

Confidential

SUMMARY OF INVESTIGATIVE FINDINGS

February 1, 2022

TO: Carrie Blackwood, Barron Smith Daugert, PLLC
FROM: Sarah L. Wixson
RE: Bellingham Municipal Court

My firm, Stokes Lawrence (recommended by the Administrative Office of the Courts as an experienced and independent entity), conducted a City of Bellingham funded investigation regarding allegations of hostile work environment, retaliation, discrimination (based upon age and religion), and violations of wage and hour and medical privacy laws. These allegations were brought by employees of the Bellingham Municipal Court against Judge Debra Lev, Court Administrator Respondent 1, Deputy Court Administrator Respondent 2, and Jail Alternative Program Manager Respondent 3.

I. Scope of Investigation

The Bellingham Municipal Court through its attorney, Carrie Blackwood of Barron Smith Daugert, PLLC, requested a full and complete investigation of employee claims. I was retained by the Bellingham Municipal Court through its attorney Carrie Blackwood of Barron Smith Daugert, PLLC, on or about July 27, 2021, to investigate employee claims. The scope of the investigation is the allegations set forth by the Bellingham Municipal Court employees as reflected in the interview notes of investigator Sarah Hale as well as the corresponding factual allegations set forth in grievances filed on behalf of the employees by Bellingham Local 1937, Guild of Pacific Northwest Employees (“Guild”).

II. Procedural Background

The Bellingham Municipal Court is a Court of limited jurisdiction; it has jurisdiction over civil infractions such as parking and traffic infractions and also has jurisdiction over criminal matters, misdemeanors, and gross misdemeanors occurring within the Bellingham city limits. Judge Debra Lev has presided over the Court since her election in 2002. Judge Lev appointed Commissioner Pete Smiley in 2003. Most recently, Judge Lev ran unopposed and was re-elected in 2021.

The Court employs approximately twelve employees. Respondent 1 serves as the Court Administrator and is responsible for all non-judicial functions of the Court; Respondent 2 serves as the Chief Deputy Court Clerk and assists with management functions at the Court;

and Respondent 3 is the Jail Alternatives and Diversion Manager with the goal of reducing incarceration through home monitoring and other alternatives. The remainder of the employees are Court process specialists, lead Court process specialists, and an accounting technician. They are responsible for processing Court documents, assisting during Court, processing payment of fines and filing fees, and otherwise serving the public and the Court.

Most employees at the Court are represented by two unions. The Chief Deputy Court Clerk and the Jail Alternatives and Diversion Manager are represented by the General Teamsters Union Local 231 of the International Brotherhood of Teamsters while Court specialists, accounting technicians, and leads are represented by the Guild. The Guild was certified as their bargaining representative in 2019.

The City and the Guild are parties to a collective bargaining agreement. Court management has historically consulted with the City's Human Resource Department regarding personnel matters and has participated in the City's civil service processes when the nature of the position required it.

In April 2021, Human Resources met with four Municipal Court employees and learned of complaints about working conditions at the Court. The Executive Branch of the City, without the Court's knowledge, retained investigator Sarah Hale, a partner at Barran Liebman LLP, to investigate the claims. In May of 2021, Ms. Hale conducted an investigation. Judge Lev, citing separation of powers, declined to participate. Respondent 1 and Respondent 3 also declined to be interviewed. The Executive Branch of the City adopted Ms. Hale's determination that Respondent 3 stalked and surveilled employees, and the Executive Branch of the City determined that Respondent 3 posed a threat to other employees. The Executive Branch of the City placed Respondent 3 on administrative leave on May 24, 2021, and deactivated Respondent 3's computer access and electronic building key. On May 25, 2021, the Executive Branch of the City placed Respondent 1 on administrative leave for failing to participate in the Executive Branch of the City's investigation. Judge Lev, again citing separation of powers, instructed Respondent 3 and Respondent 1 to report to work.

On May 27, 2021, upon seeing Respondent 3 in the workplace, three employees, Witness 6, Witness 3, and Witness 9, asserted that they did not feel safe and walked out. Employees Witness 8 and Witness 7 were out of the office during this time. Witness 8 was on vacation and Witness 7 was out sick; however, Witness 8 and Witness 7 never returned to work, so it was assumed by Respondent 1 that Witness 8 and Witness 7 joined the other three employees in the walk out. As a result, the Executive Branch of the City placed all five on paid administrative leave. Also on May 27, 2021, Judge Lev filed a lawsuit in Whatcom County Superior Court (No. 21-2-00541-37) against the City of Bellingham and its mayor, Seth Fleetwood, alleging that the Executive Branch of the City's investigations of Court working conditions and the placing of Court employees on administrative leave

violated the separation of powers between the executive, legislative, and judicial branches of government. At a hearing on June 4th, 2021, the Whatcom County Superior Court granted a temporary injunction preventing the Executive Branch of the City from compelling Court staff to participate in the investigation and preventing the Executive Branch of the City from disciplining, firing, suspending, or denying employees' access to Court buildings or computer accounts.

Judge Lev, Respondent 1, and Respondent 3 resumed work with the Court. However, the employees who walked out on May 27, 2021, remained on administrative leave through the Executive Branch of the City and were relieved of any duties associated with the Court.

Judge Lev and the Executive Branch of the City reached a mediated settlement on or about September 23, 2021. The settlement states that although Court employees are City employees, it affirms that the Washington State Supreme Court's General Rule 29 applies to the Bellingham Municipal Court. That rule states that the Presiding Judge has general administrative supervision over judicial branch employees when it comes to things like working conditions, hiring, discipline, and termination decisions.

III. Investigative Process

A. Interviews

In connection with this investigation, I interviewed the following individuals in person on August 4, 2021:

1. Judge Debra Lev, City of Bellingham Municipal Court Judge;
2. Court Commissioner Pete Smiley;
3. Respondent 1, Court Administrator;
4. Respondent 2, Chief Deputy Court Clerk;
5. Witness 1, [REDACTED] (presently Court Records Program Technician) and Guild member;
6. Respondent 3, Jail Alternative Program Manager;
7. Witness 2, City of Bellingham [REDACTED] (by telephone);
8. Witness 3, previously Court Process Specialist (by telephone);
9. Witness 4, previously Court Process Specialist (by telephone);
10. Witness 5, previously Court Process Specialist (by telephone);
11. Witness 6, previously Court Process Specialist (through written questions);

12. Witness 7, previously Lead Court Process Specialist (through written questions).

I also relied upon interview notes from Sarah Hale's investigative file. Ms. Hale's file included interviews notes for the following individuals:

1. Witness 8, previously Lead Court Process Specialist, Guild employee;
2. Witness 6, Guild employee;
3. Witness 7, Guild employee;
4. Witness 9, [REDACTED], Guild employee;
5. Witness 3, Guild employee;
6. Witness 4, Guild employee;
7. Witness 5, Guild employee;
8. Witness 8, City of Bellingham [REDACTED] Human Resources;
9. Witness 9, City of Bellingham Human Resources [REDACTED];
10. Witness 10, City of Bellingham [REDACTED] (Human Resources support);
11. Witness 11, City of Bellingham Deputy Administrator;
12. Witness 12, City of Bellingham [REDACTED];
13. Witness 1, Guild employee; and
14. Respondent 2, Chief Deputy Court Clerk.

