

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 2898,

Complainant,

vs.

CITY OF SEATTLE,

Respondent.

CASE 23159-U-10-5896

DECISION 10803-A - PECB

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

Schwerin, Campbell, Barnard, Iglitizin & Lavitt by *Kathleen Phair Barnard*,
Attorney at Law, for the union.

Peter S. Holmes, Seattle City Attorney, by *Fritz E. Wollett*, Assistant City
Attorney, for the employer.

On April 9, 2010, International Association of Fire Fighters, Local 2898 (union) filed an unfair labor practice alleging that the City of Seattle (employer) committed an unfair labor practice within the meaning of RCW 41.56.140(1) by discriminating against a bargaining unit employee for the exercise of protected rights. On April 15, 2010 a preliminary ruling was issued which gave the employer 21 days to file an answer. According to the timeframe set forth in the preliminary ruling, the employer's answer was due by May 6, 2010.

The case was assigned to Examiner Kenneth J. Latsch for further proceedings. A pre-hearing conference was conducted on May 10, 2010. During the course of that conference, the Examiner notified the employer's representatives that the employer had not yet filed its answer. The employer did file an answer on May 12, 2010, without explanation as to why the answer was late. On May 18, 2010, the union filed a request for default judgment. On June 16, 2010, the Examiner denied the motion, noting that the union had not suffered any prejudice from the late

filing. The union then requested a discretionary review of the Examiner's decision from the Commission. The Commission declined to review the matter, stating that the Examiner did not commit any obvious error in accepting the late answer. *City of Seattle*, Decision 10803 (PECB, 2010).

A hearing was conducted on July 14, 15, 20, and August 17, 2010, in Seattle, Washington. The parties both submitted post-hearing briefs on November 10, 2010.

ISSUE

Did the employer interfere with and discriminate against Battalion Chief Bruce Amer by issuing him a reprimand and by not promoting him to the rank of "Supervising Battalion Chief" because Amer exercised rights protected by Chapter 41.56 RCW?

The Examiner finds that the employer did not commit unfair labor practices as alleged by the union. The union did not establish that the employer's actions were motivated by anti-union animus against Amer. In addition, the employer had legitimate business reasons reprimanding Amer and for not promoting him.

APPLICABLE LEGAL STANDARDS

The Commission draws its authority in this case from the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. RCW 41.56.040 protects the right of public employees to organize and bargain as follows:

No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter.

If a public employee's collective bargaining rights are violated, the Commission addresses those violations through the unfair labor practice provisions found in RCW 41.56.140 through 41.56.160.

The Examiner's authority is limited to the allegations of interference and discrimination for union activities stated in the preliminary ruling. In *Educational Service District 114*, Decision 4361-A (PECB, 1994) and numerous subsequent decisions, the Commission has called upon its examiners to utilize the three-prong, burden-shifting scheme endorsed by the Supreme Court of the State of Washington in *Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46 (1991) and *Allison v. Seattle Housing Authority*, 118 Wn.2d 79 (1991) to determine whether discrimination has occurred.

When discrimination is claimed, the complainant must first establish a prima facie case of discrimination. In *Educational Service District 114*, the Commission held that a complainant must show three specific factors to sustain its burden of proof. Those factors are:

- (1) the employee has participated in protected activity or communicated to the respondent an intent to do so;
- (2) the employee has been deprived of some ascertainable right, benefit, or status; and
- (3) there is a causal connection between those events, i.e. that the respondent's motivation was the employee's exercise of or intent to exercise statutory rights.

Once a complainant establishes a prima facie case, the respondent has the opportunity to articulate legitimate, non-retaliatory reasons for its actions. The complainant retains the burden of proof at all times, but may respond to a defense by showing that either: The reasons given are pretextual; or although some or all of the stated reasons are legitimate, the employee's pursuit of a protected right was nevertheless a substantial factor motivating the disputed action. *Brinnon School District*, Decision 7210-A (PECB, 2001); *Educational Service District 114*, Decision 4361-A (PECB, 1994).

