

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY REGIONAL AFIS GUILD,

Complainant,

vs.

KING COUNTY,

Respondent.

CASE 127743-U-15

DECISION 12582-F - PECB

DECISION OF COMMISSION ON
COMPLIANCE

James M. Cline, Attorney at Law, Cline & Associates, for King County Regional AFIS Guild.

Susan N. Slonecker and *Lynne J. Kalina*, Senior Deputy Prosecuting Attorneys, King County Prosecuting Attorney Leesa Manion, for King County.

SUMMARY OF DECISION

The Commission upholds the compliance officer's order finding that King County (county) has not complied with the Commission's order in *King County*, Decision 12582-B (PECB, 2018). To effectuate the Commission's order the county shall pay overtime consistent with this decision. Notwithstanding the county's arguments, the retention period for internal investigations unit (IIU) investigation 2015-288 has expired and the county has not demonstrated a need to retain IIU 2015-288 beyond the retention period. The Commission's order treated IIU 2015-288 as an employment record, therefore it must be deleted to comply with the order.

PROCEDURAL BACKGROUND

In 2015, the King County Regional AFIS Guild (guild) filed an unfair labor practice complaint alleging that the county unilaterally changed the vacation approval process and discriminated against Marquel Allen. After an evidentiary hearing, an examiner concluded that the

county unilaterally changed the vacation approval process and dismissed the discrimination allegation. *King County*, Decision 12582-A (PECB, 2017).

The guild appealed the examiner's remedy for the unilateral change violation and argued that the examiner should have ordered a make whole remedy. The Commission amended the remedy and ordered the county to take the following action:

Ascertain the employees who would have worked overtime but for the employer's unlawful unilateral change and make those employees whole for the loss of overtime work opportunities by payment of overtime wages and benefits.

The guild appealed the examiner's conclusion that the county did not discriminate against Allen. The Commission reversed the examiner's decision and concluded that numerous county actions against Allen were in reprisal for protected activity. *King County*, Decision 12582-B (PECB, 2018); *King County*, Decision 12582-D (PECB, 2018). Relevant to this appeal, the county unlawfully initiated an IIU investigation, IIU 2015-288, into Allen's protected activity at a staff meeting. *King County*, Decision 12582-B at 18-19. As a result of the investigation, the county issued Allen a written reprimand. *Id.* To remedy the unlawful action, the Commission ordered the county to take the following action:

Delete IIU 2015-288, the internal investigation into Marquel Allen's conduct on November 16, 2015, and remove any and all references to the April 27, 2016, written reprimand from all personnel files or other employment records concerning Allen.

After the Commission issued its final decision on appeal, *King County*, Decision 12582-D,¹ the county filed an appeal in King County Superior Court.² The King County Superior Court

¹ This case involved multiple appeals to the Commission. For clarity, we are discussing only the allegations, decisions, and orders disputed in the compliance proceeding.

² *King County v. Washington Public Employment Relations Commission*, No. 18-2-23081-1 SEA (Washington Superior Court King County. Sept. 17, 2018) (unpublished court order).

affirmed the Commission's decisions. The county subsequently filed and withdrew an appeal to the Washington State Court of Appeals.³

After receiving a letter from the county, a Commission compliance officer began working with the parties to complete compliance.⁴ As memorialized in a July 24, 2019, email to the parties, on June 12, 2019, the compliance officer discussed the status of compliance with the county's representatives.⁵ The compliance officer's email initiated a back-and-forth discussion with the parties contesting the adequacy of the county's compliance.⁶

The county asserted that it had complied with the order to pay overtime because it had not been able to identify employees who lost overtime in the relevant period.⁷ The county did not believe it could destroy IIU 2015-288 and comply with its retention schedule.⁸ In response, guild attorney Jim Cline asserted that the county had not complied. Cline asserted that the overtime remedy could be calculated by examining past overtime records.⁹ Regarding the county's position that it was required to retain IIU 2015-288, Cline asserted that the county's retention schedule did not "override state law or legal or administrative orders."¹⁰ On August 8, 2019, Legal Advisor Diane Hess Taylor responded on behalf of the county.¹¹ Hess Taylor countered Cline's assertion

³ King County v. Washington Public Relations Commission, No. 80013-2-I (Wash. Ct. App. Div. I).

⁴ This document is in the Commission's case file and was not offered at the compliance hearing. During the compliance hearing, the compliance officer admitted into evidence email correspondence between the parties and the compliance officer detailing the disagreement between the parties. Ex. Union (Un.) 7-9(2021); Ex. Employer (Er.) 1A-L (2021).

⁵ Ex. Er. 1B, 1D (2021). The compliance officer's email summarizing the call explains that the guild's attorney, while invited, did not participate in the call.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Ex. Er. 1D (2021).

