City of Pullman, Decision 11148 (PECB, 2011)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1892, Complainant, vs. CITY OF PULLMAN, Respondent.	CASE 22912-U-09-5845 DECISION 11148 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Makler, Lemoine & Goldberg, P.C., by *Patricia Bridge Urquhart*, Attorney at Law, for the union.[1]

Stafford Frey Cooper, P.C., by *Michael Bolasina*, Attorney at Law, for the employer.[2]

The International Association of Fire Fighters, Local 1892 (union), filed an unfair labor practice complaint on December 16, 2009, alleging that the City of Pullman (employer), engaged in discrimination, discrimination for filing charges, interference, and domination. By letter dated December 24, 2009, the Commission's unfair labor practice manager issued a deficiency notice detailing several defects in the union's complaint. On January 13, 2010, the union filed an amended complaint and dropped the domination and discrimination for filing charges allegations. The unfair labor practice manager issued a preliminary ruling on January 19, 2010, finding two causes of action, one for discrimination in reprisal for union activities concerning 14 employees and another for independent interference concerning six employees.

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1 The Commission received notice after briefs were submitted that Urquhart is now practicing "of counsel" with Fenrich & Gallagher.

2 The Commission received notice after briefs were submitted that Bolasina is now practicing with Summit Law Group.

The Commission assigned the case to Examiner Jamie L. Siegel who held 12 days of hearing on June 9 through 11, August 2 through 6, and October 18 through 21, 2010. On June 18, 2010, after three days of hearing, the union filed a motion to amend its complaint which I granted by letter dated June 29, 2010.[3] The letter notes that "allegations raised for the first time in the second amended complaint which concern events occurring more than six months before the filing of the amended complaint will be considered as background information that cannot form the basis of a cause of action." The letter also amended the preliminary ruling finding a cause of action for discrimination in reprisal for union activities concerning seven employees and a cause of action for independent interference concerning 11 employees.

ISSUES

1. Did the employer discriminate against Eric Reiber in violation of RCW 41.56.140(1) when it disciplined him for creating a hostile work environment?

2. Did the employer discriminate against Rudy Fisher, John Gollnick, Eric Reiber, Blake Richards, Chris Volk, Chris Wehrung, and Jason Wilkins in violation of RCW 41.56.140(1) when it conducted an investigation into allegations that they retaliated against bargaining unit employees who provided the employer with adverse information about Reiber and when it disciplined Fisher, Gollnick, Richards, Volk, Wehrung, and Wilkins for engaging in retaliation?

3. Did the employer interfere with employee rights in violation of RCW 41.56.140(1) by its actions concerning Chuck Caessens, Andrew Chiavaras, Jon Erickson, Rudy Fisher, Don Foster, Mark Johnson, Tony Nuttman, Eric Reiber, Tim Southern, Chris Volk, and James Young?

After fully considering the extensive record in this case, I find that the employer did not discriminate against any of the named employees nor did the employer interfere with employee rights.

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[3] Both parties sought to admit post-complaint evidence. I advised that I could not admit post-complaint evidence unless the union filed an amended complaint. *See Central Washington University*, Decision 10118-A (PSRA, 2010).

APPLICABLE LEGAL STANDARDS

Discrimination

An employer unlawfully discriminates when it takes action against an employee in reprisal for the employee's exercise of rights protected by Chapter 41.56 RCW. *Educational Service District 114*, Decision 4361-A (PECB, 1994). The complainant maintains the burden of proof in employer discrimination cases. To prove discrimination, the complainant must first set forth a *prima facie* case by establishing the following:

1. The employee participated in an activity protected by the collective bargaining statute, or communicated to the employer an intent to do so;

2. The employer deprived the employee of some ascertainable right, benefit, or status; and

3. A causal connection exists between the employee's exercise of a protected activity and the employer's action.

Educational Service District 114, Decision 4361-A; *Central Washington University*, Decision 10118-A (PSRA, 2010). To prove an employer's motivation for an adverse employment action was discriminatory, the complainant must establish that the employer had knowledge of the employee's union activities. *Metropolitan Park District of Tacoma*, Decision 2272 (PECB, 1986), *aff'd*, Decision 2272-A (PECB, 1986). The complainant may use circumstantial evidence to establish its *prima facie* case because a party does not typically announce a discriminatory motive for its actions. *Clark County*, Decision 9127-A (PECB, 2007).