B. Documentation

I reviewed the following categories of documents provided by the individual witnesses, the City of Bellingham, and the documents contained in Ms. Hale's investigative file:

1. Video log of Bellingham Municipal Court security cameras;
2. Blueprint drawing (Map) of Bellingham Municipal Court;
3. Collective Bargaining Agreement between the City of Bellingham and the Guild;
4. Workplace Expectations of the Bellingham Municipal Court;
5. E-mails and documents received from Respondent 1;
6. E-mails and documents received from Judge Debra Lev;
7. E-mails and documents received from Respondent 3 ;

8. Sarah Hale's investigative file including notes and e-mails;
9. E-mails and documents received from the City of Bellingham pursuant to the settlement agreement in *Lev v. City of Bellingham*, Whatcom County Superior Court No. 21-2-00541-37; and
10. Grievances filed by Bellingham Local 1937.

C. Tour of premises

I toured the Bellingham Municipal Court building on August 4, 2021, and took photographs.

IV. Factual Background

In the spring of 2020, the Bellingham Municipal Court closed its doors to the public due to COVID-19. For a time, employees were either furloughed or worked remotely. In the summer of 2020, employees returned to work at the Bellingham Municipal Court in person, but the Court remained closed to the public. Court appearances occurred by video and telephonic hearings.

Also in 2020, three long-term employees retired early and a fourth resigned because her husband took a position in Texas. The retirement or departure of long tenured employees was in line with a general trend in the United States in 2020.¹ The impact of the departures on Bellingham Municipal Court was significant. By January 2021, more than a third of the staff at the Municipal Court had left employment, though case volume remained at or close to pre-pandemic levels.

Respondent 3 had joined the Court as the Jail Alternatives and Diversion Manager in approximately April 2019. Although the Court previously participated in the diversion program, it did not have a dedicated manager. Prior to Respondent 3 accepting the position, Court Administrator Respondent 1 and Guild employee Witness 7 were running the program along with their other duties. Witness 7 also applied for the Jail Alternatives and Diversion Manager position but was not the successful candidate.

Respondent 3 has prior law enforcement experience, including as a federal investigator. Respondent 3 also worked in the private sector for a company, Friendship Diversion Services, which at one point had a contract with the City of Bellingham to provide jail and sentencing alternatives. While Respondent 3 was employed by Friendship Diversion Services, she worked with Respondent 1 and Witness 7.

¹ The number of retirements in the United States in 2020 was more than double that of 2019.
<https://www.pewresearch.org/fact-tank/2020/11/09/the-pace-of-boomer-retirements-has-accelerated-in-the-past-year/>

Respondent 3 was in charge of the electronic home detention and home monitoring program. She was also tasked with auditing and improving courthouse security. In her first year with the Court (2019-2020), Respondent 3 audited courthouse security measures and made numerous changes and improvements including the installation of operable panic alarms, installation of new door hardware, and initiated the installation of two additional cameras. She also created new security post orders and assisted with the execution of a new security contract.

When the courthouse suspended in-person hearings to the public, the Court no longer had need for security officers to screen members of the public. Respondent 3 took over the role of building security. She would monitor the courthouse as well as Judge Lev's car and parking spot. While the Court was closed due to COVID, there were several occasions where someone had attempted to tamper with or hide themselves near Judge Lev's car. Respondent 3 intervened. She stated that since then she observes Judge Lev's car from a second story window several times a day.

In September 2020, Respondent 2 was promoted to Chief Deputy Court Clerk. Witness 7 and Witness 1 also applied for the position. In October 2020, Witness 1 was promoted to a lead position. Witness 4 had also applied for the position. Employee [REDACTED] retired² in March of 2021. During all times relevant to this investigation, the office was short-staffed, and people were called upon to fill in wherever they were needed.

V. Discussion

1. Court responds to claims of relational aggression.

In 2019, employee Witness 1 worked in a cubicle next to Witness 8. These cubicles were in the cluster of cubicles in the open area. Witness 1 stated that Witness 8 would say hurtful things about coworkers. Witness 8 would not only talk negatively regarding mistakes that were made by others, but also how coworkers dressed and their physical appearance. A small group of women participated in the discussions. Witness 1 states that she told Witness 8, "that's mean, you can't say that." Witness 1 states that she found the negative talk so distracting that she asked to be moved to a different area. Witness 1 moved to one of the cubicles facing the wall next to Witness 4. Witness 1 stated that when it became clear that she was not going to participate in the negative talk, the Group³ "pushed her out." The Group stopped talking to her and excluded her from lunches and other social gatherings.

² [REDACTED] retirement was not sudden. She tendered her letter of resignation on or about January 14, 2020.

³ "The Group" refers to the four employees who were counseled on December 8, 2020. Eventually, Witness 3, one of the employees who asserted that the Group had excluded her, was accepted and she joined the Group. Long tenured employees Witness 6 and Witness 7 also joined the "Group," but the timing of this alliance is unclear. For ease of reference, this group of six women are referred to as "the Group."

On or about September 23, 2020, the City's Human Resources Department put on a City-wide program entitled, "How was Your Day: Getting Real About Bias, Inclusion, Harassment, and Bullying." The program included the query, "Have you ever been the target of ugly rumors or gossip?" The power point presentation included the following:

How do I stop someone from making derogatory comments about a co- worker?
Tell them to stop.
Say something like, "You know if someone was saying things like that about you, I wouldn't want to hear it. I don't want to hear this either."

Approximately one week later, on October 1, 2020, Witness 3 began working with the Court. Witness 3 was placed in Witness 1's former cubicle, the one near Witness 8. On or about November 4, 2020, both Witness 3 and Witness 1 complained that they were being excluded by a small group of approximately four women (Witness 4, Witness 8, [REDACTED]⁴ and Witness 5). They reported that the group would publicly arrange lunch dates with each other but would not extend an invitation to anyone else. They also reported that for birthdays, the Group would bring treats for one another but not acknowledge other co-worker's birthdays. The group would gather together and talk in whispers. One employee, Witness 8, told Witness 3 that she was "trying to get the group to like [her]," which Witness 3 interpreted to mean that that they did not currently like her.