ANALYSISDepartment Organization and Battalion Chief Rotation

The Seattle Fire Department provides a number of fire prevention, fire suppression, and emergency medical services for local residents. Under the overall direction of Fire Chief Gregory Dean, the department is composed of four divisions:

- Operations - responsible for fire suppression and emergency medical services;
- Fire Marshal's Office - responsible for fire prevention work;
- Risk Management - responsible for departmental safety and training programs; and
- Administration - responsible for administrative functions.

Assistant chiefs direct the four divisions. At the time of hearing, Assistant Chief William Hepburn was in charge of the Operations Division, Assistant Chief John Nelsen directed the Fire Marshal's Office, Assistant Chief A.D. Vickery was in charge of the Risk Management Office, and Assistant Chief Susan Rosenthal was responsible for the Administration Division. The Operations Division and the Risk Management Office are particularly important to the instant case, so further discussion of their respective structures is necessary.

In the Risk Management Office, there is a Safety Division that is under the direction of a deputy chief and has four safety officers who all report to Assistant Chief Vickery. The safety officers are all battalion chiefs. The Safety Division must respond to all major emergencies in the city and oversee department safety at the emergency scene. Safety officers also inspect all fire stations and other department facilities. Safety officers respond to accidents involving department equipment and personnel, and investigate as necessary. Safety officers also make sure that training offered by the department is conducted in a safe manner.

The Operations Division operates 24 hours a day, seven days a week, with approximately 200 personnel on duty. The division is composed of four platoons, referred to as "A," "B," "C," and "D," each under the supervision of a Deputy Chief. In fire department jargon, these deputy

chiefs are often referred to as “Deputy One,” because they are in charge of their respective platoons.

The platoons are composed of Battalions. Battalion chiefs supervise the activities of each battalion, and report to the deputy chiefs. Each battalion is assigned to a specific fire station and geographic region of the city, and is composed of a mixture of fire engines, ladder trucks, and emergency aid vehicles. While all of the battalions have the same general mission of suppressing fire and providing emergency medical assistance, certain battalions perform specialized duties. For example, Battalion 2 takes primary responsibility for hazardous materials emergencies. Battalion 3 takes the lead on technical rescue work in high rise buildings, and Battalion 7 provides marine services.

With the exception of Battalion 3, four battalion chiefs are assigned to each battalion.¹ One of the battalion chiefs in each battalion is designated as the “supervising battalion chief.” The supervising battalion chief is responsible for overall battalion operation and performs additional administrative duties. The supervising battalion chief also ensures that the other battalion chiefs are aware of operational issues and that all of the battalion chiefs provide uniform supervision for their respective duty shifts. While the supervising battalion chief position receives the same rate of pay as other battalion chiefs, supervising battalion chiefs are given additional time off to compensate for the extra work involved, and are given training opportunities not generally available to the other battalion chiefs. In addition, assignment to a supervising battalion chief position is viewed as a significant factor for promotion to deputy chief.

Fire department personnel are represented for purposes of collective bargaining by the International Association of Fire Fighters (IAFF). Non-supervisory personnel are represented by IAFF Local 27. Employees holding the rank of battalion chief and deputy chief are represented by IAFF Local 2898. At the time of hearing, Local 2898 represented approximately 34 department employees.

¹ Battalion 3, primarily responsible for technical rescue work, is supervised by a deputy chief, and at the time of hearing, no battalion chiefs were assigned to it.

The issue of battalion chief rotation was discussed by Local 2898 and the department for several years, culminating in a memorandum of understanding in 2007. In 2009, the parties reached agreement on a new memorandum of understanding to deal with the issue. The process for rotation set forth the following terms:

- Each Battalion Chief shall be rotated once every three years.
- Each Battalion Chief will submit a choice of assignment to the Deputy One Chiefs and the Assistant Chief of Operations for re-assignment consideration. The Deputy Chief will meet with platoon members to discuss their choices and interests.
- Every effort will be made to grant members their choice. However, since there may be overlapping preferences, this may not always be possible.
- The Assistant Chief of Operations will identify Supervising Battalion Chief positions on January 1 of each calendar year. Supervising Battalion Chiefs shall be moved to other supervising positions where possible. However, because there is a limited number of supervising Chief positions, this may not always be possible.
- Battalion Chiefs may apply for vacancies if the vacancy is a move forward to a battalion that the Battalion Chief has not worked in previously. Newly promoted Battalion Chiefs will fill the remaining positions after any transfers are made. The Assistant and Deputy Chiefs will determine if the member can remain in the position for three years or their current time remaining prior to their next transfer.
- As a result of retirements and promotions, Battalion Chiefs may be assigned to a different group to ensure that the experience level of each group remains balanced.
- Members may be allowed to “trade” assignments, with the approval of the Assistant Chief of Operations, in order to maintain the experience level within each group. Trading of assignments will not be allowed if the trade puts one of the members back into a previous assignment.

By using this rotation model, the department could meet its goal of giving its battalion chiefs more experience with department operations while avoiding unnecessary disruptions of leadership within the battalions. Individual battalion chiefs could express a preference to assignments on rotation. The department usually granted the battalion chiefs’ request for a specific assignment provided that the requesting battalion chief had the appropriate level of experience for the assignment, and was not “doubling up” on the same assignment. If more than one battalion chief wanted a specific assignment, the department used seniority to determine which eligible candidate should take the position.

Bruce Amer's Employment with the Department

The instant unfair labor practice complaint deals with Bruce Amer and the fire department's decision not to appoint him to a supervising battalion chief position. Events leading to the department's decision must be set forth to understand the circumstances that existed at the time that the decision was made.

Bruce Amer was hired by the Seattle Fire Department as a firefighter in December, 1972. Initially, Amer was assigned to Battalion 7 in West Seattle. At the time of his employment, Battalion 7 was not the department's maritime fire fighting command. Amer stayed in Battalion 7 until 1980, when he was transferred to the department's headquarters station. In the mid-1980's, Amer was promoted to lieutenant and he returned to Battalion 7. By the time of his transfer back, Battalion 7 contained the maritime fire fighting command. Amer attended specialized training in maritime fire fighting procedures, and he later helped design the fire department's marine fire fighting training program.

Amer was next transferred to Battalion 5, where he served as a lieutenant at a fire station on East Marginal Way for approximately 12 years. Amer also served in Battalion 6 and, for a brief period of time, in Battalion 2. In the early 1990's, Amer was promoted to captain. By the time of his promotion, Amer was serving in Battalion 6 again. Amer was promoted to battalion chief in 2004.

During his career with the Seattle Fire Department, Amer was an active member of the IAFF. Starting with service on the union bargaining team as a member of Local 27, Amer was also active with Local 2898. At the time of hearing, Amer was in the fifth year of serving as Local 2898's vice president. At all times pertinent to these proceedings, Battalion Chief Richard Verlinda served as president of Local 2898.

While he was serving as Local 2898 vice president, Amer participated in the negotiations for collective bargaining agreements, and the memorandum of understanding related to battalion chief rotation.

Events Preceding the Unfair Labor Practice

The instant unfair labor practice complaint must be analyzed in the context of events leading to the filing of charges. The parties presented evidence concerning three separate incidents involving Amer's employment relationship with the department. Each must be detailed to give a complete picture of events.

The Traffic Accident

On June 26, 2009, Amer was involved in a traffic accident while driving a department command car. Dispatched to a structure fire in West Seattle, Amer momentarily lost control of the vehicle and hit a traffic sign. Department protocol called for Amer to immediately notify the department of the accident and to wait at the accident scene so investigators could be dispatched to the scene.

Amer did not follow department procedures. He did not report the accident, and he left the accident scene to continue on the fire call. Shortly after he left the accident scene, Amer was informed that he was not needed, and that he could return to his station. On the way back to his station, Amer returned to the accident scene, where he cleaned up some of the debris, and took some pictures of the scene. He then proceeded to his station, where he informed fire command that he should be considered "out of service," without specifying why he would be in that status. He did not notify the Safety Officer which was required under department procedures. Amer then asked to have a new fire vehicle assigned to him. When Amer reported the accident, he estimated the damage at \$500.00. The actual damage amount was over \$6,800.