¹⁰ *Id.*

¹¹ *Id.*

about how the overtime could be calculated and requested that the agency place the burden on the guild to establish how much overtime was owed and to which employees. Hess Taylor reiterated the county's position that RCW 40.14.070 and King County Code (KCC) 2.12.060 prohibited the destruction of records less than six years old.¹² The email back-and-forth continued until October 24, 2019.¹³

On May 22, 2020, the county responded to a May 14, 2020, email from the compliance officer.¹⁴ On October 30, 2020, Cline responded and asked that the parties discuss next steps.¹⁵ The parties and the compliance officer engaged in further discussions to resolve the matter.¹⁶ Unable to reach a resolution, the compliance officer set the matter for hearing.

Following a hearing, the compliance officer concluded that the county had not complied with the Commission's order. *King County*, Decision 12582-E (PECB, 2024). The county appealed. Neither the county nor the guild filed briefs on appeal. Therefore, the Commission has relied on the arguments advanced to the compliance officer during the compliance hearing.

FACTS RELATED TO IIU 2015-288

IAPro is an electronic database the county maintains to document, among other things, complaints and investigations.¹⁷ IAPro contains employment records such as complaints,

¹² *Id.*

¹³ Ex. Er. 1G (2021); Ex. Un. 7 (2021).

¹⁴ Ex. Er. 1H at 1 (2021); Ex. Un. 8 (2021). The compliance officer's May 14, 2020, email is not part of the administrative record. However, an April 30, 2020, email detailing the status of compliance is in Ex. Er. 1J (2021).

¹⁵ *Id.* While there is some delay between the May 22, 2020, email from the county, and the October 30, 2020, response, there were certainly other matters ongoing in 2020 that may have impacted the parties' attention to this matter.

¹⁶ Ex. Un. 9 (2021); Ex. Er. 1K, 1L (2021).

¹⁷ Ex. Er. 2 at 2 (2021).

commendations, and awards.¹⁸ Within the sheriff's office, managers have access to IAPro; however, managers typically contact human resources to request an employee's IIU history when hiring.¹⁹ While the county doesn't "generally" provide everything contained in IAPro to a prospective employer, the county would disclose requested information if it existed.²⁰ The county shares sustained discipline or sustained allegations maintained in IAPro.²¹ The county does not share information that is not sustained or for which an employee has been exonerated.²²

In this case, the electronic investigation file for IIU 2015-288 is maintained in IAPro and contains "documentation of the complaint, processing of the complaint, witness statements, documentary evidence, findings and recommendation documents, the PERC decision, and a summary that reflects a finding of "Exonerated."²³ The county removed the written reprimand from the IIU 2015-288 file but kept the document recommending a sustained violation and including a handwritten note stating, "waived and concur. Written Reprimand."²⁴ The electronic file designates the result as exonerated.²⁵

ANALYSIS

Applicable Legal Standards

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

¹⁸ Tr. 149:13–18.

¹⁹ Tr. 151:19–152:22; 153:11–23; 155:4–10.

²⁰ Tr. 148:2–3.

²¹ Tr. 148:7–8.

²² Tr. 148:18–20.

²³ Ex. Er. 2 at 2 (2021); *see also* Ex. Un. 11; Tr. 129:22–130:3.

²⁴ Ex. Un. 11 (2021); Tr. 131:4–5.

²⁵ Tr. 131:5–7.

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).

WAC 391-45-400 governs compliance. When reviewing an appeal of an order for compliance, the Commission evaluates the steps the party who has violated the statute has taken to comply with the order. *See generally City of Mercer Island*, Decision 1026-B (PECB, 1982) (looking at what was ordered and comparing how the steps taken effectuated the order); *East Valley School District – Spokane (Public School Employees of Washington)*, Decision 13114-A (PECB, 2021) (comparing the union’s action of posting the notice in one location against the examiner’s order).

The Commission has authority to issue appropriate remedial orders necessary to effectuate the purpose of the collective bargaining statute and make its orders effective. *Municipality of Metropolitan Seattle v. Public Employment Relations Commission*, 118 Wn.2d 621, 633 (1992); RCW 41.56.160. “Agencies enjoy substantial freedom in developing remedies.” *Municipality of Metropolitan Seattle v. Public Employment Relations Commission*, 118 Wn.2d at 634. The Commission “has authority to issue appropriate orders that it, in its expertise, believes are consistent with the purposes of the” statute. *Id.*

The County Must Pay for Missed Overtime Opportunities to Comply with the Commission’s
Order

The county argues that it should be found to have substantially complied with the Commission’s order because employees had more overtime opportunities after the unlawful unilateral change. During the compliance hearing, the guild presented its theory that the county should calculate the average number of overtime hours worked between 2013 and 2015 and the period the unlawful policy was in place, November 1, 2015, through July 11, 2017. According to the guild, it should be entitled to the difference between the two periods. We disagree with both parties.

The county argues that the most reliable information about missed overtime opportunities is the employee responses to the guild's 2016 request for information.²⁶ Based on its review of the record, the county avers that the "most generous interpretation" of the employee responses about denied vacation leave, including both requests that were denied and requests that had an unclear outcome, results in a total of 13.5 eight-hour days of potentially denied vacation leave.²⁷ We agree.