On or about December 3, 2020, while Respondent 1 was on vacation, Witness 3 asked for a meeting with Respondent 2. Witness 3 explained that her colleagues' behavior was making it hard to come to work every day. Witness 3 reportedly told Respondent 2, "I'm doing my best to stay positive, but it has been a bit of a challenge when it's pretty regularly in your face." Witness 3 reported that the Group would be whispering to each other, and she would be the only other person in the area; although she didn't know if they were talking about her, it made her uncomfortable. Witness 3 reported that she asked Respondent 2 not to say anything because she did not want to cause any trouble.

Respondent 2 reported the issue to Respondent 1 and Judge Lev and indicated that the Group's behavior seemed to be escalating. As a result of the complaints, on or about December 8, 2020, Respondent 1 and Judge Lev had a meeting with the four members of the group: Witness 4, Witness 8, [REDACTED], and Witness 5. Respondent 1 had written talking points. She explained to the four women that co-workers had complained about their behavior and that their behavior was violating the stated core competencies of teamwork and cooperation; including the requirement of speaking of and to team members in positive terms. They were also reminded of the Court's written Workplace Expectations

⁴ [REDACTED] tendered her letter of resignation on or about January 25, 2021, and left on or about February 15, 2021. She and her husband were relocating to Texas because he received a promotion.

- a document signed by employees annually that set forth behavioral requirements of courtesy and respect. See attached, **Exhibit 1**.

Several members of the Group asserted that the Court's written Workplace Expectations was a newly created document that was not bargained for and thus constituted a unilateral change. However, longer tenured employees including Witness 6, Witness 5, and Respondent 2 indicated that the Workplace Expectation document was reviewed by Judge Lev or supervisory staff with employees annually. I find the longer tenured employees' characterization of the Workplace Expectations document more credible than the shorter termed employees' recollections.

The Group was told that to avoid hurt feelings, they should not make plans aloud with one another because a co-worker could hear and feel excluded. They were also reminded to keep their personal conversations to a minimum so that people could focus on work and to avoid whispering to one another. They were told that they weren't being disciplined, but that if the behavior did not improve that there would be fact finding and potentially discipline. However, Judge Lev and Respondent 1 stated that the women would have a "clean slate" after this meeting.

In response, the Group stated that they were talking about work-related issues and that they would like more regular staff meetings. The Court used to have periodic lunchtime staff meetings, but these meetings were suspended when it was determined that they were not in line with the Guild's collective bargaining agreement. The Group believed that the Court was blaming the union for the lack of meetings and/or communication.

Findings:⁵

1. *The Court's Workplace Expectations was in existence for several years, and was not a new office rule or policy.*
2. *Judge Lev and Respondent 1 indicated that the Group's behavior needed to change, but there is insufficient evidence to conclude that this meeting was disciplinary rather than coaching.*

⁵ I will include findings at the end of section where appropriate. For ease of reference, I will number findings sequentially throughout the sections.

2. Immediate response.

On December 10, 2020, fellow employee [REDACTED] came into Respondent 1's office crying because the Group would not speak to her or acknowledge her. [REDACTED] was so upset that she went home for the rest of the day. Also on December 10, 2020, Witness 1 said that Witness 4 confronted her about who had reported the whispering and negative talk. Witness 1 stated that she complained to Respondent 1 because the Group's conduct really bothered her. She did not tell Witness 4 that Witness 3 also complained.⁶ Witness 1 then told Witness 4 that if she was upset, she could go talk to Respondent 1. Witness 1 stated that Witness 4 and the group stopped talking to her. The next day, on December 11, 2020, [REDACTED] tearfully reported that one of her co-workers wouldn't speak to her.⁷

On or about December 16, 2020, Witness 8 reported to Human Resources that a stranger was occupying the jury room despite the fact the courthouse was closed to the public due to COVID-19. Witness 4 stated that she had sent an e-mail to Respondent 1 regarding an unknown person in the building. The person in the jury room was Judge Lev's college-aged daughter who was studying for finals. Also on December 16, 2020, Witness 8 reported to Respondent 1 that Witness 3 and Witness 1 had made audible lunch plans and asked Respondent 1 to apply the same admonitions against public social planning to them. Respondent 1 told Witness 8 that she would address the issue.

On or about December 17, 2020, Judge Lev sent an e-mail to staff indicating that decisions regarding the Court including building closure, building entry, conduct within the building, staff performance and behavior, and courtroom behavior were hers to make. If they had any questions, employees could come to her. The Group believed that the e-mail was an implicit threat of termination.⁸

In the nearly twenty years Judge Lev has been a municipal Court judge, there have been few terminations. One employee was terminated in her probationary period in approximately 2017 due to performance issues. Another employee was allowed to resign in lieu of termination as the result of a physical altercation with a member of the Group. Many employees, including several members of the Group, had been with the Court ten

⁶ Members of the group appeared to be under the impression that Witness 3 had not complained. Witness 5 stated that Witness 3 told her that she had nothing to do with the December 8th meeting. Witness 3 subsequently was accepted by the Group.

⁷ Upon investigation, Respondent 1 discovered that [REDACTED] was not speaking to [REDACTED] because she thought [REDACTED] was not speaking to her. Respondent 1 talked to them both and told them it appeared that there was a miscommunication. The two women resolved the issue.

⁸ The record is clear from Sarah Hale's interview notes that some of the complaining employees did not believe that Judge Lev had authority over them or the courthouse. Witness 9 stated that a small group felt like they ran the Court and that everyone else was below them: Judge Lev, Respondent 1, Respondent 2 and Respondent 3. Another stated that she "felt like a peasant to a king."

years or longer. By all accounts, the members of the Group had strong positive reviews and had not been issued formal discipline.

Findings:

3. *Judge Lev's e-mail outlining the scope of her authority was not a threat of termination.*

3. Claims of retaliation

After the December 8, 2020, meeting, the Group believed that they were subjected to scrutiny, surveillance, and retaliation. The Group asserts a variety of behavior by several people. Each claim is addressed separately below.

a. December 2020.

Witness 4 stated that for a period of approximately three weeks after Human Resources was informed of a non-employee's presence in the courthouse, Judge Lev was cool to her in Court. Witness 4 stated that the very next day, Judge Lev arrived to Court fifteen minutes late and immediately began Court without speaking to Witness 4. Witness 4 asserted that Judge Lev no longer talked about non-work-related matters with her prior to the proceedings. Witness 4 stated that she was moved from Judge Lev's arraignment docket to Commissioner Pete Smiley's jail docket. Witness 4 also asked that she be allowed to come in fifteen minutes earlier on jail docket days and leave fifteen minutes earlier. Respondent 1 denied Witness 4's request. Witness 4 stated that Witness 1 was allowed to start earlier when she was covering the jail docket. Witness 4 believed that she was being treated differently because Judge Lev believed she had reported the Judge's daughter in the jury room.