On June 28, 2009, Deputy Chief James Fosse wrote a memorandum indicating that he wanted Amer to go through formal counseling for the accident. Fosse was the duty chief at the time of the accident. Assistant Chief of Operations William Hepburn reviewed Fosse's proposed counseling for Amer, and in an August 10, 2009 memorandum stated that no further action would be necessary.

The incident was not resolved at that point. As part of a regular practice of reviewing proposed counseling, Assistant Chief of Administration Susan Rosenthal reviewed Fosse's proposal and Hepburn's concurrence, with fire department Human Resources Director Linda Czeisler.

Rosenthal was concerned about the use of counseling alone to address the incident, given the nature of the accident involved. Czeisler informed Rosenthal that the proposal for counseling could be returned to Fosse for another review, particularly since the proposed counseling did not seem consistent with department disciplinary policy for such incidents.

On August 26, 2009, Rosenthal sent Fosse a memorandum telling him that the recommended discipline was not consistent with “past practice,” and directing Fosse to re-examine Amer’s accident in light of department policy about accident reporting. On August 27, 2009, Fosse issued a “Statement of Formal Charges” against Amer because of his failure to report the accident of June 26, 2009. The charges were presented to Amer, who signed an acknowledgment of receipt on October 15, 2009. The discipline called for a formal reprimand. Deputy Chief Hepburn approved of the proposed discipline on November 17, 2009, and it was accepted by Fire Chief Dean on December 16, 2009. On January 3, 2010, Amer appealed the discipline. On January 29, 2010, Chief Dean denied Amer’s appeal.

The Letter to Chief Dean

In February 2009 Battalion Chief Dave Jacobs went onto disability status because he was suffering from an aggressive form of cancer. At the time he went on disability, Jacobs was working on “modified duty assignments” in the department’s Training Division. At some point near the time that Jacobs went on disability leave, Amer and union president Verlinda met with Chief Dean to discuss Jacobs’ employment situation. Chief Dean testified that Verlinda and Amer wanted the union to determine where Jacobs should be assigned when he returned to work. Dean further testified that he informed Verlinda and Amer that any assignment decision would be up to the department and not the union. Amer and Verlinda recalled the meeting, but neither of them could remember Dean stating that only the department and not the union would be responsible for placing Jacobs in a light duty position upon his return to work.

In September 2009 Chief Jacobs returned to work in a light duty capacity. Jacobs originally returned to a position in the department’s Training Division. Jacobs returned to a position that was arranged by Verlinda and Amer in direct conversations with members of the Training Division staff. Chief Dean learned of Jacobs’ return to work through the Assistant Chief of Risk

Management. Chief Dean immediately took steps to transfer Jacobs to the Fire Marshal's Office. Jacobs was notified of his new assignment through a message left on his home telephone. Shortly thereafter, Jacobs learned that his disease had returned, and that he only had a short time to live.

On October 9, 2009, Local 2898 sent Chief Dean a letter strongly protesting the Chief's decision to transfer Jacobs to the Fire Marshal's Office and criticizing the way that Jacobs learned of the transfer. The letter, in part, explained the steps that the union had taken in establishing Jacobs' work in the Training Division:

When Chief Jacobs returned to duty we met with the Chief of Training and were informed that his initial assignment would be to update a series of training guides that were seriously out of date. This is a project that was long overdue and a project that Chief Jacobs possessed both the skill and expertise to accomplish. After a brief discussion, we were able [to] establish some reporting procedures and time frames for completing the work along with a work schedule and work environment that would accommodate Chief Jacob's disease and ongoing treatment regimen. The minimal accommodations afforded Chief Jacobs were in line with and in compliance with federal and state statutes and resulted in a win-win situation for both the Department and Chief Jacobs.

