, the union showed that the employer discriminated against Chuck Lare in violation of RCW 41.56.140(1).

#### ORDER

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

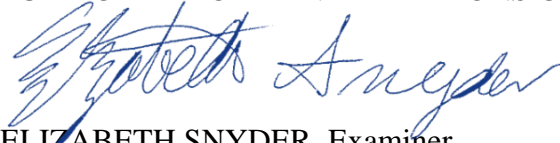
1. CEASE AND DESIST from:
  - a. Discriminating against Chuck Lare for his exercise of protected union activities under 41.56 RCW

- 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. Issue back pay to Chuck Lare for 6.5 hours of pay at his hourly rate for each month, starting November 2022 and ending November 2023, where the safety committee met and members were performing committee work.
    - b. Read the notice provided by the compliance officer into the record at a regular public meeting of the King County commission 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.
    - c. Contact the compliance officer at the Public Employment Relations Commission to receive official copies of the required notice for posting. Post copies of the notice provided by the compliance officer in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.
    - 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 20th day of May, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

ELIZABETH 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.