
INVESTIGATION REPORT

WADENA COUNTY
COMPLAINT INVESTIGATION

Issue(s):

**Alleged Hostile Work Environment and Retaliation
For Protected Reports of Harassment**

I. PROCEDURAL BACKGROUND

This report documents a complaint investigation initiated by and conducted on behalf of the Wadena County Board of Commissioners (“County Board” or “Board”).

- A. On September 12, 2017, the County Board authorized the investigation of a hostile work environment complaint filed on September 1, 2017, by [REDACTED]

[REDACTED] The subject to the complaint is Judith Taves (“Taves”), Wadena County Auditor/Treasurer (“A/T”). A/T Taves is alleged to have engaged in a continuing pattern of behavior creating a hostile and harassing work environment for her direct report employees. Taves is also alleged to have terminated a probationary employee after and in retaliation for the filing of the September 1 complaint accusing her of hostile work environment harassment.

- B. The complaint investigation was conducted by Investigator Michelle Soldo of Soldo Consulting, P.C. During the period September 14 to November 6, 2017 witness interviews were conducted and records were received and reviewed. On October 6, 2017, Auditor/Treasurer Taves was interviewed. On November 6, 2017, the investigation record was closed.

II. INVESTIGATION RECORD

The extensive investigation record is cited and discussed in Attachment A. See Attachment A: Summary of the Investigation Record.

- A. The investigation record includes the initial complaint consisting of a letter dated September 1, 2017 from Teamsters Local 320 Business agent Mike Horton and a Teamsters Local 320 Class Action Grievance dated September 6, 2017. The grievance was subsequently withdrawn.¹ See Exhibit 1: Complaint Record.

¹ On September 14, Teamsters Local 320 withdrew the grievance without prejudice or setting a precedent as the conditions requested were met via the Board’s interim measures adopted at its September 12, 2017 meeting.

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- B. The investigation record includes the County policy that applies to the complaint allegations. See Exhibit 2: Wadena County Personnel Policy, Article 48 – Wadena County Policy Against Offensive Conduct, Harassment and Violence. Key policy provisions are identified in Section V of Attachment A. See Attachment A: Section V – Summary of Applicable County Policy and Policy Provisions.
- C. The investigation record includes background information regarding A/TO operations and staffing. That information is identified in Section II of Attachment A. See Attachment A: Section II – Wadena County Auditor/Treasurer’s Office Background.
- D. The investigation record includes two reports discussing the findings of a County-wide work environment/climate review (“environmental scan”) conducted during the period September 2016 to January 2017. One report discusses general findings. The other report discusses findings specific to the A/TO work environment. Key A/TO report findings directly relevant to this alleged hostile work environment complaint investigation are identified in Section III of Attachment A. See Exhibit 3A: County-wide Work/Environment Climate Review Report Dated 01.10.17 and Exhibit 3: Wadena County Work Environment/Climate Review Reports. See also Attachment A: Section III – Discussion of the Findings of a County-wide Work Environment/Climate Review and Issues Adversely Impacting the A/TO Work Environment.
- E. The investigation record includes a March 16, 2017 Consultant memorandum discussing consultant facilitated meetings with Commissioners, A/T Taves and other County staff to address environmental scan findings. See Exhibit 3E: 03.16.17 Memorandum from Consultant Toni Smith to Wadena County Commissioners Re: “March Facilitation.”
- F. The investigation record includes September 12, 2017 County Board Meeting and Agenda and Minutes discussing County Board authorization of a complaint investigation and interim action. See Exhibit 9: County Board of Commissioner 09.12.17 Meeting Agenda and Minutes and Clerk of the Board’s Handwritten Minutes.
- G. The investigation record includes information received from [REDACTED] employees (collectively referred to as “complainants”) interviewed by Investigator Michelle Soldo. Due to concerns expressed regarding potential continuing retaliation on the part of Taves, the information the complainants provided is generally summarized in Sections IV and VI of Attachment A. See Attachment A: Section IV – Summary of Complainant Feedback and Section VI: Discussion of Key Events Leading to the Complaint Teamsters Local 320 Filed on Behalf of [REDACTED] on 09.01.17.
- H. The investigation record includes information received from the following County Commissioners and employee witnesses with knowledge of events leading to this complaint investigation: 1) [REDACTED] 2) [REDACTED] 3) Commissioner Jim Hofer; 4) Commissioner Chuck Horsager; 5) Commissioner Sheldon Monson; 6) Commissioner Bill Stearns; 7) Commissioner Dave Hilukka; and 7) [REDACTED]. The information [REDACTED] and [REDACTED] provided is discussed in written statements marked and attached hereto as

Exhibits 4 and 5. The records [REDACTED] provided are attached hereto as Exhibit 9. The information the Commissioners provided is discussed in Section VI Attachment A. Records Commissioners provided are marked and attached as Exhibits 6, 7 and 10. See Attachment A: Section VI - Discussion of Key Events Leading to the Complaint Teamsters Local 320 Filing on Behalf of [REDACTED] on 09.01.17. See also Exhibit 4: [REDACTED] Written Statement; Exhibit 5: [REDACTED] Written Statement; Exhibit 6: Commissioner Jim Hofer Record Submissions; Exhibit 7: Commissioner Chuck Horsager Record Submissions; and Exhibit 10: [REDACTED] Record Submissions.

