



615 South 9th Street, Suite 200  
Tacoma, Washington 98405-4670  
(253) 798-7480

**TO:** Dale Washam, Assessor-Treasurer  
**FROM:** Betsy Sawyers, Human Resources Director  
**DATE:** August 18, 2010  
**RE:** EEO Retaliation Investigation Report

**RECEIVED**  
**ASSESSOR / TREASURER**

**AUG 20 2010**

**PIERCE COUNTY**

Attached you will find a copy of Donald Heyrich's report regarding the EEO retaliation investigation into four employee complaints against you. As you are aware, Mr. Heyrich of Heyrich, Kalish, McGuigan, PLLC, Employment Attorneys, was contracted by the Human Resources Department to conduct the investigation. The complaints alleged retaliation for their participation in EEO complaints.

The investigation did find sufficient evidence to support a finding of retaliation with respect to one of the four complaints. The investigator concluded that you retaliated against this employee by imposing discipline and demoting the employee from a supervisory position, Appraiser 5, to a lower level classification of Appraiser 3. Also, the investigator concluded that the employee's participation in Sally Barnes' EEO complaint investigation and the filing of this employee's own EEO complaint were the motivating factors that caused this adverse employment action. Furthermore, the investigator concluded that you, and your assistant, Gretchen Borck, violated the County's EEO policy by refusing to participate in an interview and provide requested documents. Finally, the investigator concluded that there was no violation of the County's EEO policy with respect to the other three complaints.

A copy of the investigation report has been requested by the News Tribune. The County has an obligation by law to disclose the investigation since there were sustained findings.

**Mr. Washam, I cannot over emphasize how critical it is that no further retaliation occurs to the complainant or any other employee.** Such behavior would not only again, violate the law, but it could again place the County under increased liability.

I am again highly encouraging you to contact me directly at 253/798-7469 to discuss the findings and recommendations and to work with me to attempt to mitigate this situation and to prevent any further retaliation. Please contact my Administrative Assistant at 253/798-6174 to schedule a meeting if you would be willing to participate in such a meeting.

Attachment: Investigation Report  
EEO Policy

cc: Pat McCarthy, County Executive

AATEEORetaliationComplaintsOutcomeWashamMem.doc/P10-294

PIERCE COUNTY IS AN EQUAL OPPORTUNITY EMPLOYER



# Pierce County

Human Resources Department

Betsy Sawyers  
Director

615 South 9th Street, Suite 200  
Tacoma, Washington 98405-4670  
(253) 798-7480

August 19, 2010

**RECEIVED**  
ASSESSOR / TREASURER

AUG 20 2010

Dale Washam  
Assessor-Treasurer  
2401 S. 35<sup>th</sup> Street – Room 142  
Tacoma, WA 98409

PIERCE COUNTY

Mr. Washam:

As the records custodian for the Pierce County Human Resources Department it is my duty to notify you that the Pierce County Human Resources Department has received a public records request from Sean Robinson, a reporter from the Tacoma News Tribune, for a copy of the report on the recently concluded EEO investigation which was conducted by Don Heyrich of Heyrich, Kalish, McGuigan, PLLC. The County has the obligation by law to disclose the report on the investigation since there were sustained findings.

Mr. Robinson is requesting: "The most recent report-review of HR-related complaints against Pierce County Assessor-Treasurer Dale Washam".

The report is subject to disclosure with the following exclusions:

- The names and other identifying information of the employees filing an EEO complaint, to protect their privacy rights pursuant to RCW 42.56.240(2).
- The name of a second employee named in the report where there were also findings of retaliation, because Mr. Robinson did not request that information.
- The name of the complainant in the previous EEO complaint referenced in the report who has not otherwise waived their confidentiality rights, would typically be redacted from the records where it appears to protect their privacy rights pursuant to RCW 42.56.240(2). However, the employee who filed the previous EEO complaint referenced in this report has indicated that she does not desire her identity to be redacted, so no such redactions have been made.

