STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 876, Complainant,	)	CASE 14294-U-98-3544
vs.	)	DECISION 7275 - PECB
SPOKANE COUNTY FIRE DISTRICT 1, Respondent.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Emmal, Skalbania and Vinnedge, by Alex Skalbania, Attorney at Law, for the complainant.

Perkins, Coie, LLP, by Jeffrey Hollingsworth, Attorney at Law, for the respondent.

On December 21, 1998, International Association of Fire Fighters, Local 876 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that Spokane County Fire District 1 (employer) had discriminated in violation of RCW 41.56.140. A preliminary ruling was issued under WAC 391-45-110,[1] finding a cause of action to exist on allegations of:

> Demotion of employee Bill Anderson from the rank of battalion chief, after the filing of a representation petition for a bargaining unit of battalion chiefs, and in retaliation for protected union activities under Chapter 41.56 RCW.

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[1] At this stage of the proceedings, all of the facts alleged in a complaint are assumed to be true and provable. The question at hand is whether the complaint states a claim for relief available through unfair labor practice proceedings before the Commission.

A hearing was held on September 8, November 30 and December 1, 1999, before Examiner J. Martin Smith. Briefs were filed to complete the record.

Based upon the evidence, and the parties' arguments at the hearing and in their briefs, the Examiner rules that no unfair labor practice was committed. The complaint is dismissed.

BACKGROUND

Spokane County Fire District 1 (also known as "Valley Fire"), operates the largest fire department in Spokane County outside of the City of Spokane. Seven fire stations serve suburban/rural populations in the Spokane valley, to the east of Spokane. Elected members of a board of fire commissioners set policy for the employer and hire the fire chief. Pat Humphries was the fire chief throughout the period relevant to this case. Two assistant fire chiefs report to the chief. In 1998, the supervision of the fire stations was by three battalion chiefs reporting to the assistant chiefs.

International Association of Fire Fighters, Local 876, is the exclusive bargaining representative of captains, lieutenants, fire fighters, and paramedics employed by Valley Fire. The bargaining relationship has existed for many years, and the parties have had a series of 10 or more collective bargaining agreements.[2] This case involves events following promotion of a member of that bargaining unit and former president of Local 876, Bill Anderson, to the rank of battalion chief, in 1998.

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[2] Shifts at each station were headed by a captain and two lieutenants represented by Local 876.

Anderson's prior work record includes that he was hired at Valley Fire in 1970, and worked as a dispatcher, driver, and lieutenant prior to being promoted to captain in 1992.

Between 1992 and 1998, Anderson was an unsuccessful candidate for promotion to the ranks of battalion chief and assistant chief. In his application for battalion chief, Anderson indicated that he held a "BA degree in Fire Administration" and "MA degree in Public Administration," both from Eastern Washington University. Exhibit 10. In his application for assistant chief, Anderson listed an "AA" degree in Fire Sciences/Administration, a "BA" in General Studies/Fire Administration and an "MPA" in Public Administration. Exhibit 11. An examination-interview board ranked Anderson second of the three candidates for the assistant chief vacancy, largely because of his claim that he had a master's degree.

In 1996, a Spokane Valley Chiefs Association headed by Battalion Chief Mark Grover filed a petition with the Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of the battalion chiefs and assistant chiefs at Valley Fire. That organizing effort for the "mid-management personnel" was terminated, according to the testimony of Assistant Chief Lobdell in this proceeding, when the individuals involved agreed to take "personal services contracts" in lieu of exercising their collective bargaining rights under Chapter 41.56 RCW. That petition was thus withdrawn, and the case was closed, in August 1996.[3]

On January 29, 1998, Chief Humphries announced the selection of Mark Grover to become the new assistant chief. Anderson applied for promotion to the resulting vacancy in the battalion chief rank, and was the only eligible candidate for that vacancy. Anderson was

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[3] *Spokane Valley Fire District 1*, Decision 5637 (PECB, 1996).

not required to pass a promotional examination, and was promoted to battalion chief effective March 1, 1998,[4] subject to completion of a probationary period.[5] Like others promoted to that rank before him, Anderson was given a document titled: "Expectations for Battalion Chiefs" wherein the chief set forth his criteria for successful completion of probation in that assignment. Thus, Anderson began a period of four and one-half months during which he was excluded from the non-supervisory bargaining unit represented by Local 876.