- I. The investigation record includes information Respondent A/T Taves provided during her in-person and recorded investigatory interview conducted on October 6, 2017 at her Wadena, Minnesota home (at her request). Present during the interview was A/T Taves' husband, Harry Taves. Prior to the interview, Taves received a summary of the complaint allegations. Taves' response to the allegations is detailed in the attached interview recording and summarized in Section V of Attachment A. See Exhibit 10A: 10.06.17 Memorandum from Investigator Michelle Soldo to Respondent A/T Judy Taves; Exhibit 10B: Respondent A/T Judy Taves 10.06.17 Interview Recording and Exhibit 10C: Respondent A/T Judy Taves Record Submissions. See also Attachment A: Section V - Discussion of Key Events Leading to [REDACTED] Filing a Complaint [REDACTED] on 09.01.17.

III. SUMMARY OF ALLEGATIONS, FINDINGS AND FACTUAL BASIS FOR FINDINGS

- A. Allegation 1: Following a County-wide and County Board initiated environmental scan that concluded in mid-January 2017, A/T Taves continued to engage in much of the same hostile behavior toward A/TO staff and other County employees identified in a detailed report presented to and discussed with Taves during a December 28, 2016 scan debrief meeting. Taves' recent behavior is alleged to include negative and offensive remarks she made to and about the Christianity of an A/TO employee and her spouse, remarks perceived and alleged to constitute disparate treatment based on religion.
 1. Finding – Allegation 1: The allegation is substantiated in part. The record establishes that following the County-wide environmental scan, A/T Taves continued to engage in hostile behavior toward A/TO staff. The record does not substantiate the allegation that Taves engaged in behavior that constitutes disparate treatment based on religion.
 - a. The record establishes that following the environmental scan, Taves continued to engage in some of the same hostile, divisive, controlling and disruptive behavior she engaged in prior to the environmental scan. The behavior alleged during this investigation is similar to and/or consistent with the behavior Taves was widely alleged to have engaged in prior to the environmental scan. Taves, by her own account, did not agree with and erroneously characterized written and verbal scan feedback she received regarding the adverse impact of her behavior on the work environment of A/TO and other County employees as false claims made

against her by two Department Heads and a single County employee. Consequently, Taves did not take any action to change intra- and external-office behavior she did not view as problematic.

- b. Based on the totality of the record, Taves' prior and current denial that she engaged in behavior independently reported and corroborated by multiple employees is not credible. The greater weight of the evidence indicates that after the environmental scan, Taves continued to engage in behavior that adversely impacts the work environment of A/TO staff and others. Taves' continuing behavior has fostered a climate of fear and intimidation for A/TO staff.
 - c. Taves' behavior is prohibited by Wadena County Personnel Policy, Article 48 – Policy Against Offensive Conduct, Harassment and Violence, which prohibits offensive, harassing and violent conduct and provides that the County will maintain a work environment that is free from offensive conduct, harassment and violence and will take action to address prohibited conduct.
2. The record does not substantiate the claim that Taves engaged in behavior that constitutes disparate treatment based on religion. The allegation is based on alleged remarks Taves' denied making that could not be independently corroborated.
 3. Interim measures implemented by the County Board on and since September 12, 2017 have significantly improved the A/TO work environment.
- B. Allegation 2: On September 5, 2017, Taves summarily terminated an A/TO employee in retaliation for her protected report of workplace hostility and harassment to HR and the Teamsters Union and, thereafter, publicly discussed the termination.
1. Finding – Allegation 2: The allegation is substantiated.
 - a. On September 7, Taves terminated a probationary employee without any prior verbal or written notice to the employee, HR/IT Director Kreklau or her Commissioner Liaisons, of the employee's allegedly deficient work performance. Taves terminated the employee close in time to (within 2-14 days) and after she had knowledge of the complaint-related events. Specifically:
 - Taves terminated the employee two calendar days after she was notified (on 09.05.17) that Teamsters Local 320 filed a complaint alleging hostile work environment harassment in her office and she was advised that, until the complaint is resolved, to be mindful of doing anything that could be perceived as retaliatory.
 - Taves terminated the employee five calendar days after she met with, questioned and berated the employee (on 08.30.17) for nearly an hour for contacting IT staff for assistance when she directed the employee not to do so, and then told the employee it was all a misunderstanding and ■■■ is doing a good job.