I will be making the records available to Ms. Robinson on Monday, August 30, 2010. Attached is a copy of the records we will be providing for your review. If you have any questions about your rights in this matter, I suggest that you contact an attorney.

Sincerely,

Sue Wahlberg  
Public Records Officer  
Pierce County Human Resources

PIERCE COUNTY IS AN EQUAL OPPORTUNITY EMPLOYER

pd dwasham enotice.doc  
P10-297

Attachment: Public Records Request dated Thursday, August 12, 2010  
August 12, 2010 Investigation Report from Don Heyrich of Heyrich, Kalish,  
McGuigan, PLLC.

**Subject: Records request**

**Date:** Thursday, August 12, 2010 4:36 PM

**From:** SeanRobinson <sean.robinson@thenewstribune.com>

**To:** Sue Wahlberg <swahlbe@co.pierce.wa.us>

**Cc:** Hunter George <hgeorge@co.pierce.wa.us>

**Conversation:** Records request

Dear Sue,

Under RCW 42.56, I'm seeking copies of the following records:

The most recent report-review of HR-related complaints against Pierce County Assessor-Treasurer Dale Washam. I understand that this report will be complete in the next few days. I'm afraid I can't be more specific about the report, since I know little about it. By my count, it would be the fourth such report tied to Washam's tenure.

I will fax this request to the appropriate number. Please advise me when the records become available.

Thank you,

Sean Robinson  
Reporter  
The News Tribune  
253-597-8486  
sean.robinson@thenewstribune.com

AUG 20 2010

PIERCE COUNTY



Donald W. Heyrich  
Email: dheyrich@hkmlegal.com  
Direct: (206) 826-5357

August 12, 2010

TO: Betsy Sawyers, Director  
Pierce County Human Resources Department

FROM: Donald W. Heyrich  
Heyrich Kalish McGuigan PLLC

SUBJECT: Investigation Report -- EEO Complaints in the  
Pierce County Office of the Assessor-Treasurer

### **I. Summary of Findings**

Dale Washam and [REDACTED] retaliated against one of the employees discussed in this report. The employee's participation in EEO complaints was a substantial factor in adverse employment actions imposed by Washam and [REDACTED]. I am unable to conclude that there was a violation of the Pierce County EEO Policy with respect to the other three complaining employees.

### **II. Introduction**

Four employees in the Pierce County Office of the Assessor-Treasurer submitted complaints under the Pierce County Equal Employment Opportunity Policy, which is set forth in Pierce County Code Section 3.16 (hereinafter "EEO Policy"). The employees allege retaliation because they were witnesses in a prior EEO investigation of Pierce County Assessor-Treasurer Dale Washam or because they submitted their own EEO complaints.

I reviewed the complaints, analyzed pertinent documents, and conducted 19 witness interviews, including interviews of the complaining employees. This report sets forth my findings and conclusions.

Preliminarily, two matters must be noted in connection with this investigation. First, three key witnesses did not participate. Albert Ugas, the

Deputy Assessor-Treasurer, and Gretchen Borck, the administrative assistant to the Assessor Treasurer, did not respond to interview requests from Pierce County Human Resources. I understand that they likewise failed to be interviewed for other similar investigations. It is unclear whether they have refused to be interviewed or whether they have been forbidden from doing so by Assessor-Treasurer Dale Washam.

Assessor-Treasurer Dale Washam offered to participate in this investigation but only upon the submission of written questions and answers. This offer was not accepted because written questions and answers are not conducive to an effective investigation. Written "interrogatories" provide no opportunity to observe the demeanor of a witness, no opportunity for efficient and effective follow up questions, and no opportunity to challenge in-person the veracity and logic of statements by the witness, all of which are key factors in assessing allegations of discriminatory motive.

Pierce County's EEO Policy states that it applies to all levels and departments of County government. PCC 3.16.010. Pierce County Code Section 3.16.080(A) states, "All employees, including the complainant, co-workers, potential witnesses, and others must participate in and cooperate fully in the investigation of complaints. Failure to do so may result in disciplinary action." PCC 3.16.080(A) (emphasis supplied).