When the complainant establishes a *prima facie* case, it creates a rebuttable presumption of discrimination. In response to a complainant's *prima facie* case of discrimination, the employer need only articulate a non-discriminatory reason for its actions. The employer does not bear the burden of proof to establish the reason. *Port of Tacoma*, Decision 4626-A (PECB, 1995). Instead, the burden remains on the complainant to prove by a preponderance of the evidence that the disputed action was in retaliation for the employee's exercise of statutory rights. *Clark County*, Decision 9127-A. The complainant meets this burden by proving either that the employer's reason was pretextual, or that union animus was a substantial motivating factor behind the employer's actions. *Port of Tacoma*, Decision 4626-A.

Interference

An employer commits an unfair labor practice if it interferes with, restrains, or coerces employees in the exercise of rights protected by Chapter 41.56 RCW. RCW 41.56.040 sets forth the rights of employees to organize and designate representatives without interference 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.

The union bears the burden of proving employer interference. WAC 391-45-270. The Commission finds unlawful interference where one or more employees could reasonably perceive an employer's action as a threat of reprisal or force, or promise of benefit, associated with the exercise of protected rights. The union need not show that the employer intended to interfere or that the employees involved actually felt threatened. *Central Washington University*, Decision 10118-A. The Commission does not base a finding of interference on the reaction of the particular employee involved; instead, it bases its determination on whether a typical employee could reasonably perceive the action as an attempt to discourage protected activity. Additionally, the complainant bears the burden of establishing that the employer's conduct resulted in harm to protected employee rights. *City of Wenatchee*, Decision 8802-A (PECB, 2006).

The Commission dismisses interference complaints when they are based upon the same set of facts that fail to constitute a discrimination violation. *Reardan-Edwall School District*, Decision 6205-A (PECB, 1998). The Commission recently declined to overrule this longstanding precedent. *Northshore Utility District*, Decision 10534-A (PECB, 2010).

Procedural Matters: Statute of Limitations, Allegations Not Raised in Complaint

RCW 41.56.160(1) restricts the Commission from processing alleged unfair labor practices that occur more than six months before the filing of the complaint. When a union believes an employer violated an employee's procedural rights while conducting an investigation into the employee's alleged violation of policy, the union must file the unfair labor practice complaint

within six months of when it knew, or should have known, of the alleged violation *Seattle School District*, Decision 9982-A (PECB, 2009). The statute of limitations is a jurisdictional issue that the Commission and its examiners may raise at any time, even if the opposing party does not raise it. *City of Bellevue*, Decision 9343-A (PECB, 2007).

WAC 391-45-070(2) allows a complainant to make a motion to amend its complaint to conform the pleadings to the evidence after the opening of the hearing, provided the party meets certain specified requirements, including that the proposed amendment is timely. The law bars examiners from granting such a motion unless the evidence is received without objection and the party makes its motion to amend the complaint prior to the close of the evidentiary hearing.

ANALYSIS

Background

The employer maintains a fire department (department) led by Chief Patrick Wilkins who has served in that position since 1984. Mike Heston serves as the fire operations officer. The department operates out of two stations.

The union represents a bargaining unit comprised of all employees within the fire department except Wilkins, Heston, and the administrative secretary; the unit includes captains, lieutenants, and firefighters who each work on one of three 24-hour shifts.[4] Eric Reiber, Rudy Fisher, and Chris Volk work within the fire department and make up the union's executive board and, along with legal counsel, the union's bargaining team. Reiber serves as a captain in the department and as the union's president; Fisher serves as a lieutenant in the department and as the union's vice president; Volk serves as a firefighter in the department and as the union's secretary/treasurer.

The employer and union were parties to a collective bargaining agreement at all times material to this proceeding.

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[4] It appears that the unit also includes a training officer who works a day shift.

Tadema

Chelsey Tadema worked for the employer as a reserve firefighter from 2004 to 2006. After completing college and paramedic training, the employer hired her into a temporary firefighter/paramedic position in April or May of 2008. In June 2008, the employer hired her into a regular firefighter/paramedic position. During the time in question for this matter, Tadema served as the employer's only female career firefighter.

As is customary with probationary employees within the department, Tadema worked for several months on each of the three shifts. She worked on A and B shift without incident. She received one formal performance evaluation during her time on those shifts which was positive.[5] Tadema rotated to C shift, her last rotation, in January of 2009. Reiber served as captain of C shift.

