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-A - PECB DECISION OF COMMISSION

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

Susan N. Slonecker, Senior Deputy Prosecuting Attorney, King County Prosecuting Attorney Leesa Manion, for King County.

SUMMARY OF DECISION

King County (county) appeals the Examiner's decision finding that it discriminated against Chuck Lare. We affirm the Examiner's conclusion that, while the county provided a nondiscriminatory reason for removing Lare from the Atlantic Base Operations Safety Committee (safety committee), the Amalgamated Transit Union Local 587 (ATU) has met its burden of persuasion to show that the county's action was a pretext for Lare's protected activity.

PROCEDURAL BACKGROUND

On May 4, 2023, the ATU filed an unfair labor practice complaint alleging King County discriminated against Chuck Lare when it removed Lare from his elected position on the safety committee. Following a hearing, Examiner Elizabeth Snyder concluded that the county discriminated against Lare. *King County*, Decision 13831 (PECB, 2024). The county appealed.

ANALYSIS

On appeal, the Commission reviews findings of fact to determine if they are supported by substantial evidence, and, if so, whether those findings in turn support the Examiner's conclusions of law. *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B (PECB, 2002). The Commission reviews conclusions and applications of law, as well as interpretations of statutes, de novo. *City of Wenatchee*, Decision 8802-A (PECB, 2006). Unchallenged findings of fact are verities on appeal. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. 333, 347 (2014); *Brinnon School District*, Decision 7210-A (PECB, 2001). The Commission attaches considerable weight to the factual findings and inferences, including credibility determinations, made by its Examiners. *Cowlitz County*, Decision 7007-A (PECB, 2000). King County did not identify any specific findings of fact to be in error in its appeal; therefore, the Examiner's findings of fact are verities on appeal. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. at 347.

An employer unlawfully discriminates against an employee when it acts in reprisal for the employee's exercise of rights protected by chapter 41.56 RCW. 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. WAC 391-45-270(1)(a). To prove discrimination, the complainant must first establish a prima facie case by showing that

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 protected activity and the employer's action.

City of Vancouver v. Public Employment Relations Commission, 180 Wn. App. at 333, 348-349; *Educational Service District 114*, Decision 4361-A.

If the complainant establishes a prima facie case, the burden shifts to the respondent. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. at 349; *Port of Tacoma*, Decision 4626-A (PECB, 1995). The respondent may meet their burden of production by articulating a legitimate nondiscriminatory reason for the adverse action. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. at 349. If the respondent meets its burden of production, then the complainant bears the burden of persuasion to show that the employer's stated reason was either a pretext or substantially motivated by union animus. *Id.*

The county argues that the Examiner applied the wrong criteria to determine whether Lare was engaged in protected activity. The county asserts that Lare was not engaged in protected activity when he petitioned to resume safety committee meetings and challenged the county's decision to reduce the number of employee-elected members on the safety committee. The county argues that the safety committee is not within the scope of the protections of collective bargaining statutes because the safety committee is a requirement of the Washington State Department of Labor & Industries (L & I). We agree with the Examiner that Lare was engaged in protected activity and that the ATU established a prima facie case of discrimination. Decision 13831 at 5-6.

"Actions and activities undertaken by public employees in furtherance of their rights under Chapter 41.56 RCW are known as protected activities." *City of Seattle*, Decision 3066 (PECB, 1988), *aff'd*, Decision 3066-A (PECB, 1989). Rules promulgated by other government agencies, including the L & I rule requiring a safety committee, do not remove safety from collective bargaining or deprive an employee of the protections of chapter 41.56 RCW. *See Gulf Power*, 156 NLRB 622, 626 (1966). Lare's participation in the safety committee furthered employees' rights under chapter 41.56 RCW because safety and related mechanisms for addressing safety issues within the workplace are generally considered mandatory subjects of bargaining. *International Association of Fire Fighters, Local Union 1052 v. Public Employment Relations Commission (City of Richland)*, 113 Wn.2d 197, 204 (1989) (finding that a subject's relationship to safety tips the balance towards the subject being mandatory); *Washington Public Employees Ass'n v. Washington Personnel Resources Board*, 2002 Wash. App. LEXIS 1399 (2002) (stating that matters that directly affect employees, such as safety, are mandatory subjects of bargaining);

King County v. Public Employment Relations Commission, 94 Wn. App. 431 (1999) (finding that nurses' safety concerns outweighed the employer's prerogative to require surnames on identification badges); *King County*, Decision 12582-B (PECB, 2018) (finding that an employee challenging a manager about safety and other mandatory subjects of bargaining is protected activity); *Gulf Power*, 156 NLRB at 622 (finding safety provisions in a collective bargaining agreement to be a mandatory subject of bargaining). In this case, Lare engaged in protected activity when he served on the safety committee, addressed the failure of the county to schedule regular safety committee meetings, and challenged the county's decision to reduce the number of employee-elected representatives to the safety committee.