Second, I am aware that employees in the Office of the Assessor-Treasurer (hereinafter "AT") have submitted complaints under the "whistleblower" provisions in Pierce County Code Section 3.14. The four employees discussed in this report are among those AT employees who submitted such complaints under Section 3.14. In some instances their "whistleblower" allegations are stated in the same documents that identify their EEO retaliation allegations. The "whistleblower" allegations have been investigated separately and are outside the scope of this report, which is limited to allegations of retaliation under the EEO Policy, PCC 3.16.090.

### III. Definition of "Retaliation" Under Pierce County's EEO Policy

The four employees allege violations of the anti-retaliation section of the Pierce County EEO Policy. That section states as follows:

"Retaliation is an adverse employment action, taken against an individual because they have exercised a right protected under the law such as complaining about discrimination or harassment or assisting with or participating in the resolution or investigation of such a complaint in the workplace. Any form of retaliation against a person who participates in a complaint or investigation is specifically prohibited, will not be tolerated, and will be subject to severe disciplinary action up to and including termination of employment." (PCC 3.16.090)

Under the section of the EEO policy pertinent here, a "retaliation" violation requires three things. First, the EEO Policy prohibits "retaliation against a person who *participates* in a complaint or investigation." Under Washington law, giving information or being interviewed in connection with an EEO investigation is considered "participation" in a complaint or investigation. See Blinka v. Wash. Bar Ass'n, 109 Wn. App. 575, 587 (2001).

Second, retaliation under the EEO Policy requires an "adverse employment action." PCC 3.16.090. Under the law, an adverse employment action requires discharge, demotion, or another form of discrimination in compensation or the terms and conditions of employment. An "adverse employment action" requires more than the type of trivial harms, petty slights, or minor annoyances that often take place at work and that all employees experience. To be an adverse employment action, a change in employment terms and conditions must be materially adverse to a reasonable employee and sufficiently harmful that it could dissuade a reasonable worker from making or supporting a charge of discrimination. Burlington Northern & Santa Fe Ry. v. White, 548 U.S. 53 (2006); Burchfiel v. Boeing Corp., 149 Wn. App. 468, 493 (2009).

Third, there must be a causal connection between the participation and the adverse employment action. The participation in protected activities need not be the *only* cause of the adverse employment action. To sustain a retaliation violation, it is sufficient to show that participation in the protected activity was a "substantial

factor” in the adverse employment action. See Hollenbeck v. Shriner’s Hospital for Children, 149 Wn. App. 810, 823 (2009).

#### IV. Background on the Retaliation Complaints

It is by now well publicized that AT employee Sally Barnes previously submitted a complaint alleging discrimination and retaliation under the Pierce County EEO Policy. Ms. Barnes’ allegations were analyzed in an August 7, 2009, report by Diane Hess Taylor, which report is published at the following location: [http://www.co.pierce.wa.us/xml/abtus/ourorg/at/eeo\\_report\\_20090807.pdf](http://www.co.pierce.wa.us/xml/abtus/ourorg/at/eeo_report_20090807.pdf). It was concluded that Assessor-Treasurer Dale Washam retaliated against Ms. Barnes because of her participation in discrimination complaints.

Employees in this case were interviewed by Diane Hess Taylor and gave information in connection with Sally Barnes’ discrimination and retaliation complaint. They now believe that they have been retaliated against by Dale Washam for participating in the Sally Barnes investigation.

#### V. Bases for Analyzing Retaliatory Intent

Central to this or any other employment discrimination case are the motives of those who impose adverse employment actions, here Dale Washam and [REDACTED]. Those who harbor discriminatory or retaliatory motives usually do not announce those motives. I therefore must draw inferences from indirect and circumstantial evidence. The analysis takes into account the employer’s justification for the adverse employment issue and all the facts and circumstances, with the ultimate issue being whether retaliatory motive was a substantial factor in the decision.