According to Commissioner Pete Smiley, clerks routinely rotated on and off his dockets. Witness 4 had repeatedly asked Respondent 1 and Respondent 2 to be trained in different areas. In fact, Witness 3 stated that she believed Witness 4 was treated differently than she was because she was not given the same opportunity to participate in the various Court dockets as other clerks. Respondent 1 and Respondent 2 stated that there was a great deal of shuffling of clerk roles during this period due to staff shortages and changing COVID era protocols. In late January 2021, [REDACTED], who performed accounting functions, announced her resignation. Witness 1, who was on the jail docket, was moved over to cover [REDACTED] duties. Respondent 1 stated that Witness 4, in part due to need and in part due to her request to gain broader experience⁹, was moved to the jail docket. Respondent 1 stated that she denied Witness 4's request to start earlier due to departmental

⁹ Witness 4 asserted that she had expressed an interest in the accounting position, and had a background and interest in accounting, and that she should have been moved into [REDACTED] role.

needs. Witness 3 confirmed that about half of the staff were arriving early and half were covering the late afternoon due to individual circumstances.¹⁰

Witness 1, a Guild member who has worked for the Court for ten years, stated that in her experience, Judge Lev is not overly chatty and stays to herself. The Court also cancelled the Christmas potluck party, which the Group asserted was retaliatory. However, in December 2020, COVID-19 cases were surging¹¹ and non-essential gatherings were determined to be imprudent.

Findings:

4. *The fact that Witness 4 was moved to the jail docket does not rise to the level of an adverse employment action and I cannot conclude on a more probable than not basis that she was reassigned as retaliation for reporting safety concerns.*
5. *The fact that the Judge's communications were "business-only" does not rise to the level of an adverse employment action.*
6. *Given the fact that COVID-19 was surging in December 2020, I cannot conclude that cancelling a Christmas potluck party was retaliatory.*

b. Chain of command.

i. Judge Lev

The Group asserted that Judge Lev retreated to her office, was unavailable, or declined to hear their complaints, admonishing them to raise their complaints through a rigid chain of command.

In December 2020 and through today,¹² it is recommended that employees working indoors should only take off their masks if they are alone in their office and the door is closed. Judge Lev stated that she closed her door so that she could take off her mask.

The Court has a policy for employees to address complaints through their chain of command. This is a longstanding policy. The Court went over the policy with staff in January 2020 and discussed the appropriate chain of command at a staff meeting.

In September 2020, the Court had a mailbox installed outside of the courthouse. Witness 6 was concerned because for several days after its installation, the Court was not receiving mail. Witness 6 believed that the that the reason they had not received mail was because the mailbox, labeled by Respondent 1, was not labeled correctly. Witness 6,

¹⁰ For example, Witness 5 needing to arrive late due to childcare needs.

¹¹ <https://www.cnn.com/2020/12/27/health/us-coronavirus-sunday/index>.

¹² There was a brief period when it was permitted to remove your mask at work if you were fully vaccinated.

without direction, researched the issue resulting in approximately twelve pages of research. Witness 6 then approached Respondent 1 about the issue. Respondent 1 told Witness 6 that she would review the information and would handle the situation.

Witness 6, apparently not believing that Respondent 1 would or was capable of handling the issue, then approached Respondent 2. Witness 6 was persistent that Respondent 1 had incorrectly labeled the mailbox and that was the reason the mail was not being delivered. Respondent 1 went to the post office and discovered that the issue had nothing to do with how the box was labeled, but rather, there were substitute carriers who were simply unaware of the new box. Respondent 1 was frustrated that Witness 6 had attempted to work around her, and in her mind, undermined her authority by going to Respondent 2.

Judge Lev noted that Witness 6 had also recently approached her about warrant procedure rather than working through the chain of command and talking to Respondent 2 or Respondent 1 about it first. According to Judge Lev, the chain of command serves two purposes. The first purpose is a matter of efficiency. When Judge Lev is presented directly with an issue, she must then circle back to the applicable supervisor either to get more information or to give the supervisor relevant information. The second purpose is to reinforce the role and authority of leads and supervisors.

Witness 6 received an oral reprimand in September for not following the chain of command. According to Judge Lev, Witness 6 then told her, “I just won’t e-mail you anymore.” Judge Lev explained that she was not asking her to not e-mail her, just that she go through the appropriate channels. Witness 6 told investigator Sarah Hale that because she was verbally reprimanded for going outside the chain of command, she believed she no longer had an avenue to lodge complaints, especially regarding Respondent 1.

However, the record shows that Witness 6 was not precluded from raising issues, particularly concerning her supervisor, to Judge Lev. Several months later, on or about December 27, 2020, Witness 6 left Judge Lev a voicemail asking to speak to her privately. That same day, Judge Lev met with Witness 6, who told Judge Lev that she believed Respondent 1 was suffering from early onset Alzheimer’s, that she could not function in her job, was forgetting simple things, and wasn’t capable of being in a leadership role.

Findings

7. *Judge Lev stated that she closed her door so that she could take off her mask. Under the circumstances, I do not find the fact that Judge Lev frequently closed her door was retaliatory.*

8. *Upon the record before me, there is insufficient evidence to conclude that employees did not have access to Judge Lev to address complaints, or that her perceived unavailability was retaliatory.*

ii. Respondent 1

The Group similarly asserted that they could not complain to Respondent 1. The evidence reflects that employees did complain to Respondent 1 as recently as in mid to late March 2021. However, the employees were disappointed that she did not side with them or grant their requests.

For example, Witness 6 asserted that she complained to Respondent 1 about Respondent 3's actions that lead to the discharge of the security guard, and that Respondent 1 snipped at her for raising the issue. The security guard was let go due to lapses in security, one of which led to a defendant bringing a knife into the courtroom. In another example, Witness 8 complained to Respondent 1 about Respondent 2 attempting to get her and Witness 3 to quiet down in a way she thought was disrespectful. Witness 8 asserted that rather than address her complaint, Respondent 1 threatened her with discipline. Respondent 1 stated that she threatened Witness 8 with discipline because Witness 8 was the one that responded with disrespect both toward Respondent 2 and toward Respondent 1. In another example, Witness 9, who had been employed for six weeks, asked for flex time, and reported that Respondent 1 scolded her for asking. Respondent 1 reported that Witness 9 continued to argue with Respondent 1 even after the request for flex time was denied due to her short tenure. This caused Respondent 1 to remind Witness 9 of her authority.

The Group also asserted that they could not go to Respondent 1 with complaints against Respondent 3 due to their perceived close friendship. Respondent 1 and Respondent 3 are friendly at work. However, Respondent 1 states that pre-pandemic, she socialized with Respondent 3 and her partner approximately three to four times a year. Respondent 1 states that she has not seen Respondent 3 outside of work since the summer of 2020. There is not sufficient evidence to support an allegation that Respondent 1's friendship with Respondent 3 would prevent her from receiving complaints about her, nor is there evidence that any employee raised any issue regarding surveillance or safety with Respondent 1 or Judge Lev.