The county deprived Lare of a benefit and status by removing him from the safety committee. Members of the safety committee are compensated for their time. Decision 13831 at 5. Lare would have lost the wages received for serving on the safety committee. Additionally, Lare served as chair of the committee, a position of status. *Id*.

An employee may establish a causal connection by showing that an adverse action followed the employee's known exercise of a protected activity. *City of Winlock*, Decision 4784-A (PECB, 1995). In 2022, employees elected safety committee members, and Lare received the fifth most votes.[1] After the election results were known, the county decided to reduce the size of the committee. On November 3, 2022, Lare asked Atlantic Base Superintendent Aiyana Brown to retract the county's decision to reduce the number of employee-elected safety committee members from eight to five. On November 4, 2022, Brown responded by further reducing the number of employee-elected members to four, thereby removing Lare from the safety committee. A causal connection exists between Lare challenging the county's decision to reduce the number of safety committee elected-employee members on November 3, 2022, and the county further reducing the number of elected-employee members, resulting in Lare's removal from the committee, on November 4, 2022. Decision 13831 at 5.

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[1] Decision 13831, finding of fact 15.

Following the ATU's establishment of a prima facie case of discrimination, the burden shifted to the county to produce a legitimate, nondiscriminatory reason for removing Lare from the safety committee. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. at 349. The county's burden is one of production, not of persuasion. *Id*. Neither party appealed the Examiner's finding that the county produced a legitimate, nondiscriminatory reason. The county's reason for reducing the number of safety committee elected-employee members was to alleviate staffing issues, improve productivity, and conform to the requirements of the safety committee charter. Decision 13831 at 6.

After the county articulated a nondiscriminatory reason for its decision to reduce the number of elected-employee members of the safety committee, the burden shifted to the ATU. The ATU bore the burden of persuasion to show that the county's stated reason was either a pretext or substantially motivated by union animus. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. at 349. Deviations in personnel policies and from past practice may be evidence of pretext. *Port of Walla Walla*, Decision 9061-A (PORT, 2006) (finding that the employer acted inconsistently when faced with budget deficits and costs increased after laying off a union adherent); *Pasco Housing Authority*, Decision 6248-A (PECB, 1998) (finding a change in personnel policy to dilute the seniority of a union activist to be evidence of pretext).

The Examiner concluded that the county's reason for reducing the number of elected-employee members of the safety committee, and thereby removing Lare from the safety committee, was a pretext. Decision 13831 at 7. The county sought to bring the number of employee-elected members of the safety committee in line with the safety committees at other bases and the safety committee charter. However, the safety committee had, for years, operated with more elected-employee representatives than provided for in the safety committee charter. Further, the county did not reduce the number of elected-employee representatives to three as provided in the charter either in November 2022 or the following year. The county's failure to follow its policies and the Examiner's observation that the reduction did not have a significant impact on staffing lead to a conclusion that the stated reasons were a pretext.

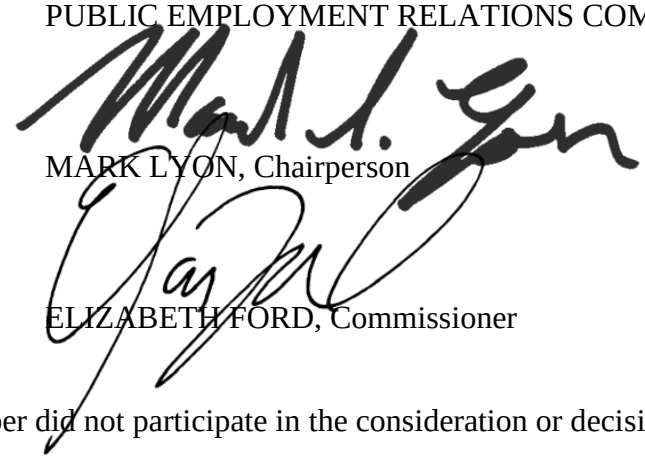
The ATU met its burden of persuasion to establish that the county violated RCW 41.56.140(1) when it removed Lare from the safety committee after he engaged in protected activity. We affirm the Examiner.

ORDER

The findings of fact, conclusions of law, and order issued by Examiner Elizabeth Snyder are AFFIRMED and adopted as the findings of fact, conclusions of law, and order of the Commission.

ISSUED at Olympia, Washington, this 16th day of January, 2025.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK LYON, Chairperson

ELIZABETH FORD, Commissioner

Commissioner Henry Farber did not participate in the consideration or decision of this case.

This order will be the final order of the agency unless a notice of appeal is filed under RCW 34.05.542.