Inferences of improper intent can be shown from any type of circumstantial evidence tending to show that the decision-maker harbored retaliatory animus. There are certain factors that have been recognized by the courts as indicative of discriminatory intent. For example:

- o Comments that demonstrate discriminatory attitudes or opinions toward the protected class (here those who participate in EEO complaints) is evidence of discriminatory intent.

- It may be evidence of discriminatory intent if the employer's explanation for the action is not believable.
- Proximity in time between the protected activity and the adverse employment action can be evidence of discriminatory intent.
- An employer's failure to follow applicable employment policies can be evidence of discriminatory intent.

## VI. Complaining Employee One

The first complaining employee (hereinafter referred to as "CE1" to protect the identity of the employee) participated in the Sally Barnes EEO investigation and has submitted [REDACTED] own EEO complaint. These actions satisfy the requirement that CE1 has "participated" in protected activity. In addition, CE1 has been the subject of employee discipline, demotion, and removal of job duties. These actions satisfy the requirement for an "adverse employment action." I therefore must determine whether CE1's participation in the Barnes EEO investigation, or the filing of [REDACTED] own complaint, was a substantial factor in adverse employment actions imposed by Mr. Washam and [REDACTED].

By way of background, Dale Washam believes that there were violations of law within the AT office during the years 2001-2008. Since taking office in January 2009, and continuing to the present, he has utilized considerable resources of his office to campaign against those prior violations. He has submitted, and continues to submit, numerous letters, reports, and data to state and county agencies and departments, to the press, and to his on-line Internet site, in an effort to expose the violations and to penalize the alleged perpetrators.

I will not detail all of the events that occurred during Mr. Washam's first few months in office, which are chronicled in prior investigation reports. However, as background on this case, I note that Mr. Washam called a meeting on January 22, 2009, to discuss the alleged illegal acts that had occurred at the AT's Office in the past. From that point forward, multiple employees contacted their labor union and Pierce County Human Resources regarding Washam's actions and comments. The most prominent contact being the EEO Complaint submitted by Sally Barnes.

When the Barnes EEO complaint became known, Washam publicly called it "bogus." Washam told employees that he knew who complained and the complainant filed the complaint to generate an excuse to protect her job, knowing that she would be fired. Washam grew increasingly hostile toward Barnes. Witnesses perceived that Mr. Washam detested Barnes so much that he did not want to be in her presence or even to see her. He verbalized animosity toward anyone who might assist Barnes, frequently making derogatory references to "Sally's Lieutenants" and stating that he knew who helped her and they would be held accountable. As discussed in the report by Diane Hess Taylor, Barnes' EEO complaint was a substantial motivating factor in subsequent adverse employment actions imposed by Washam.

Initially, Washam told employees that he was going to drop any attempt to cast blame for the past errors of the AT's office. He pledged to work prospectively to fix any problems. However, after learning of EEO complaints, Washam did an about-face. He stepped up his campaign regarding the physical inspection issue and accusations of criminal and fraudulent activity in the prior administration, and he stressed the need to find people "guilty." Diane Hess Taylor found that Washam did this as a counter-attack against Barnes and to intimidate anyone supporting her. Washam's campaign on the physical inspection issue has now become the centerpiece of his term in office.

All of this caused the work environment in the AT's office to become fractured, galvanized, and dysfunctional. According to witnesses, Washam became more and more combative, and then increasingly he withdrew himself from any interaction with employees. Witnesses describe that, at this point, Washam rarely, if ever, will interact with employees, other than some perfunctory greetings while passing in the hallway, and directs all employee communications through Mr. Ugas. Nearly every witness states that the dynamics in the office have caused very low employee morale.

In CE1's situation, [REDACTED] was not disfavored immediately like Sally Barnes was. Rather, initially, [REDACTED] was *favored*. [REDACTED] brought Washam pages from a journal that were critical of the prior administration. This was helpful to Washam. He used the journal in a presentation to the Pierce County Council and arranged for CE1 to speak to the press. Washam publicly praised CE1 as someone who "stood up to Madsen." CE1 was made a finalist for the position as Washam's [REDACTED]. However, over the last 15 months, CE1 has gone from being praised by

Washam and being a candidate for [REDACTED] to being disciplined on dubious charges and being demoted to the lowest possible job classification and duties.