Tadema found C shift to be different from the other shifts and was uncomfortable with some of the discussion and behavior of personnel on C shift. Reiber pulled her ponytail, got too close to her, rubbed her shoulders a couple of times, and called her "scrawny blonde." Such behavior made her uncomfortable, although she did not say anything about it until April 2009.

Other conduct that caused Tadema discomfort included colleagues teasing her about her physical appearance, "chief bashing," disparaging other shifts and department members, general negativity, and sexual comments. She testified that if A and B shift personnel made sexual comments and jokes, they did not do so in front of her, unlike C shift. Tadema was also uncomfortable with the pranking that occurred on C shift, even though most of it did not target her. She testified that C shift "was not a fun place for me to be."

Prior to rotating to C shift, no one raised any performance concerns with Tadema. On March 11, 2009, Reiber met with Tadema and provided her with his written evaluation of her performance. The evaluation praised her work and noted no concerns. After reviewing the evaluation, Reiber shared some concerns with Tadema that he heard from others on C shift, including that she was not "probie" enough and that she treated reserves poorly. He explained that he was not putting the concerns in writing because he had not previously spoken with her about them.

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[5] The evaluation included that she "handles EMS scenes with ease, remains composed and is able to direct the scene without difficulty" and "Chelsey is very easy going and gets along well with all of the shift members and reserves. She is very polite and treats all of the shift members and reserves with respect."

In early April 2009, Reiber met with Tadema again and told her that others on C shift were complaining that she was not contributing as much as she should to morning chores and that there had been issues relating to grocery store runs. With respect to grocery store runs, Tadema brought her own food to work, consistent with her dietary needs. As a result, she did not need to go to the grocery store during shift. The rest of C shift typically made dinner together and were permitted to take the ambulance on one store run per shift. Because Tadema was generally assigned to the ambulance, she was expected to go on the grocery store runs. The testimony revealed that on at least two occasions Tadema got frustrated when her colleagues did not plan meals ahead of time, causing her to interrupt her late afternoon workout to go to the store.[6]

On April 27, 2009, while Tadema was with colleagues awaiting the start of a training session, Reiber asked her to come with him and led her to a meeting in Operations Officer Heston's office about her performance. During the meeting, Heston referenced nine months of "smooth sailing" and asked her what happened during the last three. He asked Tadema about the problems that Reiber had previously raised with her and whether she had worked on them. She responded and shared her perspective of the perceived problems and the steps she had taken to address them. Heston ended the meeting saying that it did not sound like there were any real problems and that notes would be put in her file.[7]

Tadema was upset about the above-described interactions and felt her job was in jeopardy.[8] After the meeting with Heston and Reiber, Tadema sought advice from Andrew ("Drew")

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6 The evidence also revealed that at least some members of C shift were unhappy that Tadema generally did not eat dinner with them.

7 The record includes no evidence that Reiber or Heston ever raised concerns with Tadema about her technical skills as a firefighter or paramedic.

8 At times the union and Reiber appeared to argue that Tadema should not have thought her job was in jeopardy. The evidence, however, supports that Tadema feared for her job. She asserted that when she asked Reiber if she was in trouble when heading to Heston's office, Reiber responded with words to the effect that he was trying to keep her out of trouble or trying to help save her job. Although Reiber denies it, I credit Tadema's testimony. In his May 22, 2009 rebuttal statement, Reiber spoke of the purpose of the meeting in Heston's office and said that Heston wanted to "....make sure she was aware of the probationary timeline." Reiber also talked about the confusion surrounding when Tadema's probationary period was over and that "there wasn't much time to make sure she was squared away." He acknowledged that "Chief Heston did tell her that he wanted to make sure she was on track for a successful finish to her probationary year, and he wanted to be able to recommend a pass when the time came."

Howell, a firefighter with whom she had a close personal relationship.[9] Howell suggested that Tadema talk with Lieutenant James Turpin, Howell's supervising officer. On April 28, 2009, after Tadema spoke with Turpin, Turpin shared Tadema's concerns with Fire Chief Wilkins. During the course of the conversation, Turpin also shared with Wilkins the concerns he previously heard from other employees about Reiber, including concerns from Howell and another firefighter, Erik Taylor. Wilkins asked Turpin to document the information that he shared; Turpin complied and submitted a statement to Wilkins.