Findings:

9. *The evidence does not support the allegation that employees were unable to raise their concerns to Respondent 1 through the chain of command; evidence instead reflects that employees raised issues but were unhappy with their supervisors' decisions or responses.*

c. Stifled Communications.

The Group complained that after the December 8th meeting in which they were admonished for excluding their co-workers, they were precluded from having personal conversations at work and “walked on eggshells.” Five of the six employees who complained worked in an open area with cubicles. Sound carries throughout the space. Witness 1 indicated that Witness 8, in particular, engaged in “intense chit chat” with co-workers and then when she fell behind in her work, would ask Witness 1 to help. Witness 6 also stated that work was unevenly divided and that some employees were overloaded while others had time to chat, play on their phones, or read the newspaper.

Respondent 2 stated that she often told employees to keep their personal conversations to a minimum and to keep their volume down. The Group stated that Respondent 2 would frequently interrupt their conversations with an admonition to “keep it down,” or “let’s return to our work.” Respondent 2 recounted an incident where she noticed that two employees were on the phone for a prolonged period of time. She walked toward one employee’s desk and the employee hung up from the call. When Respondent 2 returned back to her desk, she noticed that the other employee was off the line too, leading her to believe that they had been talking to one another. There would have been no reason to end the call upon Respondent 2’s approach if it were work-related.

Respondent 2 and Respondent 1 both recounted an incident that occurred in March 2021, where Witness 8 and Witness 3 were engaged in a conversation about private matters. Respondent 1 and Respondent 2 recalled the conversation was about a wedding. Witness 8 stated that the conversation was about a boyfriend and St. Patrick’s Day, but that the conversation was nonetheless primarily about work. Respondent 1 went to her office several minutes later when the conversation was still going on and called Respondent 2 to ask them to quiet down.

Respondent 2 asked them to quiet down and return to their work. Witness 8 responded loudly, “What? What did you say to me?” Witness 8 argued that they were talking about work. Respondent 2 said, “it didn’t sound like work to me.” Witness 8 stated that she could just be a robot and go back to her cubicle and not talk to anyone.

Witness 8 complained to Respondent 1 regarding how frustrated she felt about the communication restrictions and the way she felt was being treated.¹³ Respondent 1

¹³ This is not the first time that Witness 8 was spoken to for being rude to Respondent 2. On or about November 23, 2020, Respondent 2 and Witness 8 had a disagreement. Witness 8 thought that Respondent 2 was talking down to her (“like a child”) and told Respondent 1 that Respondent 2 was “not her boss.” Respondent 1 stated that as long as Witness 8 was training on Court duties, Respondent 2 was her supervisor. Witness 8 reportedly apologized for being disrespectful.

admonished Witness 8, telling her that the way that she responded to Respondent 2 was rude and disrespectful.

The Group also believed that Respondent 1, Respondent 2, and Respondent 3 would appear in places where they were attempting to talk privately; for example, in the courtroom or in the downstairs conference room. Respondent 1 said that she recalls telling members of the Group not to gather with too many people in the conference room, but only because eating lunch together mask-less in a closed conference room was a violation of the COVID-19 protocols.

Findings:

10. From the evidence of record, I do not find that the limitations on personal conversations and reprimands for excessive or unprofessional communications was inappropriate, retaliatory, or created a hostile work environment.

d. Name-calling.

The Group asserts that Respondent 1 inappropriately called them a disparaging name. Specifically, Witness 8 was in the room adjacent to Respondent 1's office and overheard her on the phone with Human Resources referencing the group as, "mean girls."

Witness 8 did not overhear this conversation by chance. Witness 8 stated that she had seen a notation on Respondent 1's board indicating a meeting that read, "HR 3 pm." Witness 8 said that at 3 p.m. she noticed that Respondent 1's blinds were drawn. A co-worker told Witness 8 to, "go in there" (the workroom adjacent to Respondent 1's office). Witness 8 stood in the room next to Respondent 1's office to overhear her conversation with HR.¹⁴

Witness 4 stated that she was in the workroom prior to Witness 8, and that she also overheard parts of the conversation between Respondent 1 and Human Resources including the words "mean girls."

City of Bellingham Human Resource representatives stated they told Respondent 1 her characterization of the group as "mean girls" was "unprofessional." Witness 1 stated that she believed that she was the first one to describe the group in this way. There is no evidence that Respondent 1 ever called the group "mean girls" to anyone other than Human Resources. The term was used in a conversation that was presumed to be confidential and where frank discussion is warranted. The term "mean girls," while not necessarily flattering, is descriptive of a particular kind of bullying more formally referred to as "relational aggression." It is bullying which damages someone's relationships or social

¹⁴ According to Sarah Hale's interview notes, Witness 8 had similarly overheard [REDACTED] complaining to Respondent 1 in December 2020.

status and often manifests in gossiping and exclusion.¹⁵ The term “mean girls” is more descriptive of behavior than name calling.

Human Resources told Respondent 1 that her private conversations could be heard by employees. The Court had Respondent 1’s office soundproofed.

Findings:

11. *Based upon the evidence of record, I find Respondent 1 did not engage in name calling when she described the Group as “mean girls” in a private conversation with Human Resources.*

e. Surveillance and intimidation.

Employees assert that they have been surveilled, intimidated, and retaliated against for reporting their concerns to Human Resources and for participating in the Executive Branch of the City’s investigation of their claims.

The City’s policy “Preventing Violence in the Workplace” (PER 14.00.03) prohibits stalking or “making threatening remarks or statements” or “making a credible threat through physical action or gesture.” The policy further defines “stalking” as, “willful, malicious or repeated following or harassing of another person.”

The Bellingham Municipal Court building used to be a church. The building is functional, but there are many odd spaces and narrow dead-end hallways. See Map attached as **Exhibit 2**.

The majority of the Court personnel work on the second floor. At the Northeast side of the building is Judge Lev’s chambers. There is a small hallway that connects Judge Lev’s chambers and the jury room. In the jury room, there is a restroom. To the left of the jury room is another small hallway. There is a staff lounge and another rest room, as well as a bookshelf that is a makeshift supply closet. There is also another room in this hallway which on the map is labeled as “Judge’s Chambers,” but Commissioner Pete Smiley’s office is downstairs. The secondary upstairs chambers has been fashioned into an office for Respondent 3, the Jail Alternatives and Diversion Manager.

