

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CHELAN COUNTY DEPUTY
SHERIFF'S ASSOCIATION,

Complainant,

vs.

CHELAN COUNTY,

Respondent.

CASE 132113-U-19

DECISION 13308-A - PECB

DECISION OF COMMISSION

Mark A. Anderson and James M. Cline, Attorneys at Law, Cline & Associates, for the Chelan County Deputy Sheriff's Association.

Robert R. Siderius, Jr. and H. Lee Lewis, Attorneys at Law, Jeffers, Danielson, Sonn & Aylward, P.S., for Chelan County.

On September 18, 2019, the Chelan County Deputy Sheriff's Association (union) filed an unfair labor practice complaint alleging Chelan County (employer) discriminated against Deputy Jennifer Tyler when it disciplined her for union activity. An Unfair Labor Practice Administrator issued a deficiency notice. In response, the union filed an amended complaint. The Unfair Labor Practice Administrator issued a preliminary ruling for employer discrimination.

Examiner Michael Snyder conducted a hearing. The Examiner concluded that the employer unlawfully discriminated against Tyler when the employer suspended her for union activity. *Chelan County, Decision 13308 (PECB, 2021).* The employer filed a timely appeal.

ISSUE

The issue before the Commission is whether the Examiner erred in concluding that the employer discriminated against Tyler by suspending her for three days for sending an email criticizing a candidate for a union officer position. We affirm the Examiner. Substantial evidence supports the

Examiner's findings of fact, which in turn support the conclusion of law that the employer discriminated against Tyler in violation of RCW 41.56.140(1).

ANALYSIS

Applicable Legal Standard

Standard of Review

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).

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 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).

Application of Standard

The employer appealed findings of fact 16 and other portions of the Examiner's analysis. On appeal, the employer argues that there was no evidence that the employer had union animus when it initiated the outside investigation and suspended Tyler and the Examiner should have deferred to the findings of the investigator. The employer further argues it had a legitimate nondiscriminatory reason for disciplining Tyler, namely, that the discipline was based on Tyler violating the employer's policy, not on her protected activity. Finally, the employer argues that the offending portion of the email was distinct and separate from union business.

The union supports the Examiner's decision. The union argues the employer has no right to investigate and discipline an employee for what is said in private union discussions. The union

also argues that the employer's reason for disciplining Tyler is pretextual and Tyler's conduct was not so extreme as to lose protection of the statute.

As a preliminary matter, the Examiner was not bound by the findings made by the investigator that the employer hired. The issue before the Examiner was different than the issue the investigator hired by the employer was considering. The Commission will not defer to findings and conclusions made by an "independent" investigator retained by a party. Examiners must make factual findings on the record before them.

The union sought nominations for union officers from union members using their private email addresses. Tyler responded as part of an internal union discussion and contested the nomination of the then sergeant Adam Musgrove. Musgrove filed a complaint with the employer alleging Tyler would target him if he did not withdraw from the election. The employer investigated Tyler's email contesting Musgrove's nomination, concluded the email violated the employer's policies, and suspended her for three days.

The email at issue in this case was sent using a personal, nonwork email address to other union members' personal, nonwork email addresses. The subject matter was an internal union election. We agree with the Examiner that Tyler's email was protected activity. *See Chelan County, Decision 13308 at 7 (PECB, 2021) (citing General Motors Corp., 211 NLRB 986, 988 (1974), enforced in relevant part, General Motors Corp. v. National Labor Relations Board, 512 F.2d 447 (6th Cir. 1975))*. Employees must be free to communicate about their candidates for union office on nonwork time and in nonwork areas without fear that their employer will discipline them.

CONCLUSION

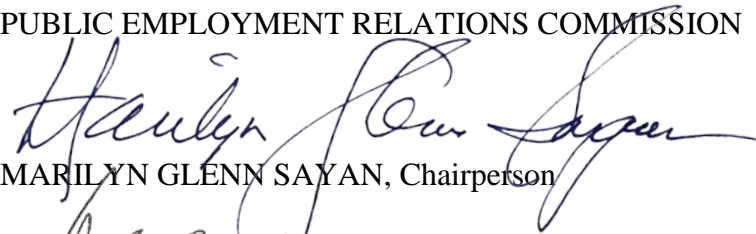
The employer discriminated against Tyler when it disciplined her for engaging in the protected activity of criticizing a candidate for union office. The Examiner identified the correct legal standard. Substantial evidence supports the Examiner's findings of fact, which in turn support the conclusions of law. We affirm the Examiner.

ORDER

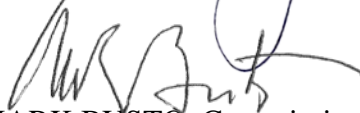
The Findings of Fact, Conclusions of Law, and Order issued by Examiner Michael Snyder are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law, and Order of the Commission.

ISSUED at Olympia, Washington, this 8th day of July, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



MARK BUSTO, Commissioner



KENNETH J. PEDERSEN, Commissioner

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



RECORD OF SERVICE

ISSUED ON 07/08/2021

DECISION 13308-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 132113-U-19

EMPLOYER: CHELAN COUNTY

REP BY: CHELAN COUNTY COMMISSIONERS
CHELAN COUNTY
400 DOUGLAS ST STE 201
WENATCHEE, WA 98801
cathy.mulhall@co.chelan.wa.us

ROBERT R SIDERIUS JR.
JEFFERS, DANIELSON, SONN & AYLWARD, P.S.
PO BOX 1688
WENATCHEE, WA 98807
bobs@jdsalaw.com

H. LEE LEWIS
JEFFERS, DANIELSON, SONN & AYLWARD, P.S.
PO BOX 1688
WENATCHEE, WA 98807
bobs@jdsalaw.com

PARTY 2: CHELAN COUNTY DEPUTY SHERIFF'S ASSOCIATION

REP BY: JOSH MATHENA
CHELAN COUNTY DEPUTY SHERIFF'S ASSOCIATION
PO BOX 2591
WENATCHEE, WA 98801
josh.mathena@gmail.com

JAMES M. CLINE
CLINE & ASSOCIATES
520 PIKE ST STE 1125
SEATTLE, WA 98101
jcline@clinelawfirm.com

MARK A. ANDERSON
CLINE & ASSOCIATES
520 PIKE ST STE 1125
SEATTLE, WA 98101
manderson@clinelawfirm.com