

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-B - PECB

DECISION OF COMMISSION

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.

The International Association of Fire Fighters, Local 2898 (union) filed an unfair labor practice complaint on April 9, 2010, alleging that the City of Seattle (employer) discriminated against union Vice-President, Battalion Chief Bruce Amer (Amer). Examiner Kenneth J. Latsch conducted a hearing over four days and determined that the employer did not commit an unfair labor practice. The union now appeals that decision.

On appeal, the union argues that the Commission should conclude that the employer discriminated against Amer because of his exercise of protected activity and thereby interfered with employee rights. To address the union's arguments we incorporate the Examiner's applicable legal standards, analysis and conclusions here as we see no reason to restate them. We are not persuaded by the union's arguments; however, we would like to address some pertinent points.

First, the employer had legitimate, non-retaliatory business reasons for reprimanding Amer and not promoting him. Specifically, as the Examiner stated: “. . . 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.” Thus, we agree that the reasons set forth by the employer were not pretextual, and Amer’s pursuit of a protected right was not a substantial motivating factor causing the employer to not promote him. The union failed to meet its burden of proof.

Second, if the employer was going to discriminate against bargaining unit employees for the issuance of the letter, it would seem more likely that it discriminate against Verlinda and not appoint him, rather than discriminate against Amer. In December 2009, after the at-issue controversy about the October 2009 letter to Chief Gregory Dean protesting Dean’s decision to have Battalion Chief Dave Jacobs reassigned, Union President Richard Verlinda was appointed as the Supervising Safety Chief. Verlinda submitted the at-issue letter under his signature block. Also, we agree with the Examiner that there was a real question as to whether the employer knew that Amer had anything to do with the letter until February 2010, well after the events leading to the instant unfair labor practice case. Thus, although the Examiner did not specifically address it, we find this fact relevant to the decision.

Third, although there is substantial evidence in the record to support the Findings of Fact, we do want to make one factual correction to the Examiner’s Finding of Fact 8. We could find no evidence that Amer was actually counseled about his participation at the November 2009 training. This change, however, does not affect our overall decision and is therefore immaterial.

We have reviewed the entire record and fully considered the parties’ arguments. The Examiner correctly stated the legal standard, considered the complete record, and appropriately applied the law to the facts. Substantial evidence supports the Examiner’s findings of fact, and the findings of fact support the Examiner’s conclusions of law. For the reasons stated above, we affirm the Examiner’s decision to dismiss this complaint charging unfair labor practices.

NOW, THEREFORE, it is

ORDERED


The Findings of Fact, Conclusions of Law, and Order of Examiner Kenneth J. Latsch are AFFIRMED and ADOPTED as the Findings of Fact, Conclusions of Law, and Order of the Commission, except that Finding of Fact 8 should be AMENDED to read:

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 exercises. The employer intended to counsel Amer about his participation at the training.

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

ISSUED at Olympia, Washington, this 14th day of December, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



PAMELA G. BRADBURN, Commissioner



THOMAS W. McLANE, Commissioner



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS
COMMISSION

BY:  ROBBIE DUFFIELD

CASE NUMBER: 23159-U-10-05896 FILED: 04/09/2010 FILED BY: PARTY 2
DISPUTE: ER DISCRIMINATE
BAR UNIT: SUPERVISORS
DETAILS: Disciplinary action for vehicle accident
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