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- Taves terminated the employee eight calendar days after she was notified (on 08.29.17) that Commissioner Jim Hofer would meet with staff on 08.31.17 to discuss the events of 08.28.17.
 - Taves terminated the employee twelve calendar days after she authorized the employee to move to a larger, unoccupied desk in the A/TO and nine calendar days after she learned the employee contacted IT staff (on 08.28.17) to request assistance moving a computer to the larger desk.
- b. The record indicates that the timing of the September 7 termination was motivated in part because the employee contacted for assistance, IT staff who report to HR/IT Director Kreklau, and also motivated in part by the Teamsters complaint.
- Documentation Taves presented to support her contention that the termination was based *solely* on the employee's failure to meet established performance standards does not make that case. Taves reported that the employee performed her assigned tasks well, i.e., was "technically good." Taves identified reports of the employee's cell phone use, her late arrival to work, and her view the employee was not a team player, as conduct warranting her termination. Yet Taves acknowledged that whenever she addressed behavioral issues with the employee, her behavior improved. That admission, in combination with Taves' recorded remarks to the employee on August 30 (6 calendar days prior to the employee's termination) that she is doing a good job, refutes Taves' claim the termination was due to the employee's failure to meet performance standards.
 - During this investigation, Taves acknowledged she terminated the employee in part, for contacting IT staff who report to HR/IT Director Kreklau, a verbal directive Taves was widely reported (during the environmental scan and this investigation) to have issued to other A/TO staff. By all accounts, Taves' directive created a chilling effect that effectively deterred A/TO staff from reporting to Kreklau and/or their Commissioner liaisons, behavior Taves continued to engage in that creates a hostile work environment for them. County employees have an absolute right to contact the County's HR Director and/or Commissioners for assistance and to report workplace hostility and harassment. Such reports constitute protected activity. Adverse employment action resulting from protected activity constitutes prohibited retaliation. The record establishes that due to widespread fear of retaliation, [REDACTED] he union filed a complaint on their half alleging hostile work environment in the A/TO office. The fact that Taves terminated the employee two calendar days after and with the knowledge of the union complaint creates the strong presumption of a causal connection between the adverse action and the protected union activity.

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2. It is undisputed that on September 12, 2017, A/T Taves attended a Rotary meeting during which she told others that she terminated [REDACTED] Taves confirmed these facts.
- ii. Allegation 3: On September 11 and 12, 2017, Taves improperly attempted to thwart Board consideration of a pending union grievance against her.
 1. Finding – Allegation 3: The allegation is substantiated in relevant part.
 - a. On September 8, 2017, Taves, in her role as Clerk to the County Board, received clear and specific written direction (via email and text messages) from Board Chair David Hilukka to include on the September 12 Board agenda language indicating that the Board would acknowledge and consider a Teamsters Local No. 320 complaint and related grievance alleging hostile work environment in her office. Taves, by her own account, did not comply with the directive.
 - b. During the September 12 Board meeting, Taves then distributed Board packets containing an agenda that did not include the agenda item Board Chair Hilukka directed her to add. Taves did not inform the Board that the agenda item was not added and asked the Board to approve the agenda she distributed.
 - c. Taves has served as Clerk to the County Board for several years and is, by all accounts, experienced and proficient in that role. Taves' failure to comply with Commissioner Hilukka's clear direction, in combination with her: 1) subsequent act of distributing the agenda without notice to the Board of the missing agenda item; and 2) request that the Board approve the incomplete agenda, constitute either a knowing effort on her part to thwart Board action, an act of subordination or both. In any event, her inaction was knowing and improper.

IV. DISCUSSION OF FACTUAL BASIS FOR FINDINGS

A. Analysis of Allegation 1

1. Allegation 1: Following a County-wide and County Board initiated environmental scan that concluded in mid-January 2017, A/T Taves continued to engage in much of the same hostile behavior toward A/TO staff and other County employees identified in a detailed report presented to and discussed with Taves during a December 28, 2016 scan debrief meeting.
2. Finding – Allegation 1: The allegation is substantiated.
 - a. Following the environmental scan, Taves continued to engage in some of the same hostile, divisive, controlling and disruptive behavior she engaged in prior to the environmental scan. The behavior alleged during this investigation is similar to and/or consistent with the behavior Taves is alleged to have engaged in prior to the environmental scan. Taves, by her own account, did not agree with and erroneously characterized written and verbal scan feedback she received

regarding the adverse impact of her behavior on the work environment of A/TO and other County employees as false claims made against her by Department Heads and a single County employee. Consequently, Taves did not take any action to change intra- and external-office behavior she did not view as problematic.

- b. Based on the totality of the record, Taves' prior and current denial that she engaged in behavior independently reported and corroborated by multiple employees is not credible. The greater weight of the evidence indicates that after the environmental scan, Taves continued to engage in behavior that adversely impacts the work environment of A/TO staff and others. Taves' continuing behavior has fostered a climate of fear and intimidation for A/TO staff.
 - c. Taves' behavior is prohibited by Wadena County Personnel Policy, Article 48 – Policy Against Offensive Conduct, Harassment and Violence, which prohibits offensive, harassing and violent conduct and provides that the County will maintain a work environment that is free from offensive conduct, harassment and violence and will take action to address prohibited conduct.
 - d. Interim measures implemented by the County Board on and since September 12, 2017 have significantly improved the A/TO work environment.
3. Factual Basis for Finding – Allegation 1:
1. Attachment A details the findings of the environmental scan finding that Taves engaged in behavior adversely impacting the work environment of A/TO staff, other County employees and her Department Head peers.
 2. The record establishes that A/TO staff who participated in the climate review were hopeful that the review would lead to positive behavioral change. That did not occur. Following the review, an outside consultant convened one meeting with them and A/T Taves. Staff believed the purpose of the meeting was to discuss and address the A/TO-specific findings of the environmental scan relative to their work environment concerns. By all accounts, during that meeting Taves erroneously characterized the “problem” as internal disputes between staff and did not acknowledge that her behavior was a factor. Beyond that meeting, Taves did not take any action to address their concerns and did not correct or otherwise alter her behavior. In fact, staff observed an escalation in Taves' unexpectedly shifting moods, her continued micromanagement of staff and tasks, and her continuing paranoia and remarks that certain Department Heads do not like and are out to get her. Taves continued to isolate and create division between her staff and other County Departments by directing that A/TO staff not interact with HR Director Kreklau and the HR and IT staff who report to him. A/T Taves also continued to tell her staff that certain County employees and Commissioners do not like them, do not think they are competent and/or complained to her about them. Staff observed that A/T Taves' already difficult behavior and paranoia escalated after the June 2, 2017

retirement of the long-time A/TO Elections Coordinator and July 28, 2017 resignation of the Deputy A/T, who accepted a position with another County. As recently as August 29, 2017, Taves told an A/TO employee that the environmental scan was worthless and if she had known what it was about, she would not have participated in it.