There is an open area with cubicles and files where the majority of staff work. There are a group of cubicles clustered together, and then another single row of cubicles separated from the main area by a wall. There are two offices at the southwest corner of the second floor that are connected by a small hallway. The northern office (labeled office 326)

¹⁵ There are countless articles describing relational aggression and nearly all of them refer to the phenomenon in shorthand as “mean girls.” See <https://medium.com/fearless-she-wrote/its-not-girls-being-girls-it-s-relational-aggression-2d87ef6e23e8>.

belongs to Court Administrator Respondent 1. The office next to Respondent 1's office is a workroom with a printer. There is another single use restroom that opens to the common open area. There is also a courtroom on the second floor.

On the first floor, there is a second courtroom. Commissioner Pete Smiley's office is on the first floor. There is also a security screening area with an x-ray machine. Behind the screening area is an area referred to as the "cash cage." The cash cage is where employees take payments from the public. Commissioner Pete Smiley stated that as he moves about the building, he is often coming around blind corners and surprising someone.

Most of the public areas of the courthouse, as well as the parking areas, are monitored by video camera. Indoor public areas that are monitored by video include the cash cage, courtrooms, access hallways, and stairs. The cameras were not installed or positioned by the Court, but rather at the discretion of the Executive Branch of the City. None of these cameras observe personal/work cubicle areas occupied by Court Staff other than the "cash cage." None of these cameras have microphones nor does the operating application allow for zooming in on the employee's computer screens as the program automatically blocks out the computer screen image(s).

i. Respondent 3.

The Group asserts that they were followed and intimidated by Respondent 3. Respondent 3 is former law enforcement. She has been trained to be observant, maintains eye contact, and speaks directly. The Group, as well as a Witness 12 and Witness 2, asserted that Respondent 3 served no security role within the Court and therefore her review of video or "patrols" of the courthouse had no legitimate purpose¹⁶.

However, the records reflect that Respondent 3 had assumed a role with regard to courthouse security for at least one year prior to the complaints. In 2019-2020, Respondent 3 conducted security audits and made numerous recommendations to improve upon Court security. Her 2019-2020 review materials set forth a number of security related tasks including installing more outdoor cameras, making sure the panic alarms were operable, creating security post orders, and improving courthouse doors. Respondent 3 also pointed out deficiencies in a long-tenured and well-liked Court security officer who had, among other things, allowed a knife into the courtroom. As a result, the security officer was removed from the courthouse security post. Several employees blamed Respondent 3 for his removal.

Respondent 3's office is located just outside the employee lunchroom. She does not work closely with other Court personnel, but states that when she leaves her office, it is

¹⁶ The majority of the complaints are that Respondent 3 was surveilling the Group in an effort to intimidate them, however, Witness 4 asserted that Respondent 3 surveillance was sexual harassment because Respondent 3 is gay.

typically to talk to Respondent 1 or Judge Lev, both who work on opposite sides of the building. Respondent 3 walks through and around the courthouse building and observes Judge Lev's car from the windows. Respondent 3 began regularly observing Judge Lev's car because there were several occasions where someone had attempted to tamper with or hide themselves near Judge Lev's car.

One employee reported, as an example of surveillance, that she was using the restroom in the jury room and came out and saw Respondent 3 in the jury room. The employee said that Respondent 3's presence was surprising because the jury room is in a part of the building far from Respondent 3's office. However, the restroom is actually in the jury room, and it is not a restroom often used by employees. The jury room is also not far from Respondent 3's office. Other than Judge Lev's chambers, Respondent 3's office is the closest to the jury room. Respondent 3 does not specifically recall the incident, but states that she was probably looking out the window to make sure that no one was near Judge Lev's car.

One employee cited as evidence of stalking that she went to the bathroom and Respondent 3 was already there. It is unclear how Respondent 3's presence in a room prior to the employee arriving is stalking. Furthermore, that employee did not explain to investigator Sarah Hale why he/she considered Respondent 3's presence in the bathroom before them to be stalking. Similarly, another employee asserted that when she went to the bathroom, that Respondent 3 would often be standing outside when she exited. The employee admitted that the bathroom she was using was directly across the hall from Respondent 3's office and that Respondent 3 may have had legitimate reasons to be there, but she still found it unsettling.

Witness 4, who worked for a time pre-COVID in the cash cage with Witness 6, stated that one time Respondent 3 came into the cash cage and stood behind them with her arms crossed. She stated that Respondent 3 was facing the customer windows. She stated that she did not think that Respondent 3's observation was part of any security duties or audit because that was not Respondent 3's job.

The Group stated that Respondent 3 made prolonged eye contact, would have her arms crossed, and said "good morning" aggressively. There are not any allegations of overt verbal or physical threats. Rather, employees state that they found her manner, as well as her presence in certain places, threatening.

Respondent 3 had access to the security camera feed on her computer in her office. The camera views, twelve to thirteen cameras, show up on her computer screen all at once with each camera appearing as a small square on the screen. Respondent 3 states that she has the cameras up on one of her monitors all of the time even though she is not actively monitoring them throughout the day.

██████████, whose desk was in the open area but in a far corner away from other cubicles, also displayed the security cameras all of the time ██████████ left the Court in March of 2021. When Respondent 3 was placed on administrative leave by the Executive Branch of the City in May of 2021, her computer access was cut off. Respondent 3 was instructed by Judge Lev to come into work but could not access her computer. Instead, Respondent 3 accessed the cameras through ██████████ computer. The computer was in the same spot as when ██████████ had the cameras up. The Group asserted that the presence of the videos on the computer in a common area was a threat or a statement that they were being monitored. However, the evidence suggests that ██████████ computer was used only because Respondent 3 had been denied access on her own computer.

Respondent 3 stated that she often reviews a recorded video:

- to determine how long the front door was left open and if anyone entered the building when it was unsecured
- to determine how long a vehicle has been in the parking lot or parked next to the courthouse
- to determine why the fire alarm panel was activated
- to review an act of vandalism
- to observe a suspicious item left outside the courthouse
- to observe a person camped near the building

Respondent 3 stated that the only way to observe the wall of windows in the lobby is to use the cash cage cameras.

Notably, the fact that Respondent 3 recorded video log of the municipal Court cash cage on December 28, 2020, was cited as proof that Respondent 3 was inappropriately surveilling the employees through video. However, the recorded log shows:

Recorded video viewed for camera 'Muni Court Cash Cage (Center)' from time 2020-Dec-28 08:23:38.396 AM to 2020-Dec-28 08:23:38.396 AM by INCOB\kmsmith.

The review of recorded video was for less than a second. In addition, the video log is replete with entries that last less than a second or show logins by Respondent 3 in the middle of the night (she does not have remote access) or in the pre-dawn hours. Respondent 3 also noted that she had recalled reviewing the video logs on two different occasions that are not reflected in the log. On December 1, 2020, she reviewed the recorded log to determine who vandalized her car. On December 7, 2020, she reviewed the recorded log because [REDACTED] had reported a suspicious person. Respondent 3 has retained the images she downloaded from the log in her security files for those dates. However, those dates do not show up in the video log provided by the City in the course of this investigation.