The Department's actions earlier this week to unilaterally revoke these accommodations without reason or warning is both disgusting and reprehensible. Even more disturbing is the revelation that the Department lacked both the decency and courage to inform Chief Jacobs in person. Instead, on the day that Chief Jacobs learned that the disease that had ravaged his body had spread and that his remaining life was numbered to a few short weeks, he arrived home to find a cold, impersonal, and dispassionate message recorded on his phone informing him that he was being transferred to the FMO effective immediately. That cold impersonal message is probably the last official words that Chief Jacobs will ever hear from the fire department that he loved and served for over 25 years.

The letter was sent to Dean as well as the Mayor of Seattle and the Seattle City Council late on the afternoon of October 9, 2009, which was a Friday. Chief Dean's office did not receive the letter until approximately 4:00 P.M. The letter was not signed, but was issued with Battalion Chief Verlinda's name as union president on the signature line. There was no indication in the letter that Amer had anything to do with its contents. Amer testified that he had drafted the letter

for Verlinda's signature, and that the department should have known that he was involved with the letter by the language he used in the letter.

Chief Dean responded to Verlinda on the same day in a letter that he also sent to the mayor's office and the city council. Dean disputed the union's version of events leading to Jacobs' transfer, and discussed the union's role in getting Jacobs assigned to the Training Division in the following terms:

Your letter stating that you worked with the Training Division to establish Chief Jacob's reporting procedures as well as time lines for completing his work is new information for me and is well beyond the scope of your duties as a Local 2898 representative. I would have hoped you would have followed up with me about your concerns versus taking it upon yourself to arrange Chief Jacob's working conditions with the Deputy Chief of Training who is a member of your own bargaining unit. In addition, these arrangements were made without the knowledge of the Deputy Chief of Training's supervisor, the Assistant Chief of Risk Management.

Amer testified that he had a conversation with Dean on October 12, 2009, concerning the letter and Jacobs' situation. Amer testified that he notified Dean that he wrote the October 9 letter during the course of the meeting. Dean testified that he did not recall Amer mentioning the authorship of the letter until a meeting held in February 2010.

After the letter of October 9, 2009, was issued, Amer had a series of meetings with department officials. Some of those meetings were attended by Julie McCarthy, a City of Seattle labor negotiator. During the course of those meetings, department officials asked Amer to meet with Chief Dean about the October 9 letters. Amer never told any of the department officials or McCarthy that he had already met with Dean to discuss the letters.

The November 2009 Training Incident

The Seattle Fire Department operates a fire training facility near North Bend, Washington. Equipped with classrooms and a series of practice training stations, the facility is used to improve and to update fire suppression skills. On November 18 and 19, 2009, training was conducted for the department's Marine Emergency Response Team (MERT). Amer was

assigned to attend the training. On the first day of the training, class participants spent their time in a classroom setting, learning about the theory and procedures to be used when fighting a fire on board a marine vessel. The second day of training was devoted to practical application of the fire fighting procedures on a structure referred to as a “prop.”

Amer attended both days of training. He testified that he was not feeling well and did not have much notice of the training, but that he wanted to attend and tried to participate to the best of his abilities. Amer testified that the first day of training was well organized and well presented, and that he believed that the training was focused on real issues faced in maritime fire fighting situations. However, Amer testified that the second day of the training was disorganized and unfocused. At one point in the training scenario, Amer was asked to play a role that he did not believe to be beneficial to the training. Amer testified that, despite his misgivings about the training and his poor health, he participated in the training exercise. Because of his condition, Amer stayed near his personal vehicle through periods of the training, and was observed in his vehicle on several occasions.

Battalion Chief Paul Fletcher attended the second day of training and served as Safety Officer. Fletcher testified that Amer refused to participate in the training scenario, and that he spent the day in his personal vehicle without any interaction with the rest of the training group. Fletcher further testified that several fire fighters who were attending the class approached him to complain about Amer’s negative attitude and lack of participation.

