STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF WASHINGTON, Complainant, vs. MILL A SCHOOL DISTRICT, Respondent.	CASE 129785-U-17 DECISION 13015-A - PECB DECISION OF COMMISSION

Elyse B. Maffeo, General Counsel, for Public School Employees of Washington.

Charles W. Lind, Attorney at Law, Patterson Buchanan Fobes & Leitch, Inc., P.S., for the Mill A School District.

On September 30, 2016, Public School Employees of Washington (union) filed an unfair labor practice complaint against Mill A School District (employer) over reductions in staff hours. In the 2016 complaint, the union identified union president Doug Dyer as a participant in the meetings leading to the union filing the unfair labor practice complaint. The employer and union entered a memorandum of understanding to settle the 2016 complaint. Dyer participated in a meeting leading to settlement.[1] Dyer signed the memorandum of understanding (MOU) on behalf of the union.[2] Superintendent Bob Rogers signed the MOU on behalf of the employer. To settle the 2016 unfair labor practice complaint, the parties agreed to increase classified staff's work hours. As a result of the settlement, the employer increased Dyer's work hours from an average of three hours per week to an average of nine hours per week for the remainder of the 2016–17 school year.

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1 Tr. 119:23–120:8.

2 Union Ex. 6.

The employer maintained classified staff work hours for the 2017–18 school year with one exception. The employer reduced Dyer's work hours from nine hours in the 2016–17 school year to five hours a week for the 2017–18 school year.[3]

On October 25, 2017, the union filed an unfair labor practice complaint alleging the employer violated RCW 41.56.140(3) when the employer reduced Dyer's work hours for the 2017–18 school year. An unfair labor practice administrator issued a preliminary ruling finding a cause of action existed for employer discrimination in retaliation for filing an unfair labor practice complaint.

Examiner Emily H. Martin conducted a hearing and concluded that the employer discriminated against Dyer. *Mill A School District*, Decision 13015 (PECB, 2019). The employer filed a timely appeal.

The issue before the Commission is whether the employer discriminated against Dyer for filing an unfair labor practice complaint. We find substantial evidence supports the Examiner's findings of fact, which in turn support the conclusions of law. We affirm the Examiner.

Standard of Review

The Commission applies its experience and specialized knowledge in labor relations to decide cases. RCW 34.05.461(5). The Commission reviews conclusions and applications of law, as well as interpretations of statutes, de novo. *City of Wenatchee*, Decision 8802-A (PECB, 2006). The Commission reviews findings of fact to determine if they are supported by substantial evidence and, if so, whether those findings in turn support the examiner's conclusions of law. *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B (PECB, 2002).

The Commission reviews factual findings for substantial evidence in light of the entire record. Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *City of Vancouver v. Public*

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[3] Tr. 74:2–75:13.

Employment Relations Commission, 107 Wn. App. 694, 703 (2001); *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B. The Commission attaches considerable weight to the factual findings and inferences, including credibility determinations, made by its examiners. *Cowlitz County*, Decision 7007-A (PECB, 2000). This deference is highly appropriate in fact-oriented appeals. *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B.

Application of Legal Standards

On appeal, the employer argued that the Examiner erred when she did not address the issue as framed by the preliminary ruling. The employer asserted that Dyer was not involved in the filing or processing of the 2016 unfair labor practice complaint and the union could not prove that the employer discriminated against Dyer for filing an unfair labor practice complaint in violation of RCW 41.56.140(3). The union countered that there is no threshold level of involvement on the part of a union official for the statute to protect against discrimination. The union asserted that Dyer actively participated in the union's campaign to restore his work hours and met with the employer and union counsel to resolve the 2016 unfair labor practice complaint. According to the union, Dyer engaged in protected activity, including being named in the complaint and participating in settlement discussion.

Consistent with what it alleged in its unfair labor practice complaint, the union established that Dyer engaged in protected activity. The union named Dyer in the 2016 complaint. Dyer signed the MOU settling the 2016 complaint. This is sufficient to find that Dyer was involved in the 2016 complaint to establish a prima facie case of discrimination.

After the parties settled the unfair labor practice complaint, the employer reduced Dyer's work hours thereby depriving Dyer of a benefit—work hours. We disagree with the employer's assertion that we should compare Dyer's 2017–18 work hours to the budgeted hours for 2016–17. The baseline for comparison is the number of hours Dyer worked immediately prior to the reduction. The hours the employer budgeted Dyer for the 2017–18 was a reduction of hours. The Examiner correctly found that the union established a prima facie case of discrimination.

The employer presented a legitimate, nondiscriminatory reason for reducing Dyer's work hours. The employer had revenue reductions. After articulating this reason, the burden of persuasion remained with the union to prove that the stated nondiscriminatory reason was a pretext. We agree with the Examiner that the union satisfied its burden of proof.

We agree with the Examiner that the employer's nondiscriminatory reason was a pretext. The employer increased the technology services it provided when it added a high school program, yet the employer reduced the hours of technology staff. While the employer asserted that it wanted to align the number of hours it budgeted for technology with other districts, the employer undertook a limited evaluation of other districts' technology services. The employer did not consult with Dyer to determine how many hours it should budget for technology staff.

In discrimination allegations, there is rarely an admission of animus on which an examiner may base a conclusion that the employer's reason is pretext. An examiner must weigh the evidence presented, including the credibility of witnesses. In the instant case, the Examiner had the advantage of observing the witnesses during the hearing and made credibility determinations based on her observations. Roger's testimony that the 2016 complaint was not a substantial motivation for the decision to reduce Dyer's hours in 2017 was found not credible by the Examiner. We defer to the Examiner's determination.

Conclusion

The union met its burden of persuasion to establish that the employer's stated nondiscriminatory reason was a pretext. The union met its burden to prove that the employer discriminated against Dyer for his participation in the 2016 complaint. Substantial evidence supports the Examiner's findings of fact, which support the conclusions of law. We affirm the Examiner.

ORDER

The Findings of Fact, Conclusions of Law, and Order issued by Examiner Emily H. Martin are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law, and Order of the Commission.

ISSUED at Olympia, Washington, this 6th day of December, 2019.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

MARK BUSTO, Commissioner

KENNETH J. PEDERSEN, Commissioner

RECORD OF SERVICE

ISSUED ON 12/06/2019

DECISION 13015-A - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE 129785-U-17

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