After the meeting with Turpin, Wilkins met with Tadema. She came to the meeting with notes and, upon Wilkins' request, provided him with the notes. During the meeting, Tadema requested a transfer to a different shift. Wilkins also met individually with Howell and Taylor and asked them to document the information that they shared with him; they complied and submitted statements to Wilkins.

Wilkins forwarded the statements from Turpin, Tadema, Howell, and Taylor to Karen Sires, the employer's human resources manager, and asked that she conduct an investigation. After working one more C shift, the employer transferred Tadema to A shift.

Tadema testified that she did not raise concerns about C shift earlier because she understood that her role as a probationary employee was not to be heard.[10] Although she believed that she was subjected to a sexually hostile work environment, when Tadema raised concerns in April 2009,

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9 Tadema worked for the Howell family when off-duty from the department. The record contains extensive testimony concerning the suspicion on the part of many in the department that Howell and Tadema were having an affair.

10 Considerable testimony corroborated Tadema's view of her role as a probationary employee. The following are three examples:

- Firefighter John Gollnick testified that as a probationary employee "you're told not to speak your first year, you really don't have an opinion, because you're a rookie. . . . That's how it worked in the Fire Department. . . . The better you took it, the better you were accepted later on. And that's just how it was."
- Reiber testified: "But the thing I would expect with a probationary firefighter is they're going to look and listen and learn, and they're probably not going to tell us how we should run the Fire Department, because they haven't been there long enough to know . . . ."
- Firefighter James Young testified: "You're expected to answer questions only if asked, and not to speak your mind until after your probationary year."

she chose not to share examples of inappropriate comments and jokes on C shift. She testified that as the only female career firefighter, she did not want to be "'that' girl."

Reiber investigation

On May 5, 2009, the employer placed Reiber on paid administrative leave pending the outcome of the investigation into allegations that he created a hostile work environment. Human Resources Manager Sires conducted the investigation. She formulated interview questions based upon the information she had from Howell, Tadema, Taylor, and Turpin. She asked the same questions of each employee she interviewed.

By letter dated May 12, 2009, the employer scheduled an investigatory interview with Reiber which was held on May 22, 2009. By letter dated June 8, 2009, the employer informed Reiber of its intent to discipline him by demoting him to the rank of firefighter. The letter also provided Reiber notice of his pre-disciplinary meeting on June 24, 2009. The employer included Sires' investigative report with the letter. The report detailed some of the responses Sires received to interview questions and provided examples of where she found Reiber treated Tadema "in a manner that could be interpreted to be demeaning, humiliating, and where he used intimidation in his interaction with her. . . ." The report also gave some examples demonstrating the type of environment Reiber allegedly created, including:

- Reiber referring to women visiting the department as "hot."
- Touching and standing close to female employees in the department.
- Suggestive comments to employees' wives such as "When are you going to sneak off with me?" "When are you going to leave that loser?" "When are you going to tell him about the other night?"
- Demeaning others by calling them "dickhead," "buttmunch," and "dickscratch."
- Making negative comments about fire department and city administrators in front of subordinates and peers.
- Requesting naked photos of the wives of other firefighters.[11]

[11] As discussed in more detail later in this decision, the record reveals reason to question this allegation.

The report also reviews the employer's previous efforts to address concerns with Reiber's performance, including: comments in Reiber's evaluation relating to improving his communication; documentation of a situation involving Reiber using the term "old man" to describe Chief Wilkins in front of Wilkins' wife and a car salesman; and documentation of Reiber's role in a situation involving damage to two department vehicles. The last paragraph of Sires' report states:

> An affirmation of an individual's complaint that they find the workplace hostile is not mediated by testimony from others that they do not find the same. Firefighter Tadema is the only female in the department and Captain Reiber's consistently demeaning comments regarding women as well as the manner in which he chooses to address problems, one of a demonstration of power and humiliation, have resulted in a work environment that is unmanageable for at least one employee.

On June 24, 2009, Reiber attended his pre-disciplinary meeting along with a union attorney, union vice president Fisher, union secretary/treasurer Volk, and a number of other employees. The employer denied the union's request to introduce testimony from employees other than Reiber, his union representative, and union attorney but offered the union the opportunity to submit written statements by July 3, 2009.

Union investigation and Sires' letter to Fisher

With Reiber on leave, Fisher assumed the role of acting union president and led the union's efforts in support of Reiber. The efforts included preparing statements to be submitted to the employer and some investigation. Fisher and one of the union's attorneys, Patricia Urquhart, drafted and/or edited most of the statements. Fisher testified that he was clear with each person when signing the statement "that means you take ownership of every word that's in there."