On May 14, 1998, Local 876 filed a petition with the Commission under Chapter 391-25 WAC, seeking to represent a bargaining unit of battalion chiefs at Valley Fire.[6] At that time, the battalion chiefs were Anderson, Wayne Cumpton and Rick Keeling.

On or about May 25, 1998, Anderson sent a letter to Cooper Kennett, who was then the president of Local 876, as follows:

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[4] Anderson's promotion to battalion chief was announced by Chief Humphries on February 17, 1998. Enclosed with that letter was a personal services contract for Anderson's signature. Exhibit 12.

[5] Civil Service Rule 06.06 indicates:

> Permanent appointments shall be subject to a probationary period of six (6) months of actual service or one (1) year of actual service for entry level employees and shall not include time served under any other type of appointment. If the employee shall be found to be unacceptable to the Appointing Authority at any time during the probationary period, the Appointing Authority may return the appointee to his/her former position . . .

(emphasis added).

[6] Notice is taken of the Commission's docket records for Case 13920-E-98-2328, which indicate that IAFF International Vice President James L. Hill represented the union in the processing of that petition.

> In my exuberance to build a bridge between labor and management in our Department, I seem to have made the gap wider. I'm afraid I've lost credibility with both parties. Since the Battalion Chiefs are currently working under a contract with the District and they have both told me they do not want to pursue organizing at this time, I respectfully request that you withdraw P.E.R.C. Case 13920-E-98-2328. . . . It is my hope that we can work together with Local 876 and the District's Administration to be pro-active in solve [sic] disputes. I apologize for creating a confusing and confrontational situation for everyone involved.

Although a copy of Anderson's letter found its way into (and became a public record as part of) the Commission's file for the representation case, Local 876 did not immediately withdraw its petition, based upon that letter.[7]

In June of 1998, Anderson informed Chief Humphries that he did not, in fact, have a master's degree.

On July 15, 1998, the employer terminated Anderson's probationary appointment as battalion chief, and returned him to the rank and duties of captain.[8]

By a letter filed on July 17, 1998, the union withdrew the representation petition for the separate bargaining unit of supervisors.[9] That case was thus closed on July 20, 1998.

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[7] Local 876 was the petitioner, so only a union official could withdraw the petition. *See* WAC 391-25-150.

[8] Although it appears that the demotion was authorized or approved by Chief Humphries, the demotion letter was signed by Assistant Chief Grover. Exhibit 7.

[9] *Spokane County Fire District 1*, Decision 6374 (PECB, 1998). Thus, the representation petition was withdrawn some five days after Anderson was demoted from battalion chief. Exhibits 5, 6.

Anderson subsequently retired from Valley Fire. In 1999, he filed for and ran a political campaign seeking election as a member of the board of fire commissioners at Valley Fire. Anderson was elected to a six-year term in the 1999 general election, and he held elective office as a member of the employer's board of fire commissioners at the time of the hearing in this proceeding.

POSITIONS OF THE PARTIES

The union argues that Humphries was motivated by anger at the union in his decision to demote Anderson from the rank of battalion chief. Further, the union contends the demotion of Anderson was in specific reaction to the petition filed by the union for a separate supervisory bargaining unit, and so violated RCW 41.56.140.

The employer argues that Anderson was promoted subject to a probationary period, and that he was removed from the battalion chief position after he revealed to Chief Humphries that he had supplied false information on his applications for promotion. The employer denies that the demotion of Anderson was connected to the representation petition filed by Local 876 concerning the battalion chiefs, and denies that there was any discrimination against the battalion chiefs because they sought representation by Local 876.

DISCUSSION

This case features a higher-than-normal political profile, inasmuch as the claimant seeks a declaration that the employer which he now co-heads as an elected official discriminated against him in his former life as an employee. The record reveals Anderson's historical involvement in political issues, in addition to his leadership in Local 876 and related bargaining issues. The record also reveals a clear conflict between Captain / Battalion Chief / retiree / Fire Commissioner Anderson and Chief Humphries, which

stems at least in part from the earlier appointment of Mark Grover to the assistant chief position.[10]

The Standard for Discrimination Cases

Chapter 41.56 RCW prohibits employers from interfering with or discriminating against public employees who exercise collective bargaining rights secured by that statute:

> **RCW 41.56.040 RIGHT OF EMPLOYEES TO ORGANIZE AND DESIGNATE REPRESENTATIVES WITHOUT INTERFERENCE.** 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.