It is unclear if the logs are reflecting some sort of computer update or involuntary activity. For example, on December 7, 2020, the log shows that Respondent 3 logged out of the software at 15:59:54, and yet, without logging back in, reviewed recorded video of the cash cage at 16:10:10. Inquiry to the City IT department yielded no response. From the log, it also appears that other users are also regularly accessing the municipal Court video log, including the police, a user called “mccamera,” and Witness 6.

The Group also asserted that Respondent 3 spoke of installing “nanny cams” in the employee breakroom. Witness 1 explained that someone had left a Coke in the freezer of the breakroom overnight and it froze and exploded leaving a mess in the freezer. Several employees were joking about who could have left the Coke in the freezer and wondered aloud how they would ever solve the “mystery.” Respondent 3 joked that nanny cams in the breakroom would solve the mystery. People laughed; Witness 1, Respondent 2 and Witness 9 reported that the comment was part of a running joke.

Findings:

12. *From the evidence of record, I cannot conclude that Respondent 3 stalked or surveilled the Group or violated the City’s policy “Preventing Violence in the Workplace, (PER 14.00.03).*

13. *From the evidence of record, I cannot conclude on a more probable than not basis that Respondent 3 crossing her arms, making sustained eye contact or saying “good morning” were “credible threat[s] through physical action or gesture” pursuant to City’s policy “Preventing Violence in the Workplace, (PER 14.00.03) .*

ii. Respondent 2

Employees similarly complained that supervisors Respondent 2 or Respondent 1 would surveil them, namely that they would appear in their work areas to check on them. There are no specific examples of surveillance by Respondent 1. One employee stated that Respondent 1 was always in her office and had no idea what the employees did.

Respondent 2 was a new manager. Members of the Group, including Witness 6, expressed a belief that she should not have received the Chief Deputy position. The Group stated to investigator Sarah Hale that they would whisper around Respondent 2 so that she would not overhear and interject herself into what they were doing. Witness 9, who had been employed by the Court for less than six weeks, stated that Respondent 2 appeared in the cash cage and surprised her. Respondent 2 and Witness 9 stated that Respondent 2 said, “Oh yes, I’m everywhere, watch out!” Witness 9 interpreted this as a threat. Respondent 2 stated that her statement was a joke.

Respondent 2 was a brand new manager in a newly created position. There were many relatively new employees and the Court was serving the public virtually which was a new experience for everyone. Respondent 2 stated that she often walked around to help and answer questions.

Findings:

14. *From the evidence of record, I cannot conclude that Respondent 1 stalked or surveilled the Group or violated the City’s policy “Preventing Violence in the*

Workplace, (PER 14.00.03). I also cannot conclude that Respondent 1 subjected members of the Group to scrutiny because they engaged in protected activity.

15. *From the evidence of record, I do not find that Respondent 2's rounds or the comment to Witness 9 constituted surveillance or intimidation under the City's policy "Preventing Violence in the Workplace, (PER 14.00.03). I also cannot conclude that Respondent 2 subjected members of the Group to scrutiny because they engaged in protected activity.*

4. Comments regarding religion

The Group asserted that Respondent 1 had referred to Witness 8, Witness 3, and Witness 1 as, "good Christian girls." Witness 4 stated that she believed that she was singled out due to her religious belief; Witness 4 is atheist.

Witness 1 is openly Christian and states that it is a large part of her identity. Witness 3's husband works for a church¹⁷, and Witness 8 is also reportedly a woman of faith. Respondent 1 states that she did not identify the three women as "Christian," but admitted that she had commented that two of them, Witness 3 and Witness 1, have "a lot in common" referring to their faith. Witness 1 similarly stated that Respondent 1 did not refer to her as a "Good Christian girl" but did tell her that she and Witness 3 had a lot in common.

Witness 4 stated that her atheism is not something that she told Respondent 1 about. However, Respondent 1 brought her a greeting card intended for a colleague at the Court to sign, and then paused, noting that one of the cards referenced "Godspeed." Respondent 1 asked Witness 4 whether she was comfortable signing a card with the word "God" on it. Witness 4 said the card was fine with her but was offended as to why Respondent 1 would even ask such a question. Respondent 1 told her that someone told her that Witness 4 was offended by the word "faith." Witness 4 replied, "did I tell you?" Respondent 1 replied that someone told her that Witness 4 did not believe in God. Witness 4 replied, "I would not have told you that." Respondent 1 apologized. Based upon Respondent 1's admission and other evidence of record, I find that Respondent 1 did make comments about employees' faith.

Witness 4 also alleges that her atheism caused Respondent 1 to treat her differently and thwart her career advancement. As an example of discrimination, Witness 4 asserted that in October of 2020, Witness 1 received a promotion that Witness 4 thought she deserved. Witness 1 had ten years of experience, while Witness 4 only had two years of experience.

Witness 4 had applied for another position with the City and Respondent 1 was in the interview panel. Witness 4 stated that she had "never not gotten a job I applied for" so she believed that her unsuccessful application was Respondent 1's doing. According to

¹⁷ Respondent 1 reported that husband was a pastor. Witness 3 states that her husband is maintains the facilities.

Witness 9 from Human Resources, the initial process for that position was blind; in this blind process, Witness 4 was ranked near the bottom of the candidates. Witness 4 stated that during the interview portion, she performed poorly due to Respondent 1's presence. Witness 9 stated that Respondent 1 participated in the interview portion, but that Respondent 1 was professional and did not interfere in the process.

Witness 3 asserted that Witness 4 was passed over for Court clerking positions. Witness 3 had only been with the Court a short time and stated that Witness 4 commented that she had wanted to clerk in Court for years, but her requests to do so had been denied. Witness 3 stated that Witness 4 had asked Respondent 1 repeatedly for more and varied work experiences. However, Witness 3 also indicated Witness 4 was clerking in Court when she arrived. The record as discussed above reflects that the Court was short staffed, and as a result, staff was being called upon to serve in new roles.

Findings:

16. Respondent 1 made comments regarding employee's religion or lack thereof.

17. There is insufficient evidence to conclude that Respondent 1's comments created a hostile work environment or in any way had an impact upon Witness 4's work or opportunities for advancement. The fact that two of the three women were among the Group who complained about Respondent 1 undercuts the allegation that Respondent 1 favors Christian employees over other employees.

5. Statements regarding age

The Group also asserts that Respondent 1 made statements regarding age and discriminated against an employee on the basis of their age. Witness 6 stated that Respondent 1 has made inquiry about Witness 6's retirement plans and once made a remark to the effect that Witness 6 had a positive disposition while old employees were typically grumpy. Witness 6 stated that she is not a lead or manager because Respondent 1 doesn't like her.