3. During this investigation, A/TO staff independently and consistently reported that Taves has continued to engage in the following behavior that adversely impacts their work environment:
 - 1) Taves' mood and behavior continues to quickly and unexpectedly shift from cordial and affable to upset and demanding; Taves has brought nearly all A/TO employee to tears by the harsh way she speaks to them. Taves' moody behavior has escalated since July 2017, following the resignation of the Deputy A/T and retirement of the Elections Coordinator, who were her allies.
 - 2) Taves continues to create division between A/TO staff and other County employees by openly criticizing her office staff she is aware of or suspects are having lunch with other County employees, particularly those from IT and HR. Taves has told her office staff that the only reason certain County employees like them is because they eat lunch with them.
 - 3) Taves continues to create division between A/TO staff and other County employees by falsely telling her office staff that HR and IT staff, County Commissioners and others "hate," "do not like," or are "upset with them," "do not think they are doing a good job," "do not want to work with them" and/or criticized them.
 - 4) Taves continues to create division between A/TO staff and other County employees by speaking negatively to her office staff about County Commissioners and other County employees, referring to them as "incompetent," "evil" and "trying to exercise authority they do not have," etc.
 - 5) Taves continues to criticize direct reports for spending too much time at the office counter responding to customer questions.
 - 6) Beyond morning greetings, Taves continues to require that staff refrain from talking in the office, even about work-related matters, and admonishes staff she hears talking.
 - 7) Notwithstanding union contract provisions, Taves discourages staff from taking their daily fifteen-minute breaks when, in her opinion, she believes staff spend too much time talking in the office. Consequently, some staff are reluctant to and often do not take breaks.

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- 8) Taves inappropriately involves herself in the personal lives of her direct reports, advising them to go to bed early and cease part-time work and extracurricular activities they engage in on their personal time. Taves told one employee that her husband is not a good Christian husband because he requires that she spend time after work helping him flip houses and he should not require that she work a second job.
 - 9) Taves continues to direct that A/TO staff not talk to, provide or receive assistance from HR or IT. Taves directs that her staff only communicate via email with other departments and to copy her on all email communications.
 - 10) On August 28, 2017, Taves agreed that a direct report could move her work station to a larger, unoccupied desk in the A/TO if she did not involve IT staff in the move because Taves refuses to work with or permit her staff to work with IT staff. On August 28, IT staff moved the employee's computer tower to the new work station. Taves was in the office when that activity took place. On August 29, 2017, Taves retaliated against the employee and IT by directing that the employee immediately return to her former workspace and accused IT of moving the employee "without written or oral authorization" from her. On September 1, 2017, Teamsters Local 320 filed a complaint on behalf of [REDACTED]. Thereafter, in retaliation for the complaint, Taves terminated a probationary A/TO employee.
- d. It is undisputed that A/T Taves did not address staff concerns regarding her behavior that were identified during and discussed with her following the environmental scan.
1. During this investigation, A/T Taves reported that, as follow-up to the review results, she met with Commissioners Hofer and Hilukka and some Department Heads to address some of the dynamics identified during the review. Taves disagreed with the review findings and denied that she ever engaged in any hostile behavior toward A/TO staff and other County employees.
 2. Taves acknowledged that, following the environmental scan, she did not take any action to discuss the review findings with A/TO staff or change her behavior. Taves explained that she attributed all the staff issues and concerns identified in the report as concerns raised by a single employee – a now former A/TO employee [REDACTED]. Similarly, Taves largely denied engaging in the behavior A/TO staff reported during this investigation or offered reasons for her behavior and remarks that she asserts justify the behavior.
 3. At the conclusion of her approximately three-hour investigatory interview, Taves expressed that if [REDACTED] do in fact have the concerns discussed with her (i.e., complaint allegations), she is surprised, sad and profoundly disappointed; she considered them friends and colleagues, and it was never her intent to offend them.

See Exhibit 10B: Respondent Auditor/Treasurer Judy Taves 10.06.17 Interview Recording.