The relationship between Washam and CE1 began its downhill slide on March 19, 2009. By that time, Washam had been counseled by the Human Resources Department concerning religious references in the workplace and had exhibited anger and verbalized intent to retaliate against those who complained against him. He told CE1 that he intended to fire Sally Barnes by building a case against her "the dirty way."

The precipitating moment that caused CE1 to be disfavored was when Washam and CE1 were discussing Sally Barnes. CE1 said that, if called as a witness, [REDACTED] would be truthful and say some good things about Barnes. Washam became angry, red in the face and called CE1 a "protectionist." From that point forward, Washam was hostile toward CE1.

On April 23, 2009, CE1 was interviewed by Diane Hess Taylor and this fact was known by Washam. Washam had his assistant tracking who was interviewed as part of the investigation, how many times they were interviewed, and how long their interviews would last. One employee found an interview tracking list with this information on a copier and Washam later confirmed its existence. Washam also talked to employees and told them he knew they were interviewed. He questioned employees on whether they had criticized him in their interview. When they denied doing so, he said, "I don't know that."

On May 11, 2009, the selection of [REDACTED] for the [REDACTED] position was announced. [REDACTED] told CE1 that CE1 did not get the job because he "stepped on [his] dick." According to various on-line slang dictionaries, this is a phrase meaning a screw-up, embarrassing oneself, or to cause one's own problems. No evidence has come to my attention suggesting any reason why CE1 would have caused problems for [REDACTED] by this point, other than (1) expressing opinions on Sally Barnes, which caused Washam to state [REDACTED] was a "protectionist," and (2) being interviewed by Diane Hess Taylor.

Ugas also said that CE1 was not selected for the [REDACTED] position because of "character" issues and that Washam had "trust issues" with CE1. Washam was heard telling others that CE1 "talks too much."

That same day, May 11, 2009, [REDACTED] informed CE1 and another [REDACTED] that they would be switching positions. CE1, a [REDACTED] [REDACTED] would be transferred to the statistical appraisal team. The other employee was the [REDACTED] and would become [REDACTED]. [REDACTED] explained that the change would allow a "new set of eyes" over the [REDACTED] and would allow for cross-training.

CE1 believes that the decision to remove [REDACTED] from the position was an act of retaliation based on Washam's perception that CE1 supported Barnes. Such a drastic change in job duties can be an "adverse employment action," especially where, as here, they were followed up with further organizational changes resulting in demotion.

Witnesses describe the decision to switch CE1's position as being bizarre from a management standpoint and bad for productivity. They say CE1 is a bright, hard-working, and skilled expert in commercial appraisal. [REDACTED] consistently was successful in handling big money court cases and had developed rapport with the county attorneys who relied on [REDACTED] as a witness for the office. The county had significant investments in [REDACTED] training and experience. All of that was thrown by the wayside when CE1 was removed from [REDACTED] position. [REDACTED] has become underutilized (and, by now, completely marginalized).

The proximity in time between the protected activity and the adverse employment action raises an inference of retaliatory motive, as does the employer's failure to follow the section of the County EEO policy requiring cooperation in investigations. However, we cannot conclude at this time, based on the available evidence, that the change was motivated by retaliatory animus. A final conclusion on this issue should involve exploring with Dale Washam and [REDACTED] their reasonable, nondiscriminatory explanations for the decision.

The relationship between CE1, Washam, and [REDACTED] grew worse in the weeks and months that followed the switch in CE1's job duties. When analyzing the retaliatory intent of Washam or [REDACTED], it is important to note that CE1 has engaged in conduct that would tend to strain [REDACTED] relationship with these gentlemen. For example, when character was mentioned by [REDACTED] in connection with the selection of [REDACTED], CE1 responded that [REDACTED] would have declined the job for reasons related to "character" after learning more about Washam's decisions. A comment

such as that obviously would not improve CE1's standing in the eyes of Washam. In another example, CE1 sent a memo to Washam on October 12, 2009, stating that the "Investigative Report" that Washam had published was "false and misleading." CE1 went so far as to request that Washam issue a public statement retracting his earlier findings.