Witness 6 was an employee with the Court for nearly fifteen years before Respondent 1 was hired. She did not become a lead or manager during that time. Respondent 1 states that Witness 6 never applied for a lead or manager position while she has been the Court Administrator.

Findings:

18. There is insufficient evidence to conclude that Witness 6 was discriminated against on the basis of age or that she suffered a hostile work environment due to her age.

6. Disclosure of private medical information

The Group asserts that Respondent 1 disclosed their private medical information to staff and third parties. On September 23, 2019, the [REDACTED], [REDACTED], sent Witness 7 an e-mail asking if Witness 7 could provide feedback on a report that was still in draft form, but needed to be finalized. Respondent 1 was copied on the e-mail, and in a “reply all” response that included Witness 7 and four other people stated, “XXXX [Witness 7] shattered her ankle while on vacation and may not be back for a while.” She offered to answer [REDACTED] questions regarding the report. Witness 7 did not give permission to disclose her medical information.

Another instance where Respondent 1 is alleged to have disclosed confidential medical information, the fact that a different staff member was absent because of a urinary tract infection (“UTI”), could not be verified.

Findings:

19. I find that Respondent 1 did disclose medical information about Witness 7’s broken ankle.

7. Disparaging remarks about Witness 6

Newly hired employees assert that during their interview process and in the early days of their employment with the Court, they were told that there is a problem with gossip “downstairs” or that there was someone who liked “drama” downstairs and that it should be avoided. Witness 6 has worked for the Court for 23 years and works downstairs. Through investigator Sarah Hales’ interview notes, it appears that members of the Group stated that Respondent 1 was vague and did not name Witness 6; however, the Group was fairly certain that Respondent 1 was referring to Witness 6.

Witness 6 is a Guild member, and at one point, served as the shop steward. The Group asserts that Respondent 1 was attempting to steer them away from Witness 6 due to her union involvement and perhaps also steer them away from a conduit to union rights and process. Employees also assert that Respondent 1 talked disparagingly about the Guild because she said that the Court could no longer have lunch staff meetings due to the Guild.

The Court stopped having lunch time staff meetings in approximately 2017 because the Guild successfully asserted that the meetings interfered with employees’ lunch breaks as set forth in the collective bargaining agreement.¹⁸ Respondent 1, who herself was once a shop steward, says that after that time, she was cautious about adhering to the requirements of the collective bargaining agreement.

¹⁸ The Guild’s Collective Bargaining Agreement superseded WAC 296-126-092, the applicable meal and rest break regulation.

According to Commissioner Pete Smiley, who is largely uninvolved in the disputes set forth in this report, states that due to her more than twenty-year tenure, Witness 6 had a great number of ideas about how the Court should be run and was not afraid to voice her opinion. He acknowledged that she had some very good ideas. However, investigator Sarah Hale's interview notes of Witness 6 and from other members of the Group also reflect that Witness 6 was of the opinion that Witness 7, rather than Respondent 2, should have received the Chief Deputy position. Witness 6 was also of the opinion that Respondent 1 did not have the knowledge or mental capacity to fulfill her position, and she was of the opinion that Witness 1 made more mistakes than others and should not have been promoted into a lead position. In voicing these opinions, Witness 6 undermined the authority of Respondent 1, Respondent 2, and Witness 1, and engaged in what could be characterized as "gossip" or "drama."

Findings:

20. The evidence of record is insufficient to conclude that Respondent 1's warnings against gossip or drama which alluded to Witness 6 was related to her union affiliation or an attempt to dissuade union participation.

8. Comments regarding Witness 4's departure.

On approximately May 13th, 2021, Witness 4's last day, Witness 4 asserts that she stopped by Respondent 3's office to tell her that it was her last day. Witness 4 states that Respondent 3 said, "Good. Bye." Respondent 3 recalls that instead she did not know what to say, and that her default is to say, "Cool."¹⁹ No one else heard this conversation.

Respondent 3's comment to Witness 4 is ambiguous. Moreover, it was Witness 4's last day of employment. Respondent 3 is not Witness 4's supervisor and performed wholly separate job duties. It does not appear that Witness 4 suffered any adverse employment action as a result of Respondent 3's comment.

Witness 3 stated that the day after Witness 4 left, she had commented that she was "sad that [REDACTED] [Witness 4] was gone." Witness 3 asserts that Respondent 2 responded, "Well, I am glad to have the tattletale gone." Respondent 2 stated that she actually stated that she was "glad to have the tattle-telling stop." Respondent 2 explained that she considered Witness 4 to make unnecessary reports about colleagues' conduct; frequently reporting to her when a co-worker had done something wrong without naming the co-worker. For example, Respondent 2 stated that Witness 4 would state, "Just so you know, someone didn't log out" or "Thought you'd want to know, someone left the Court lights on." Witness 3 stated that she and several others heard Respondent 2's comment.

¹⁹ Respondent 3, in fact, reverted to this default language several times during the course of our interview.

Witness 4 was no longer employed; therefore, Respondent 2's statement had no impact upon her employment. Respondent 2's statement contained no threat of termination or disciplinary action to other "tattletales," as Witness 4 resigned. There is no evidence that the statement heard by Witness 3 or others had an impact on their employment.

Findings:

21. There is insufficient evidence to conclude that Respondent 3 or Respondent 2's comments regarding Witness 4 were an adverse employment action or otherwise retaliatory,

9. Rest Breaks

The Group asserts that they were denied rest breaks. The terms of the Guild's collective bargaining agreement supersedes the Washington Administrative Code²⁰:

- a) An employee will be allowed a rest period of 15 minutes of employer's time for each 4 hours of working time, though no employee will be required to work more than 3 hours without a rest period. Rest periods will be taken as near as possible to the midpoint of the work period or as otherwise operationally feasible.

- e) An employee who misses a rest period will tell a supervisor. Rest periods do not accrue from one day to the next and cannot be cashed out.

Court is in session approximately seventeen times a week. Other than the rare jury trial, Court lasts for three or four hours from approximately 8:45 am until approximately noon, and then again from 1:30 p.m. to 4:00 p.m. Clerks in Court can, and do, send an e-mail if they need a break and a second staff member will step into the Court proceedings to enable the clerk on duty to take a break. On occasion, Respondent 2 would e-mail employees in Court to see if the clerk needed a break.

During non-Court times, employees are free to take breaks on their own schedule. Clerks will often leave the building to purchase a snack, coffee, or another beverage. No employees reported to a supervisor that they missed a rest period. During interviews, no employee indicated that they were denied breaks.

Findings:

22. Although it is possible that employees have missed an occasional rest break, there is no evidence upon which to conclude, on a more probable than not basis, that employees were denied rest periods or required to work more than three hours at a time.

²⁰ WAC 296-126-092.