- e. During this investigation, consistent with A/T Taves' refusal to accept adverse climate review findings regarding the adverse impact of her behavior, Taves denied that she ever engaged in any hostile or otherwise inappropriate behavior toward A/TO staff. Similarly, Taves largely denied engaging in the behavior A/TO staff reported during this investigation and offered reasons for behavior and remarks she acknowledged, reasons she asserts justify the behavior. For example:
- 1) Taves denied reports that her mood and behavior continues to quickly and unexpectedly shift from cordial and affable to upset and demanding and has brought nearly all A/TO employees to tears by the harsh way she speaks to them.
 - 2) Taves acknowledged that she continues to direct that A/TO not talk to, provide or receive assistance to or from HR or IT staff and directs that her staff only communicate via email with other departments and copy her on all email communications. Taves asserted her directives are reasonably based on her negative experiences working with HR/IT Director Kreklau and the lack of trust between them.
 - 3) Taves denied reports that she continues to create division between A/TO staff and other County employees by openly criticizing A/TO staff she is aware of or suspects are having lunch with other County employees, in particular IT and HR employees. Taves conceded that she might have told an A/TO employee that the only reason certain County employees like ■■■ is because she eats lunch with them, but denied the behavior was anything more than her expressing a personal observation.
 - 4) Taves denied reports that she continues to create division between A/TO staff and other County employees by falsely telling her office staff that HR and IT staff, County Commissioners and others "hate," "do not like" or are "upset with" them, "do not think they are doing a good job," "do not want to work with them" and/or criticized them. Taves said, "I don't do that."
 - 5) Taves denied reports that she continues to create division between A/TO staff and other County employees by speaking negatively to her office staff about County Commissioners and other County employees, referring to them as "incompetent", "evil" and "trying to exercise authority they do not have", etc. Taves said, "I don't do that."
 - 6) Taves denied reports that she continues to criticize direct reports for spending too much time at the office counter responding to a single customer's questions. Taves acknowledged that she told an A/TO employee who allowed some customers to monopolize her time that she needed to

answer the question and move on. Taves asserted that her remark was reasonable and appropriate direction regarding time management.

- 7) Taves denied reports that beyond morning greetings, she continues to require that staff not talk in the office, even about work-related matters, and admonishes staff she hears talking. Taves said staff are free to and do talk in the office, but she expects that talking will not interfere with their work. When she hears too much talking, she might comment on the amount of talking, action she asserts is reasonable.
 - 8) Taves denied the report that, notwithstanding union contract provisions, she does not allow staff to take their daily fifteen-minute breaks because staff spend that time talking in the office. Taves said that employees can, do and are not prohibited from taking their fifteen-minute breaks and if they spent that time talking in the office, she reasonably considers that their break time.
 - 9) Taves denied reports that she inappropriately involves herself in the personal lives of her direct reports, advising them to go to bed early and cease part-time work and outside activities they engage in (e.g. riding motorcycles) during their personal time. Taves said that from time-to-time she engages in casual discussion with staff about and might comment on their hobbies and activities. She does not view her remarks as improper. Taves acknowledged that she told an A/TO employee who was tired and falling asleep at work that she needs to go to bed early, a remark she asserts was appropriate in light of the impact the lack of sleep had on the employee's work performance.
 - 10) Taves denied reports that she told an A/TO employee that her husband is not behaving "like a godly man" because he requires that she assist him with flipping homes after work. Taves asserted that she never made the remark alleged.
- f. Based on the totality of the record, Taves' prior and current denial that she engaged in behavior independently reported and corroborated by multiple employees is not credible. The greater weight of the evidence indicates that after the environmental scan, Taves continued to engage in behavior that adversely impacts the work environment of A/TO staff and others.
- g. The record does not substantiate the claim that Taves engaged in behavior that constitutes disparate treatment based on religion. The allegation is based on Taves' alleged isolated remarks to an A/TO employee that her husband is not a good Christian husband because he requires that she work a second job flipping homes with him. Taves' denied that she made the alleged remarks and asserted she merely expressed concern, when she observed the employee was falling asleep at work, that the employee was working too much and needed more sleep. There were no witnesses to the alleged discussion, so the she/said, she/said

B. Analysis of Allegation 2:

1. Allegation 2: On September 5, 2017, Taves summarily terminated an A/TO employee in retaliation for her protected report of workplace hostility and harassment to HR and the Teamsters Union and, thereafter, publicly discussed the termination.
2. Finding – Allegation 2: The allegation is substantiated.
 - a. On September 7, Taves terminated a probationary employee without any prior verbal or written notice to the employee of her allegedly deficient work performance. The record establishes that the timing of the September 7 termination, occurring only two calendar days after Taves was notified that Teamsters Local 320 filed a complaint on behalf of [REDACTED] alleging hostile work environment harassment in her office, was motivated at least in part by and in retaliation for the complaint. Reasons Taves presented to support her contention that the termination was based *solely* on the employee’s failure to meet established performance standards does not make that case and is insufficient to overcome the presumption of a causal connection between adverse action occurring close in time to the filing of a complaint.
 - b. On September 12, 2017, Taves attended a Rotary meeting and told meeting participants that she terminated [REDACTED]
3. Factual Basis for Finding – Allegation 2:
 - a. The elements of a claim of retaliation are: i) protected activity; ii) adverse employment action; and iii) a causal connection between the protected activity and the adverse employment action. When an adverse employment action occurs very close in time after an employer learns of a protected activity, there is a presumption of a causal connection between the protected activity and the adverse employment action. The presumption may be overcome if the respondent can establish he or she had legitimate, business-related reasons for the adverse employment action unrelated to the protected activity.
 - b. Taves confirmed that by email dated September 5, 2017, HR/IT Director Kreklau notified her that a grievance had been filed alleging hostile work environment harassment in the A/TO.
 - c. Taves acknowledged that her act of terminating [REDACTED] on September 7, two business days after she was notified of the grievance, constituted adverse employment action that could be perceived as retaliation. In regard to the timing of the termination, Taves said, “It probably looks bad.”
 - d. Taves denied that she terminated [REDACTED] in retaliation for the Teamster’s complaint. In an attempt to overcome the presumption of a presumed causal connection between the adverse employment action (termination) occurring close in time