Witnesses describe CE1 as someone who can be head-strong at times and [REDACTED] will stand up for [REDACTED] and [REDACTED] beliefs, sometimes to a fault. After [REDACTED] job responsibilities were changed, CE1 expressed displeasure at Washam's decisions and publicly vocalized frustration to coworkers. [REDACTED] talked with [REDACTED] multiple times to explain why the move was not in the best interests of the office. [REDACTED] also sent an email to Washam protesting the change. Again, these are examples of actions that would not improve CE1's standing in the eyes of Washam.

Tensions surfaced again on July 16, 2009. CE1 was in a meeting with Washam and others. At some point, the conversation touched on the subject of taxpayers who appeal their tax assessments each year. CE1 made a reference to these taxpayers as "perennial appellants." Witnesses say that Washam became angry, red in the face, and told CE1 that use of that term was bigoted. Washam explained that he had been called a "perennial candidate" by the press in the past when he announced candidacies for public office.

It is clear that, by this time, the work relationship between CE1 and Washam was strained, if not broken. Washam's dislike for CE1 had grown to such an extent that he became extremely angry with CE1 for an innocuous use of the word "perennial." For [REDACTED] part, CE1 did not back down. [REDACTED] drafted minutes of the meeting that described the events as they occurred (the accuracy of which has been confirmed with other meeting attendees).

When CE1 submitted the "minutes" of the meeting, [REDACTED] received a written reprimand from [REDACTED] stating as follows:

At some point during the discussion, you chose to label certain citizens who exercise multiple times their right to appeal their property valuation as "perennials". Dale took offense at the use of such, or any other labels, and stated that it amounted to an insult. At which point in time you compounded your poor judgment by aggressively telling him that "on at least six different

occasions" you had told him you approached valuation disputes as though the values were indeed in error. When corrected by Dale on this statement, you again chose to prolong the argument, rather than exhibiting the better judgment demanded of a section supervisor under similar circumstances.

As you well know . . . this is not the first instance where you have exhibited inappropriate behavior towards those in attendance at work meetings. It is not up to me to speculate as to the root causes for this issue, my interest lies exclusively on ensuring such incidents do not happen again. My concern is magnified however, upon reviewing the official minutes for this meeting that you submitted. You brought these minutes to me beforehand and asked me to review them. I purposely limited my review to its grammar and suggested a very small number of inconsequential corrections, primarily because I did not wish it to be alleged I had altered in any form your version of the events.

This document . . . represents an official county record. It is essential they accurately and truthfully reflect what actually took place. There should not even be a need for me to remind you of something as basic as this. The version you submitted makes no mention of the events as I and others in attendance understood them. In so doing, perhaps unbeknownst to you, you are sowing the seed of doubt on your other works.

You are a critical element and a valuable member of this office's staff. Your contributions and your talents are many, and you well know they are indeed appreciated. We cannot however, sit idly by and allow you to undermine and disrespect those working with you, as well as your own leadership role within our team. We must hold you to a higher standard.

The minutes need to be corrected and your attitude needs to change. I am also taking the additional step of relieving you of supervisory responsibilities over [two employees]. From this point forward they will be reporting directly to me.

By late August, 2009, Washam was in receipt of the report by Diane Hess Taylor. Washam would have known that some of the comments in the report originated from CE1. In addition, by September 2009, Washam knew that CE1 had submitted an EEO complaint. Washam told one witness that he knew which employees had filed EEO complaints and mentioned CE1's name.

In early September 2009, the union representing AT employees filed an Unfair Labor Practice Complaint with the Washington Public Employment Relations Commission. The union's complaint expressly identified CE1 as someone who had made official retaliation complaints against Washam. In addition, the ULP complaint prominently features CE1's name and mentions █████ numerous times as a source of allegations against Washam.