(emphasis added).

Enforcement of those statutory rights is through the unfair labor practice provisions of the statute:

> **RCW 41.56.140 UNFAIR LABOR PRACTICES FOR PUBLIC EMPLOYER ENUMERATED.** It shall be an unfair labor practice for a public employer:
>
> (1) *To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;*
>
> (2) To control, dominate or interfere with a bargaining representative;
>
> (3) *To discriminate against a public employee who has filed an unfair labor practice charge;*

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[10] While he did not remember Anderson as being a spokesman for Local 876, long-time Fire Commissioner C. Ray Allen testified that labor unrest was a steady feature at Valley Fire during 1979-83, after which things calmed down until a levy failure in 1997 necessitated cutting several fire fighter positions from the budget.

> (4) To refuse to engage in collective bargaining.
>
> (emphasis added).

Taken together, those two statutory sections make it illegal to discriminate against a particular public employee or group of employees, even if the employee or group has not as yet filed an unfair labor practice with the Commission.

The standard to be applied in discrimination cases under RCW 41.56.040 is "whether protected union activity was a *substantial motivating factor* behind a respondent's action or inaction" regarding an employee. *Educational Service District 114*, Decision 4361-A (PECB, 1994), *citing Wilmot v Kaiser Aluminum*, 118 Wn.2d 46 (1991) and *Allison v Seattle Housing Authority*, 118 Wn.2d 79 (1991).[11]

Under the "substantial motivating factor" test, the first step in the processing of a "discrimination" claim is for the injured party to make out a prima facie case of discrimination. To do this, a complainant must show:

1. That he or she exercised a statutorily-protected right, or communicated an intent to do so;

2. That he or she was deprived of some ascertainable right, status or benefit; and

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[11] The employer's brief questions whether the Commission has wisely chosen to adapt the test used by the Supreme Court of the State of Washington under other laws in *Wilmot* and *Allison*, in place of the test used by the National Labor Relations Board since *Wright Line, Inc.*, 251 NLRB 1083 (1980). The Examiner notes that *Wright Line* was, itself, an adaptation of a test used by the Supreme Court of the United States under a federal law other than the National Labor Relations Act. Ultimately, the Examiner is bound by *Educational Service District 114*, and the employer would have to address its concerns to the Commission.

3. That there was a causal connection between the exercise of the legal right and the discriminatory action.

The complaint will be dismissed if the complainant fails to make out a prima facie case, but that is not a burdensome task:

> [I]n establishing the prima facie case, the employee need not attempt to prove the employer's sole motivation was retaliation or discrimination based on the worker's exercise of [protected rights]. Instead, the employee must produce evidence that pursuit of a [protected right] was a cause of the firing, and may do so by circumstantial evidence . . .

Wilmot, at page 70.

An anti-union bias and/or an intent to retaliate is sometimes fairly obvious: In *Port Angeles School District,* Decision 7198 (PECB, 2000), others heard a threat to treat a disciplined employee more harshly if he contacted his union. Most cases are more subtle: A dismissal of discrimination allegations in *Brinnon School District*, Decision 7210 (PECB, 2000), is now on appeal before the Commission. The focus on circumstantial evidence recognizes that employers usually do not announce their unlawful plans and intentions in public.[12]

If the complainant establishes his/her prima facie case, there is a shift of the burden of production. The respondent has the opportunity to articulate legitimate, nonretaliatory reasons for its actions, by producing relevant and admissible evidence of another motivation. The complainant will prevail if this burden of

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[12] Both employers and unions can benefit greatly from reviewing the Commission's discussion in *Lewis County*, Decision 4691, 4691-A (PECB, 1994).

production is not met,[13] but the respondent need not provide the preponderance of evidence necessary to sustain the burden of persuasion.

The burden of proof does not shift, but the complainant may meet that burden by showing either:

1. That the reasons asserted by the respondent for its action(s) are pretextual; or

2. That, although some or all of the employer's stated reason may be legitimate, the employee's pursuit of protected rights was nevertheless a *substantial factor* motivating the respondent to act in a discriminatory manner.