On November 23, 2009, Fletcher expressed his concerns about Amer in a memorandum to Deputy Chief Robert Lomax. Upon receipt of the memorandum, Lomax contacted Fletcher to discuss the situation. Fletcher then contacted Deputy Chief Jesse Youngs, who was serving as “A” Shift Deputy Chief. Youngs approached Amer to discuss the matter. On December 6, 2009, Amer sent Youngs a detailed e-mail, criticizing the training and defending his participation in it.

Rotation for the “Supervising Battalion Chief” Position

Near the end of 2009, deputy and battalion chief rotation was set to occur. Amer testified that he, as senior battalion chief in Battalion 7, was in line to take the “supervising battalion chief”

position in the battalion. Using the rotation procedure detailed above, Assistant Chief of Operations William Hepburn was responsible for deciding how the rotation would work and which battalion chiefs should be named “supervising battalion chief.” In making his decision, Hepburn received input from other commanders, and had to consider the knowledge, skills, abilities and experience of each eligible battalion chief. Hepburn testified that he believed that he could balance those factors to make his decision, and that none of the four factors was considered to be of paramount importance.

On December 2, 2009, Hepburn met with the department’s four Operations Division deputy chiefs to discuss the next chief rotation and to identify who would serve as supervising battalion chief for each battalion. Amer was considered for the supervising battalion chief position for Battalion 7, but the management group unanimously decided he should not be given the position. Hepburn testified that the management group lacked confidence in Amer’s judgment, particularly noting Amer’s behavior at the training exercise of November 19, 2009.

Hepburn testified that he was also concerned about Amer’s lack of judgment concerning the accident of June 26, 2009, where Amer did not follow established department policies to report the incident in the appropriate way. Several deputy chiefs who met with Hepburn testified that they also had concerns about Amer’s judgment. Deputy Chief Robert Lomax and Deputy Chief Michael E. Walsh testified that they were aware of the training incident and the traffic accident, and that they did not believe that Amer should be given a supervising position. After further discussion, Hepburn decided to give the supervising battalion chief position to Phillip Jose, a battalion chief who was junior to Amer.

On January 10, 2010, Local 2898 filed a grievance on Amer’s behalf, challenging the employer’s choice of Battalion Chief Jose as Supervising Battalion Chief of Battalion 7. The employer responded to the grievance on January 26, and again on January 27, 2010. In the January 26, 2010 response, Chief Dean stated that Amer was not appointed to the position because of “work performance issues” specifically relating to the traffic accident and the training incidents.

The January 27, 2010 response was titled to “supercede the letter dated January 26, 2010.” In the letter of January 27, 2010, Chief Dean specified that there was no requirement for the department to appoint the senior battalion chief to the supervising battalion chief position, and disputing the union’s assertion that the department’s decision to bypass Amer was a form of discipline. Chief Dean again referred to the traffic accident and training incidents as reasons that Amer was not selected for the position.

Application of Precedent - The Prima Facie Case

The elements of a discrimination complaint are set forth in *Educational Service District 114*, Decision 4361-A, and quoted earlier in this decision. To be successful in a discrimination case, the complaining party must first show that a statutorily protected right was either being exercised or the intent to exercise the right was effectively communicated to the employer. In this case, the protected activity related to the October 9, 2009 letter sent by Local 2898 to Chief Dean concerning Battalion Chief Jacobs’ employment status. In its closing brief, the employer argued that the letter was not, in fact, protected activity because of the inflammatory language used, and the accusations made against Chief Dean.

I must conclude that the letter may be misguided and emotionally charged, but it could be considered to be the kind of communication that would be protected under Chapter 41.56 RCW. While the union did not have the authority to make work assignments, it appears that Local 2898 was working on behalf of one of its members, and attempted to make an accommodation for that individual. However, there is a real question as to whether the employer knew that Amer had anything to do with the October 9 letter.