The county has not complied with the Commission's order because it has not paid any employees overtime. Over seven years after the Commission's original order, determining which employees would have been entitled to overtime may be difficult. Nevertheless, "[t]he most elementary conceptions of justice and public policy require that the wrongdoer shall bear the risk of the uncertainty which his own wrong has created." *Bigelow v. RKO Radio Pictures, Inc.*, 327 U.S. 251, 265 (1946); *Moore v. Washington State Health Care Authority*, 181 Wn.2d 299, 314 (2014); *Amalgamated Transit Union, Local 1384 v. Kitsap Transit*, 187 Wn. App. 113, 132 (2015) (reversing a Commission's order not tailored to remedy the unfair labor practice violation and failing to make employees whole). Thus, an employer who commits an unfair labor practice must make employees whole for the loss as best as possible. *Id.*

To effectuate the Commission's order in Decision 12582-B, we order the county to pay 13 current bargaining unit employees overtime for one eight-hour shift each. The parties may negotiate which 13 current bargaining unit employees receive the overtime compensation. If the parties cannot reach agreement as to which current employees shall receive the compensation, then the county shall pay the 13 most senior bargaining unit employees for one eight-hour overtime shift each. The county must pay the overtime within 90 days from this order.

The County Must Delete IIU 2015-288 to Comply with the Commission's Order

To determine whether the county has complied with the Commission's order, we must decide whether the order required the county to delete IIU 2015-288 from IAPro when the order

²⁶ Er. Br. Re; Compliance at 13; Ex. Un. 33–39 (2017).

²⁷ Er. Br. Re; Compliance at 13.

required the County to remove documents from “all personnel files or other employment records.” Before the compliance officer, the guild argued that to comply with the Commission’s order, the county must delete IIU 2015-288 from IAPro.²⁸ The county argued that it was required to retain IIU 2015-288 pursuant to RCW 40.14.070, KCC 2.12.060, and the King County retention schedule. In response, the guild argued that the county’s retention schedule did not override state law.

The Commission ordered the county to “delete IIU 2015-288 . . . and remove any and all references to the April 27, 2016, written reprimand from all personnel files or other employment records.” We agree that the county has strong interests in maintaining the integrity of internal investigation records. Records of investigations have value for auditing and transparency. We recognize that the county has taken efforts to rectify the record by marking the investigation “exonerated” and including a copy of the Commission’s decision. For the limited purposes of complying with the Commission’s order, IIU 2015-288 in IAPro contains employment records which must be deleted.

The county’s retention period for unfounded employee investigations has expired, and the county has not demonstrated a need to continue to maintain the records beyond the period specified in the retention schedule. The county’s retention schedule requires the county maintain unfounded employee misconduct files for four years after the case is closed.²⁹ Despite the retention period identified by the county, the sheriff’s offices “retain[s] all personnel records indefinitely”³⁰ and characterizes the retention period as a “minimum.”³¹ While law enforcement agencies may be “under significant scrutiny by the public and by numerous agencies who are tasked with

²⁸ Ex. Er. 1D (2021).

²⁹ King County, Washington *Retention Schedules*, KING COUNTY, <https://kingcounty.gov/en/dept/executive-services/data-information-services/records-management/retention-schedules> (last visited April 30, 2025). Unfounded employee misconduct files are categorized as “not archival.”

³⁰ Ex. Er. 2 at 2 (2021).

³¹ Er. Br. Re: Compliance at 15.

oversight,”³² the county has not demonstrated a need to retain the record of an employee, who is assumed to be a noncommissioned law enforcement officer, beyond the period specified by its retention schedule. The county closed IIU 2015-288 on December 11, 2015.³³ The county’s four-year retention period ended on December 11, 2019.

The county has not complied with the Commission’s order. The county has not deleted all references to the written reprimand. The county maintains documentation referencing the written reprimand in IIU 2015-288.³⁴ The county must take the action identified in the Commission’s order.

ORDER

1. To comply with the remedial order issued in Decision 12582-B, and to avoid authorization of enforcement proceedings under RCW 41.56.160, King County must
 - (a) Within 90 days of this order pay the 13 most senior bargaining unit employees eight hours of overtime.
 - (b) Comply with the King County retention schedule and delete IIU 2015-288, the internal investigation into Marquel Allen’s conduct on November 16, 2015, and remove any and all references to the April 27, 2016, written reprimand from all personnel files or other employment records concerning Allen.
2. To avoid an authorization of enforcement proceedings under RCW 41.56.160, King County must

³² *Id.*

³³ Ex. Un. 10 (2021).

³⁴ Ex. Un. 11 (2021).

- (a) Notify the above-named complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order.
- (b) Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with the order.

ISSUED at Olympia, Washington, this 30th day of June, 2025.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK LYON, Chairperson



ELIZABETH FORD, Commissioner



HENRY E. FARBER, Commissioner

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