As stated by the Examiner in *City of Federal Way*, Decision 4088 (PECB, 1993), the "substantial motivating factor" standard:

> [I]s not as high as in the past decade. The charging party must only establish that union animus was a "substantial factor" in the . . . decision to take action adverse to the employee.

At the same time, adoption of an "easier" standard under state law does not assure all complainants of success.

Anderson's Prima Facie Case

The union has made out a prima facie case that the employer discriminated against Anderson by shortening his six-month probationary period in the battalion chief position. The evidence is, of course, circumstantial:

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[13] An unfair labor practice was found in *City of Winlock*, Decision 4783 (PECB, 1994), where the reason articulated by the employer was itself unlawful.

The Exercise of Protected Activity -
This component of the prima facie case is easily discerned, where Anderson had been the president of the local union representing the employer's non-supervisory employees, and was one of only three employees in the separate bargaining unit of supervisors proposed in a petition filed within a few months after his promotion.[14] The timing of events makes the employer's action particularly suspect.

Deprivation -
Anderson was clearly "on probation" as a battalion chief. Even if the deprivation was limited to the balance of the probationary period, however, there is some basis to regard the employer's action as unusual. Importantly, probationary periods are not open seasons on union activists. In *Valley General Hospital*, Decision 1195-A (PECB, 1981), the Commission affirmed a "discrimination" finding against an employer that took action against a probationary employee who had the temerity to file grievances. In this case, the Examiner concludes there is sufficient evidence to make out a prima facie case of discriminatory deprivation of the promotion.

Causal Connection -
This element of the prima facie case is easily discerned, where the record clearly shows negative comments by the chief about the petition for a separate unit of battalion chiefs. Additionally, while not subject to a remedy in this case, the evidence regarding the employer's instigating "personal services contracts" during and

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[14] At this point in the analysis, the Examiner need not determine the employer's actual inferences, but simple mathematics indicate Anderson could have instigated the petition virtually single-handed. In a unit of only three employees, an authorization card from any one employee would be sufficient to meet the 30% showing of interest requirements of RCW 41.56.070 and WAC 391-25-110. Thus, the employer could have inferred that the petition was triggered by Anderson's promotion to the battalion chief position.

since the processing of the previous representation case for a separate unit of supervisors implies a willingness of this employer to utilize unlawful tactics in response to protected union activity.[15] Finally, the correspondence the employer sent to Anderson upon and following his promotion to battalion chief expected him to forego contact with the bargaining unit as to issues where management had a set point of view.[16]

The Employer's Stated Reasons

The employer defends that it took action because of Anderson's misrepresentation of his academic qualifications, and because Anderson failed (on multiple grounds) to perform satisfactorily in the battalion chief position.

The Examiner concludes that any of those reasons could have been lawful grounds for removing Anderson from the battalion chief position without waiting for the end of his probationary period.

Substantial Motivating Factor Analysis

The Employer's Reasons Were Not Pretextual -
Several facts established in this record dictate a conclusion that the prima facie "connection" between Anderson's union activity and the action taken against him breaks down.

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[15] *See Ridgefield School District*, Decision 102-B (EDUC, 1976), *cited in City of Pasco*, Decision 2327 (PECB, 1985) (casting doubt on the legality of individual employment contracts for employees having collective bargaining rights). *See also Washington State Patrol*, Decision 4757 (PECB, 1994).

[16] This is especially true regarding the "expectations' document provided to Anderson by the chief.

Anderson misrepresented his academic qualifications, and the union has not rebutted the employer's defense in that regard. Anderson's testimony was that he had an "AA" degree in fire science, a "BA" degree in general studies, and another "BA" in accounting. According to Anderson's statement to the panel interviewing candidates for the assistant chief position, he had applied for an "MPA" degree that he had earned. However, an official of Eastern Washington University testified that Anderson has only a "BA" degree from that institution in liberal studies, a general studies curriculum. There is no record of Anderson having a degree in accounting, or any reference to an "MPA" degree. The university official explained that an interdisciplinary program was designed for fire service employees during the 1970-1980 period, permitting them to attain a degree in general studies for fire service,[17] but that curriculum did not involve fire management. Anderson himself disclosed some or all of this discrepancy to the employer, in June of 1998. Even if not "perjury," and even if neither a "BA" degree nor a "MA" degree was required for the management positions, the record supports a conclusion that Anderson misrepresented his educational background. Anderson should never have submitted the erroneous applications, and certainly should have substituted accurate ones before the misrepresentations were relied upon by the employer in connection with filling vacancies in the battalion chief and assistant chief ranks. The claimed "MPA" degree got him second place on the promotion list for the assistant chief position, so Anderson's misrepresentations prejudiced both the employer and any applicant(s) placed below him in that process.