The letter of October 9, 2009, from the union to Chief Dean was sent with a signature block for Union President Verlinda. In fact, it appears that the letter was delivered without any signatures, either from Verlinda or any other union official. On the face of the letter, there is no way determine that Amer had anything to do with its preparation. Amer testified that Chief Dean undoubtedly knew that he (Amer) had prepared the letter because of the language used, but the employer presented credible testimony from the Chief that he was not aware of Amer’s participation in preparing the letter until February 2010, well after the events leading to the

instant unfair labor practice complaint. Amer did not prove that his participation in drafting the letter of October 9, 2009, had any connection to the employer's decision not to promote him to Supervising Battalion Chief. Any other conclusion would lead to the proposition that any union official could claim discrimination for an adverse employer action, whether the official was involved in a particular set of circumstances or not. Such a result must be avoided.

The employer showed that Amer committed several lapses of judgment that directly affected his promotion. Amer's failure to properly report the June 2009 traffic accident and his erratic behavior at the November 2009 fire training activity were serious issues and had nothing to do with Amer's union membership, or the October 9, 2009 letter. The reasons set forth by the employer were not pretextual. The record clearly shows that the employer used a balanced and careful review process to determine who should be selected as supervising battalion chief, and that Amer did not meet the employer's expectations for the position. The record further shows that the employer's reasons did not relate to Amer's status as an officer in Local 2898. Given these factors, the unfair labor practice complaint must be dismissed.

FINDINGS OF FACT

1. The City of Seattle is a "public employer" within the meaning of RCW 41.56.030 (13).
2. Among its other municipal services, the city operates the Seattle Fire Department. At all times pertinent to this matter, Gregory Dean served as Fire Chief.
3. The International Association of Fire Fighters, Local 2898 represents a bargaining unit of supervisory personnel of the Seattle Fire Department and is a "bargaining representative" within the meaning of RCW 41.56.030(2).
4. Bruce Amer has worked for the Seattle Fire Department for over 30 years, and he is Vice President of Local 2898. At all times pertinent to these proceedings, Amer served as a Battalion Chief.

5. On June 26, 2009, Amer was involved in a traffic accident while driving a department vehicle. Amer did not follow established procedures when he reported the accident. Amer was disciplined for his failure to follow established procedures.
6. In September 2009, Battalion Chief Dave Jacobs returned to work following a period of medical leave. Amer and Local 2898 President, Richard Verlinda, made arrangements to have Jacobs start working in the Training Division. Chief Dean had already told the union officials that it was the department's responsibility to make work assignments, and upon learning of Jacobs' work in the Training Division, Dean transferred Jacobs to a limited-duty position in the department's Fire Marshal's Office.
7. On October 9, 2009, Local 2898 sent a letter to Chief Dean, protesting Dean's decision to have Battalion Chief Jacobs reassigned. The letter, while unsigned, was issued under Union President Verlinda's signature block. There is no evidence in the letter that Amer had anything to do with preparing the document.
8. In November 2009, Amer participated in a fire training activity in North Bend, Washington. Several fire fighters who attended the training complained that Amer was disinterested in the training and did not do anything during the practical training exercise. Amer was counseled about his participation at the training.
9. In the latter part of 2009, a regularly scheduled Battalion Chief rotation took place. As part of that rotation, certain battalion chiefs were to be promoted to the position of "Supervising Battalion Chief." The Supervising Battalion Chief position was considered to be an important step toward further advancement in the department, and successful applicants were given additional leave and training opportunities.
10. At the time of the 2009 rotation, Amer, as a senior person on the battalion chief list, expected to be named Supervising Battalion Chief in Battalion 7. Department management reviewed the candidates for the position, and found that Amer's actions and judgment did not meet the department's expectations for the position. Accordingly, the Supervising Battalion Chief position was awarded to another, less senior battalion chief.

11. The Seattle Fire Department, through its management staff, did not consider Amer's union activities in making the decision not to promote him to the position of Supervising Battalion Chief.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. By events described in Finding of Fact 7, Amer did not demonstrate that he had any part in the preparation of the letter sent to Chief Gregory Dean on behalf of International Association of Fire Fighters, Local 2898.
3. By events described in Findings of Fact 5 through 11, the City of Seattle did not discriminate against Bruce Amer for the exercise of his protected collective bargaining rights.

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is **DISMISSED**.

ISSUED at Olympia, Washington, this 29th day of March, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


KENNETH J. LATSCH, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.