(two calendar days after) to the protected activity (the complaint), Taves asserted and maintained that: i) prior to August 30, she documented reasons for and considered terminating ■ due to her failure to meet performance standards; ii) prior to and on August 30, she informed Commissioners Monson, Horsager and/or Stearns that she intended to terminate a probationary employee; and iii) on August 30, she made the termination decision and had a valid, business-related reason for waiting until September 7 to terminate ■

e. Reasons Taves presented to support her contention that the termination was based solely on the employee's failure to meet established performance standards does not make that case.²

- 1) The termination letter Taves drafted and issued to ■ on September 7 reads: "Dear ■ Due to a lack of fulfillment of the requirements of the job description, your six-month probationary period as Administrative Accountant, formerly known as Senior Accountant, with Wadena County is being terminated, effective at 4:30 p.m. today. Kind regards, Judy Taves. (cc: Wadena County Human Resources Director)." See Exhibit 11B: Respondent A/T Judy Taves Record Submissions at p.1.
- 2) Referring to her notes, Taves said her decision to terminate ■ was due to ■'s behavior, which included "tardiness, resisting doing assigned duties, wanting to chart her own path, and not following protocol." Taves explained that ■ "has many, many good points but had struggles as far as working at the County."
- 3) According to Taves, shortly after ■ began working for the County, ■ told her that she regretted her decision to work for the County because the office "was not friendly," it was "too quiet in there and there was no talking." In May 2017, Taves talked to ■ about arriving late to work and "it got better after that." She also talked to ■ about reports she received from the now former Deputy Auditor/Treasurer and Elections Coordinator, and Commissioner Horsager's single comment all indicating ■ used her cell phone during work hours. Taves told ■ it is permissible to have her cell phone with her, but to put it on vibrate. ■'s behavior "improved to a degree."

² Taves acknowledged that when asked by Commissioners Horsager and Hilukka to provide documentation to support the termination decision, she then refused to give them the information and told them to call her private attorney. When interviewed, Taves gave Investigator Soldo notes she indicated she created at work and home, prior to and after August 30 (on dates not known and that cannot be verified), documenting behavior she asserts warranted ■ s termination prior to the end of her probationary period. The notes reference ■'s tardiness, cell phone use issues and discussion about work process and procedure, areas in which Taves said ■ improved after learning of the identified deficiencies.

continued to engage in that creates a hostile work environment for them. County employees have an absolute right to contact the County's HR Director and/or Commissioners for assistance and to report workplace hostility and harassment. Such reports constitute protected activity. Adverse employment action resulting from protected activity constitutes prohibited retaliation. The record establishes that due to widespread fear of retaliation, [REDACTED] the union filed a complaint [REDACTED] alleging hostile work environment in the A/TO office. The fact that Taves terminated the employee two calendar days after and with the knowledge of the union complaint creates the strong presumption of a causal connection between the adverse action and the protected union activity.

- f. Commissioners Horsager, Monson and Stearns did not corroborate, and presented facts refuting, Taves' claims that prior to and on August 30, 2017, she informed them of her intent to terminate a probationary employee. As discussed in detail in Attachment A, Commissioners Horsager and Stearns both said they had no knowledge prior to September 7 that Taves intended to terminate any employee. Commissioner Monson said it was not until September 6 that Taves told him she was considering terminating a probationary employee. All three Commissioners reported, and Taves confirmed, that Taves did not tell any of the Commissioners about the pending Teamsters complaint and [REDACTED]'s advice that, until the complaint was resolved, she must refrain from any employment action that could be perceived as retaliatory. The Commissioners independently and consistently reported that if they had known Taves planned to terminate [REDACTED] and also known about the pending complaint and [REDACTED]'s admonition, they would have advised Taves to consult with HR Director Kreklau and/or the County Attorney prior to taking action. See Attachment A: Summary of the Investigation Record at Sections VI(K)-(N).
- g. The record does not substantiate and refutes Taves' claim that on August 30, she made the final termination decision and had a valid, business-related reason for waiting until September 7 to terminate [REDACTED]. According to Taves, on August 30, she called Commissioner Horsager, told him she planned to terminate a probationary employee and he indicated he was available on September 7 for the termination meeting, thus the date she terminated [REDACTED]. Horsager denied Taves' claim. Moreover, as discussed in detail in Attachment A, records of text messages exchanges between Horsager and Taves on September 7, in which Taves asked to meet with Horsager at 4:15 that day about something "really, really important" directly contradict Taves' claim that on August 30, Horsager agreed to meet with her on September 7 to terminate an employee. See Attachment A at IV(L)
- h. The unsubstantiated reasons offered by Taves for terminating [REDACTED] in combination with the timing of the termination, occurring only two calendar days after Taves was notified (on 09.05.17) of the protected activity (Teamster's complaint) creates the presumption of a causal connection between the termination and the protected activity.