On December 19, 2009, CE1 received a written letter of reprimand, allegedly for "falsifying" a document. The document in question was a performance evaluation for another employee. CE1 was the employee's supervisor for 9 months of the evaluation period. When preparing the evaluation, CE1 included statistics of the employee's work for the full one-year evaluation period, not just for the 9-month supervision period. The data in the evaluation was accurate. The only issue was that, according to █████, CE1 should have included data *only* for the period CE1 was the employee's supervisor, not for the entire evaluation period. The alleged offense is inexplicable. It is far from "falsification" to include accurate data in an evaluation, particularly where there were no directions from █████ on what data should be included or excluded. It is unclear to me whether the employee being evaluated ever received a separate evaluation that included the data during the three months when CE1 was not the supervisor. In any event, what is clear is that █████ reviewed CE1's draft and never raised any questions about the dates or the data. Instead, █████ pressed CE1 to finish the evaluation and to deliver a final, signed copy. In retrospect, this event appears to be an odd set-up in which █████ was eager to receive a final, signed copy so that CE1 could be accused of "falsification."

Another disciplinary incident occurred around the holiday season in late December, 2009. CE1 was disciplined for talking too loudly in the work area. █████ refused to tell CE1 when and what was said, and said only that █████ was talking too loudly about "personal" matters. I learned that Washam and █████ brought an employee (someone known to have unfavorable views of CE1) into the office to ask █████ whether CE1 had been discussing Washam's actions. This witness told Washam and █████ that CE1 had done so and this presumably was the basis for the discipline.

This incident demonstrates that Washam and █████ were targeting CE1. Multiple witnesses have stated that another employee talks loudly in the work area

about personal matters (and personnel matters) on a daily basis. That employee has been overheard telling taxpayers on the telephone about the personnel matters going on in the ATs office. For example, this employee told a taxpayer on the telephone (and speaking of CE1), "My old boss, because ego got too big, had to be demoted and put out in the field." Employees have complained to [REDACTED] about these comments. The employee has not received a written reprimand.

Washam and [REDACTED] presumably would argue that they targeted CE1 not for retaliatory reasons, but because CE1 engaged in disruptive and disrespectful defiance of their authority. I agree that CE1 clearly has lost respect for Washam and [REDACTED], and some of CE1's words and actions, *not* related to EEO issues, probably were factors motivating the actions of Washam and [REDACTED] with respect to CE1.

However, CE1's defense of Sally Barnes, [REDACTED] participation in the Barnes EEO complaint, and the filing of [REDACTED] own EEO complaint were substantial motivating factors in the decisions made by Washam and [REDACTED]. Washam does not hide his disdain for CE1's decision to pursue an EEO complaint. In a letter dated April 14, 2010, Washam states that the EEO complaints in his office are "frivolous" and are being "wrongfully used." In a meeting regarding one of the reprimands, [REDACTED] made comments tending to show that he and Washam were unhappy with CE1's decision to file an EEO complaint and other complaints. He stated that CE1 had not shown any willingness to work with Washam and that "you guys are doing a lot of writing." Also, the proximity in time creates an inference of a link between the protected conduct and the adverse employment actions.

I conclude that CE1's support for Barnes and the filing of [REDACTED] own EEO complaint, over time, contributed to Washam and [REDACTED] viewing CE1 as a defiant employee. CE1 was viewed as "one of them." [REDACTED] was viewed as one of "Sally's Lieutenants" who supported Sally Barnes in the investigation, someone who would not stop speaking up, who submitted [REDACTED] own EEO complaint, and was in a lead role in the union unfair labor practice complaint. Based on all the evidence reviewed, I find that CE1's participation in EEO complaints was a substantial factor in adverse employment actions imposed by Washam and [REDACTED].

## VII. Complaining Employee Two

The second complaining employee ("CE2") was interviewed by Diane Hess Taylor on May 5 and May 12, 2009. As noted above, [REDACTED] knew this fact.