The Performance Deficiencies -

It was the two assistant chiefs, Lobdell and Grover, who actually determined that Anderson would not pass probation.

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[17] The classes were offered off-campus, rather than exclusively at the Cheney campus.

The evaluations of Anderson during his probationary period were not favorable. There is no evidence that the evaluations were improperly conducted, or were done in bad faith. Even where he had opportunities to do so, Anderson never marked his evaluation form that he disagreed with the scores and ratings given. The union's claim that two of four performance reviews were favorable is not persuasive: The two-month evaluation by Grover, on May 20, had several "falls below standards" ratings;[18] a second evaluation, on July 3, also reflected problems;[19] even the generally positive evaluation by Assistant Chief Rider, on July 3, gave Anderson a "below average" score of 2.5 on being pro-active in all programs; Grover's four-month evaluation also contained "below standards" and "unsatisfactory" ratings,[20] and noted Anderson "had his own agenda-not department's." In his July 14 letter in which he recommended a "no pass" on Anderson's probation, Grover stated that Anderson was weak and ineffective in areas of self-starting and pro-active management, and that Anderson was more focused on retirement than on being a battalion chief. Taken as a whole, the few favorable comments in the evaluations were deluged by the negative comments supporting the decision to end Anderson's probation.

A lack of progress on Anderson's probationary period project was established by this record. Assistant Chief Lobdell made that

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[18] Deficiencies were cited in the areas of effective management, meeting with assigned personnel, conducting shift officer meetings, completing assignments and projects, being pro-active in all programs including the ICS plan, leading through example, being responsive to personnel needs, and time management.

[19] Deficiencies were cited in the areas of completing assignments, being pro-active, and (by Keeling) in leadership. While Lobdell noted some improvement in communications, he indicated "but still needs work."

[20] Deficiency was cited for "communicating effectively and honestly about department issues."

assignment on March 12, 1998, soon after Anderson was promoted to battalion chief:

> You are to develop and implement a customized performance evaluation system for Spokane Valley Fire Dept. This is to be a 360 degree evaluation process. . . . You are to have your research and development completed by June 1, 1998. Our expectation is for an essentially finished product at that time.

The goal was to have enough of the design completed by June 1, so that performance evaluations could be discussed in bargaining with the union that was to begin in July.[21]

Anderson stated or implied to his superiors that he was making progress on that assignment, but he had little or nothing to show for the effort when the established deadline arrived.

- On April 17, Anderson told Lobdell that he was "almost done," and would present it soon.
- On May 8, Anderson repeated to Grover and Lobdell that his research was complete for "employee evaluation form." He was given 30 more days to finish the project.
- On July 1, Anderson was not finished. His note to Lobdell was that the work was "coming along well," and he promised a rough draft on July 13. Anderson was told he was way behind schedule.

In point of fact, the materials that Anderson eventually submitted to Lobdell were five pages of existing department documents, and a two-page sample evaluation form. In Lobdell's view (which the Examiner credits), Anderson's effort represented roughly five hours

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[21] In his testimony on cross-examination, Lobdell said the employer had an evaluation process in place for probationary employees, but lacked a comprehensive performance evaluation system for all employees.

of work over a time span of four months. Lobdell and Grover concluded that, without a glossary, purpose statement, means of procedure, or training materials, the effort had not produced a 360-degree evaluation and assessment system. The draft submitted by Anderson on July 13 led to a meeting later that day, where Lobdell informed Anderson that his probationary period as a battalion chief was being ended.