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- i. It is undisputed that on September 12, 2017, A/T Taves attended a Rotary meeting. During the meeting, Taves mentioned to a Rotary member “friend” who asked her how she is doing that she terminated ■ Present to hear the discussion was an individual employed at the local bank at which ■ worked before her employment with the County. See Exhibit 11B: Respondent Auditor/Treasurer Judy Taves’ 10.06.17 Interview Recording.
 - j. Taves’ conduct violates Wadena County Personnel Policy, Article 48 – Wadena County Policy Against Offensive Conduct, Harassment and Violence. The policy prohibits any County employee, agent, officer, commissioner, or elected official from engaging in offensive or harassing verbal or physical conduct and prohibits retaliation defined to include “any form of intimidation, reprisal or harassment.” See Exhibit 2: Wadena County Personnel Policy, Article 48 – Wadena County Policy Against Offensive Conduct, Harassment and Violence.

S. Analysis of Allegation 3

1. Allegation 3: On September 11 and 12, 2017, Taves improperly attempted to thwart Board consideration of a pending union grievance against her.
2. Finding – Allegation 3: The allegation is substantiated in relevant part.
 - a. On September 8, 2017, Taves, in her role as Clerk to the County Board, received clear and specific written direction (via email and text messages) from Board Chair David Hilukka to include on the September 12 Board agenda language indicating that the Board would acknowledge and consider a Teamsters Local No. 320 complaint and related grievance alleging hostile work environment in her office. Taves, by her own account, did not comply with the directive.
 - b. During the September 12 Board meeting, Taves then distributed Board packets containing an agenda that did not include the agenda item Board Chair Hilukka directed her to add. Taves did not inform the Board that the agenda item was not added and asked the Board to approve the agenda she distributed.
 - c. Taves has served as Clerk to the County Board for several years and is, by all accounts, experienced and proficient in that role. Taves’ failure to comply with Commissioner Hilukka’s clear direction, in combination with her: i) her subsequent act of distributing the agenda without notice to the Board of the missing agenda item; and ii) request that the Board approve the incomplete agenda, constitute either a knowing effort on her part thwart Board action, an act of subordination or both. In any event, her inaction was knowing and improper.

2. Factual Basis for Finding – Allegation 3:

- a. The record establishes that on Friday, September 8, 2017, at 2:53 p.m., in consultation with the County Attorney and County’s Labor Attorney, HR/IT Director Kreklau sent an email to Commissioner and Board Chair Hilukka that included as an agenda item for the County Board’s September 12 meeting, discussion of the Teamsters Local 320 complaint and related grievance alleging hostile work environment harassment, to Board Chair Hilukka.
- b. The record establishes that on September 8, 2017, at 3:13 p.m., 3:36 p.m. and 3:40 p.m., Commissioner and Board Chair Hilukka sent two emails and a text message to Taves directing that she, in her role as Clerk to the County Board, add discussion of the union complaint and related grievance filed against her to the County Board’s September 12 meeting agenda.
 - 1) The email Commissioner Hilukka sent Taves at 3:12 p.m. reads: “Judy, Please add this to the Agenda for next Tuesday’s meeting September 12, 2017. ‘Acknowledgement of Complaint and Related Grievance from Teamsters Local 32- alleging hostile work environment and discussion/determination of measures to address the requests of the union.’”
 - 2) The text message Commissioner Hilukka sent to Taves at 3:36 p.m. reads: “Judy, in visiting with Kyra this has to be added to the Tuesday Agenda per our Labor Attorney request. Thank you. Have a great weekend. Dave.”
 - 3) The email Commissioner Hilukka sent Taves at 3:40 p.m. reads: “Judy, In my phone discussion with Kyra just now she stated the County Labor Attorney has requested to have this on the agenda for next Tuesday: ‘Acknowledgement of Complaint related Grievance from Teamsters Local 320 alleging a hostile work environment and discussion/determination of measures to address the requests of the union.’ Thank you. Dave Hilukka.”
- c. The record establishes that on September 8, 2017, at the close of the day, HR Director Kreklau observed that at 11:22:42 a.m. that day, Taves posted the September 12 meeting agenda on the County website. The agenda she posted did not include the additional agenda item Commissioner Hilukka directed her to add between 3:12 p.m. and 3:40 p.m. that day. Thereafter, Taves did not, by her own admission, amend and post the agenda. At 4:31, at ██████’s direction, IT staff revised the meeting agenda to add the missing agenda item and posted the revised agenda on the County website.
- d. During this investigation, Taves acknowledged that she did not, as directed on September 8 by Board Chair Hilukka, amend the posted September 12 Board agenda to include the language she received from Hilukka regarding Board acknowledgement of the Teamsters Local 320 complaint and related grievance filed against her. The reasons Taves offered for not complying with Board Chair direction do not reasonably justify her inaction. According to Taves, she did not

act because she did not understand what Commissioner Hilukka asked of her. Hilukka said he would contact County Attorney Kyra Ladd. He then told her to “just put it on the agenda.” Because she did not receive a Board Action Form or any backup to support the request, she felt personally uncomfortable adding the agenda item. Her final thought was that the packets were copied and complete, so the agenda item “would just be an add-on” the morning of the meeting. Yet, as discussed further below, on September 12 Taves did not inform the Board of the missing agenda item.