On May 11, 2009, [REDACTED] informed CE2 that [REDACTED] would be switching positions with CE1. CE1, a [REDACTED] would be transferred to the statistical appraisal team. CE2, the [REDACTED], would become [REDACTED]. [REDACTED] explained that it would allow a "new set of eyes" over the [REDACTED] and would allow for cross-training.

CE2 believes that this decision was motivated by participation in the Barnes EEO complaint. However, as noted above, we cannot conclude at this time, based on the available evidence, that the change was motivated by retaliatory animus. A final conclusion on this issue should involve exploring with [REDACTED] and [REDACTED] their reasonable, nondiscriminatory explanations for the decision.

I have not found any further actions against CE2 that could be considered retaliatory. The one exception is that [REDACTED] has stopped talking to CE2 completely, but witnesses describe that [REDACTED] has become withdrawn from everyone in the office and rarely interacts with any employees at all. CE2 has not been disciplined and has been retained in a leadership position (although at a lower level than before the changes).

CE2 was interviewed by Diane Hess Taylor and is mentioned in the union's ULP complaint. However, when [REDACTED] has said which employees [REDACTED] thinks filed EEO complaints, employees have not heard [REDACTED] say that CE2 had filed such a complaint. This could be because CE2 is not as vocal as CE1. CE2 has been less vocal than CE1 in [REDACTED] opposition to [REDACTED] practices, making it less likely for [REDACTED] to believe that CE2 was one of "Sally's Lieutenants." I am unable to conclude that there has been a violation of the EEO Policy with respect to CE2.

### VIII. Complaining Employee Three

The third complaining employee worked as a [REDACTED] in the AT's Office until [REDACTED] was laid off. [REDACTED] submitted an EEO complaint stating that [REDACTED] believes [REDACTED] was retaliated against when [REDACTED] was assigned to work with Sally Barnes.

The report by Diane Hess Taylor describes in detail the assignment of Sally Barnes to a special project on May 11, 2009, and concludes that the assignment was motivated in part by Barnes' EEO complaint. CE3 alleges that [REDACTED] was assigned to work with Barnes to lend legitimacy to the project, as a cover up for [REDACTED] retaliatory motive. However, we are unable to conclude that CE3's assignment violated the EEO Policy.

It is unclear whether assignment to the project should be considered an adverse employment action. CE3 was classified as a [REDACTED]. For some time, the office had been assigning CE3 to miscellaneous projects (i.e., to find work) in order to retain CE3 as an employee. It made sense that [REDACTED] would be the person assigned to any special projects that came up, if not this one then the next. Moreover, the level of CE3's pay was not reduced even though [REDACTED] was performing work that was below [REDACTED] pay scale. Moreover, witnesses have overheard [REDACTED] complimenting CE3, and CE3 never experienced any animosity from [REDACTED].

CE3 was laid off from the [REDACTED] position and [REDACTED] believes that this decision, too, may relate to [REDACTED] participation in the Barnes EEO complaint. However, [REDACTED] position was eliminated during drastic budget cuts. Witness information confirms that it was clear from a business standpoint that CE3's position was one that should be cut. We are unable to conclude that this decision was in violation of the EEO Policy.

### **IX. Complaining Employee Four**

The fourth complaining employee filled out an "EEO Complaint Intake Form," which appears to be an attempt to file an EEO Complaint. However, that document and the employee's allegations do not concern any EEO issues. The employee states that [REDACTED] has been retaliated against for filing a whistleblower complaint under Pierce County Code Chapter 3.14. These allegations are beyond the scope of this investigation, and the employee does not allege retaliation for participation in EEO complaint proceedings. Accordingly, I am unable to find any violations of the Pierce County EEO Policy with respect to the fourth complaining employee.

### **X. Conclusion**

There has been a violation of the EEO Policy with respect to Complaining Employee One. [REDACTED] participation in EEO complaints was a substantial factor in adverse employment actions imposed by Washam and [REDACTED]. I am unable to conclude that there was a violation of the EEO Policy with respect to the other three complaining employees.