Anderson did not take or pass the Incident Command Test required in the chief's policy.[22] Anderson had not taken that examination before his promotion, and it is understandable that Grover decided to ask Anderson to take the test during his probationary period. Anderson was scheduled to take the test on a date in May or June; he was too busy. On another date thereafter, he elected to service a department automobile. The examination was scheduled for July 10, but Anderson called in sick on that day. Anderson asked to take the test on July 13, but did not show up to do so. The summer of 1998 was nearly devoid of serious fire-related incidents, so there was no opportunity to observe Anderson in the field. It is fair to say Grover was serious about Anderson taking the test, while Anderson did not evidence he was serious about taking the test. That conflict with his superiors was a legitimate basis for his demotion.

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[22] Exhibit 14, at "Organizational Axioms and Expectations." The union cannot now argue that the employer made an unlawful unilateral change by requiring passing this test and/or completion of a project as conditions for passing probation as a battalion chief:

First, promotions to positions outside of the non-supervisory bargaining unit are not mandatory topics for bargaining for Local 876;

Second, the union withdrew its petition for the separate unit of supervisors; and

Third, no unfair labor practice complaint alleging a unilateral change during the pendency of the representation petition was filed within the six month period allowed by RCW 41.56.160.

Unlawful Motivation Not Established -
There is no evidence whatever that the assistant chiefs who made the effective recommendation were upset by the petition filed in May. Anti-union animus is not shown here.

The labor-management relationship was routine during the period relevant to this case.[23] The organizational campaign in 1998 was limited to the battalion chiefs, and so was somewhat tame by comparison to the earlier representation petition for a supervisors unit which encompassed both the battalion chiefs and the assistant chiefs. Grover was the point man on the earlier representation petition and, apart from a complete lack of evidence of action taken against the leaders of that organizational effort, it is clear that Grover himself was later promoted.[24] Commissioner Allen remembered Anderson not so much as a union-spokesperson but as a political opponent when Anderson ran for commissioner in 1999.[25]

Anderson himself defeated the inference of union animus associated with the petition for the separate unit of supervisors, by telling Chief Humphries that he had taken no role in that petition. That occurred not once, but twice: The first by a voice-mail message left for the chief on May 18; the second at a meeting held soon

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[23] The Examiner takes notice of litigation involving this employer's administration of overtime and compensatory time. *See Collins v Lobdell (Spokane Valley Fire Dist. 1)*, 188 F.3d 1124 (9th Cir. 1999) No. 98-35655. The court ruled in favor of the employer.

[24] Mark Grover (then a battalion chief) led the organization that filed the petition in 1996. He has since been promoted to Assistant Chief.

[25] The union's attempts to cast Allen as having an influence on the promotions or demotions in the fire department did not bear fruit. Anderson remembers Allen becoming upset at one of his comments in 1990, but this was a meeting with union and employer negotiators. This claim goes nowhere. *See* employer's brief n.11.

thereafter. Tr. 100, 102, 481. While Anderson's letter to the union seems to suggest he was an instigator of the representation petition, the union's delay in withdrawing that petition calls into question whether Anderson really had much influence.

The Examiner concludes the antagonism was far less than that evident in *Lewis County, supra*, where an employees' solicitation of authorization cards angered other employees in the workforce as well. It is by no means a forgone conclusion that Anderson was seen as the ringleader of the unionization effort in 1998. Chief Humphries' use of "us versus them" terminology is ambiguous, and the union has failed to sustain its burden of persuasion for an interpretation evidencing an unlawful motive.

The Interference Claim

The union checked the box on the complaint form to allege an "interference" violation under RCW 41.56.140(1). The burden of proving unlawful interference rests with the complaining party, and must be established by a preponderance of the evidence. To establish an "interference" violation, a complainant must establish conduct which employees could reasonably perceive as a threat of reprisal or force or promise of benefit associated with their union activity. *City of Seattle*, Decision 3066 (PECB, 1989), *aff'd*, Decision 3066-A (PECB, 1989); *City of Pasco*, Decision 3804-A (PECB, 1992), and cases cited therein. Thus, the test for determining "interference" violations is one of reasonable perception of employees.[26]

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[26] If employer action is reasonably perceived by the employee(s) as related to their union activity, a violation is a possibility. But the employees must prove that the employer conduct was perceived as a threat, reprisal or promise of benefit designed to thwart an organizational campaign or defuse a grievance filing. *Oroville School District*, Decision 6209 (PECB, 1998); *City of Omak*, Decision 5579-A (PECB, 1997); *Yakima County*, Decision 5790 (PECB, 1996).