- e. The record establishes that the County Board met on September 12, 2017. Prior to the start of the meeting, [REDACTED] posted the revised meeting agenda on the Board Room door. At the start of the meeting, A/T Taves distributed a meeting agenda that did not include the agenda item language Commissioner Hilukka identified in his September 8 emails and text message to her. Taves confirmed that while she knew the agenda she distributed did not include that agenda item, she did not mention that omission and asked the County Board to approve the agenda. County Attorney Kyra Ladd and Commissioner Monson both noted the discrepancy and the County Board ultimately approved a copy of the agenda [REDACTED] revised and IT staff published and posted, which included the agenda item.
- f. By all accounts, Taves has served as Clerk to the County Board for several years and is experienced and proficient in that role. Taves’ failure to comply with Commissioner Hilukka’s clear direction to amend the agenda, in combination with her subsequent act of distributing the agenda without notice to the Board of the missing agenda item, and her request that the Board approve the incomplete agenda. Taves behavior on September 8 and September 12 is similar to examples of other manipulative behavior Taves’ Department Head peers reported (during the County-wide Work Environment Climate Review) that Taves engaged in.³ Taves behavior constitutes either a knowing effort on her part to thwart board

³ Some of the behavioral examples Department Heads widely and consistently reported include: In the role of Board Secretary, A/T Taves controls the agenda and distribution of agenda packets. She ensures Commissioners and newspaper reporters receive handouts, but does not provide the information to Department Heads. A/T Taves unilaterally changed, without discussion and input regarding the potential impact from other departments, the due dates when vendor bills must be paid. Taves said that Department Heads could call all of the vendors and waive late fees. A/T Taves’ role in the budget process is problematic. Taves provides incomplete financial information to Department Heads, adversely affecting their ability to prepare budget proposals for submission to the Board for review and approval. Some Department Heads have difficulty getting on the agenda for time to ask the Board budget-related questions and, for unexplained reasons, Taves will not distribute Board packets to Department Heads. A/T Taves has asserted that State Auditors told her she could not do something, which was found to be inaccurate when Department Heads followed up with State Auditors. A/T Taves did not consult with HR Director Kreklau when she sought to fill vacancies in her office and interviewed candidates. Consequently, Taves did not follow the established protocol for advertising for positions and asked questions and made remarks during the hiring process that exposed the County to potential liability. In a perceived power play and attempt to control information, A/T Taves has told Department Heads they could not contact State Auditor representatives directly to discuss questions regarding their department. Taves asserted that the Auditor is the only person that should talk to State Auditors. See Attachment A: Section 3 – Discussion of the Findings of a County-Wide Work Environment/Climate Review and Issues Adversely Impacting the A/TO’s Work Environment.

action, an act of insubordination or both. In any event, her inaction was knowing and improper.

See Attachment A: Summary of Investigation Record at Sections VI(Q)-(T).

IV. ATTACHMENTS & EXHIBITS

- A. Attachment A: Summary of the Investigation Record
- B. Exhibit 1: Complaint Record
 - 1. Exhibit 1A: Teamsters Local 320 Complaint Letter Dated 09.01.17
 - 2. Exhibit 1B: Teamsters Local 320 Class Action Grievance Dated 09.06.17
 - 3. Exhibit 1C: Recording of 08.30.17 Meeting
- C. Exhibit 2: Wadena County Personnel Policy, Article 48 – Wadena County Policy Against Offensive Conduct, Harassment and Violence
- D. Exhibit 3: Wadena County Work Environment Climate Review Reports
 - 1. Exhibit 3A: County-wide Work Environment Climate Review Report Dated 01.10.17
 - 2. Exhibit 3B: Auditor/Treasurer’s Office Climate Review Report Dated 12.28.16
 - 3. Exhibit 3C: Recording of 01.10.17 Presentation of County-wide Work Environment Climate Review Report Dated 01.10.17 to City Council
 - 4. Exhibit 3D: Staples World Article Dated 01.19.17, “Wadena County Boar Receives Report on Workplace Conditions”
 - 5. Exhibit 3E: 03.16.17 Memorandum from Consultant Toni Smith to Wadena County Commissioners Re: “March Facilitation”
 - 6. Exhibit 3F: Wadena County Board of Commissioners 03.14.17 Meeting Minutes (Discussion of County-wide Work Environment Climate Review)
 - 7. Exhibit 3G: 12.28.16 Department Head Work Environment Climate Review Debrief Meeting Schedule (2:00 p.m. A/T Meeting)
- E. Exhibit 4: ██████████ Written Statement and Record Submissions
- F. Exhibit 5: ██████████ Written Statement
- G. Exhibit 6: Commissioner Jim Hofer Record Submissions

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- H. Exhibit 7: Commissioner Chuck Horsager Record Submissions
 - I. Exhibit 8: Commissioner Dave Hilukka Record Submissions
 - J. Exhibit 9: [REDACTED] Record Submissions
 - K. Exhibit 10: County Board of Commissioners 09.12.17 Meeting Agenda and Minutes and Clerk of the Board's Handwritten Minutes
 - L. Exhibit 11: Respondent Auditor-Treasurer Judy Taves' Investigation Record
 - 1. Exhibit 10A: 10.06.17 Memorandum from Investigator Michelle Soldo to Respondent Auditor-Treasurer Judy Taves
 - 2. Exhibit 10B: Respondent Auditor-Treasurer Judy Taves' Record Submissions
 - 3. Exhibit 10C: Respondent Auditor-Treasurer Judy Taves' 10.06.17 Interview Recording

Document drafted by:

11.14.17

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Date

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