The Commission routinely finds a "derivative" violation of RCW 41.56.140(1) in any case where a violation of RCW 41.56.140(2), (3) or (4) is found. Since no discrimination violation has been proven here, no "derivative" interference violation is warranted on those facts.

Only activity involved in the discrimination claim is at issue in this case, and the union has not alleged facts supporting an independent "interference" claim. Nor does the evidence disclose the existence of any threats of reprisal or force or promises of benefit. The "interference" claim is dismissed.

FINDINGS OF FACT

1. Spokane County Fire District 1 (employer) is a public employer within the meaning of RCW 41.56.030(1).

2. International Association of Fire Fighters, Local 876 (union), a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of the employer's non-supervisory uniformed personnel.

3. William Anderson is now an elected member of the employer's board of fire commissioners and, as such, is excluded by RCW 41.56.030(2)(a) from the scope and coverage of Chapter 41.56 RCW.

4. From 1970 until March 1, 1998, Anderson was employed within the bargaining unit represented by Local 876. He served as president of the local union for an unspecified time.

5. In making application for promotion to a supervisory position with the employer in 1996, Anderson claimed to have both "bachelor" and "master" degrees from Eastern Washington

University. In making application for promotion to a supervisory position in 1998, Anderson claimed to have an "associate" degree, two "bachelor" degrees and a "master" degree, all from Eastern Washington University. Based on his claimed "master" degree, Anderson was rated above at least one other candidate for promotion.

6. Upon promoting a battalion chief to assistant chief, as described in paragraph 6 of these Findings of Fact, the employer took steps to fill the resulting vacancy in the battalion chief classification. Anderson was the only qualified candidate, and he was promoted to battalion chief on March 1, 1998, without having to take or pass tests usually administered to candidates for that classification. Anderson was thereupon excluded, as a supervisor, from the bargaining unit represented by the union.

7. Anderson's promotion to battalion chief was subject to a probationary period. Shortly after his promotion, Anderson was provided with written expectations for successful completion of probation, and was assigned to develop an evaluation system for the employer.

8. On May 14, 1998, Local 876 filed a representation petition with the Commission, seeking certification as exclusive bargaining representative of a separate unit of supervisors limited to persons holding the rank of battalion chief.

9. On May 18, 1998, Anderson left a voice-mail message for the fire chief, disavowing any involvement in the representation petition for the separate unit of supervisors.

10. On May 24, 1998, Anderson sent a letter to Local 876, asking that the representation petition for the separate unit of supervisors be withdrawn. A copy of that letter was filed

with the Commission, and thus should have been served upon the employer under WAC 391-08-120.

11. On an unspecified date in June of 1998, Anderson informed the fire chief that his earlier claims concerning his academic degrees were false and/or misleading. In fact, Anderson lacks the "associate," "MPA," "accounting," and "fire administration" credentials claimed in the applications which he filed as described in paragraph 5 of these Findings of Fact.

12. As of June 30, 1998, Anderson failed to either show progress or deliver a finished product in response to his assigned "evaluation" project. The employer also deemed the final result, submitted July 13, to be unsatisfactory.

13. The employer had an evaluation procedure in place for probationary employees, and at least four evaluations of Anderson's performance as a battalion chief were made by the assistant chiefs during Anderson's probationary period. Anderson was consistently rated below average in leadership and pro-active engagement with the personnel. Anderson received an overall rating of satisfactory in only one of those evaluations.

14. Anderson was directed to take an examination to demonstrate his skills in field incident command. The examination was scheduled on at least four specified dates during his probationary period, but Anderson failed to take the test on any of those occasions.

15. On July 13, 1998, the employer terminated Anderson's probationary period as a battalion chief. From that date until his retirement in 1998 or 1999, Anderson was again employed by the employer within the bargaining unit represented by the union.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapters 41.56 RCW and 391-45 WAC.

2. The union has failed to sustain its burden of proof to establish that the employer's demotion of William Anderson from his probationary appointment to the rank of battalion chief was discrimination in reprisal for the exercise of rights protected by Chapter 41.56 RCW, so that no unfair labor practice has been committed under RCW 41.56.140(1).

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED, on its merits.

Issued at Olympia, Washington, on the 7th day of February, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

J. MARTIN SMITH, 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.