With respect to the union's investigation, the union's second amended complaint states that the union leadership asked employees questions about "Reiber's conduct in the workplace, and the conduct of those employees making accusations against him." One issue that Fisher looked into involving the conduct of employees making accusations against Reiber was a "tea-bagging" incident between Howell and another employee.[12] The evidence reflects that this incident

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[12] According to Fisher, "tea bagging" involves a male dragging his scrotum over the forehead of another person. Urban dictionaries offer some variation in defining this term.

occurred in 2007 or 2008, shortly after Howell transferred from Reiber's C shift at station 1 to Turpin's A shift at station 2. Upon hearing of the incident from two firefighters during the course of the union's investigation, Fisher went to station 2 to talk with the employee who was involved; Fisher wanted to find out if it was true or if it was just "firehouse bragging."[13]

When Turpin learned that Fisher had questioned the employee about the "tea-bagging" incident, he informed Sires that he felt he was being retaliated against; he also initiated a conversation with Fisher. Concerned about potential retaliation in violation of the employer's policies, Sires sent Fisher a letter dated June 26, 2009, reminding him of the employer's policies against retaliation and cautioning him that he could subject himself to disciplinary action if he were to engage in retaliatory conduct.

On July 3, 2009, the union submitted statements from ten current employees and an employee's spouse. A former employee also submitted a statement on or about July 3 directly to Wilkins. The statements from Reiber, Fisher, and Volk, as well as from firefighters John Gollnick, Blake Richards, Chris Wehrung,[14] and Jason Wilkins,[15] made allegations against Howell, Tadema, Taylor, and/or Turpin, the employees who provided the employer with adverse information about Reiber.[16] The statements of Gollnick, Richards, and J. Wilkins contained four nearly identical paragraphs; the only difference is that one of the paragraphs in Richards' statement included a name that the others did not. A portion of the identical paragraphs included:

> These charges are unfair, because the people making these accusations are the ones who are most responsible for sex-related and disrespectful speech, and an environment that makes many of the rest of us uncomfortable.
> . . . .

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13 The employee essentially told Fisher that it was not a big deal, that Howell had his shorts on, and that after Turpin learned of the incident, Turpin told them not to engage in that kind of behavior again. Fisher characterized it a bit differently in his July 3, 2009 statement submitted to the employer.

14 At the time of the statements, Wehrung was serving as an acting lieutenant.

15 Jason Wilkins is not related to Chief Patrick Wilkins. When this decision refers to Jason Wilkins, it will indicate "J. Wilkins" to distinguish him from Chief Wilkins. This decision will continue to refer to Chief Wilkins as "Wilkins."

16 Each of their statements were directed to Wilkins and the "regarding" line included: "Investigation of the Conduct of Captain Eric Reiber and his Accusers."

> Captain Reiber is not guilty of these charges. Lt. Turpin, Andrew Howell, Chelsey Tadema[17] are the ones responsible for pushing sexual matters in the face of the rest of us.

Wehrung's statement also included the above-quoted sentences.

Reiber discipline

By letter dated July 10, 2009, Wilkins concluded that Reiber engaged in a pattern of behavior that included making rude and demeaning comments toward others, touching employees inappropriately, and creating a work environment that was, at least for one person, unwelcoming and offensive due to his own behavior as well as condoning the inappropriate behavior of subordinates. The letter included several examples and the following:

> The statements that colleagues provided on your behalf after the meeting were significant in several respects. It was noteworthy that many of the statement providers claim that they brought the sexualized comments and behavior of other firefighters to your attention because they found it to be offensive. Despite your role as a supervisor who is tasked with enforcing City and fire department policy, you did nothing in response to curb the offensive behavior or address their concerns. Indeed, no mention of such comments or behavior was ever brought forth by you until you found it necessary to attack the credibility of your accusers. The most likely explanation for this failure is that such sexualized comments and behavior was not only tolerated, but condoned and modeled, under your leadership. I am not letting you, as a supervisor, off the disciplinary hook because you have accused subordinate firefighters of acting in a similar fashion. What you do not appear to understand is that you, as a fire captain, have an obligation to lead by example and that you have an obligation to correct misbehavior of subordinates, not cite it as a reason why you should not be disciplined for also violating policy.
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> Perhaps most importantly, the investigation showed that your skill as a tactical firefighter did not translate into skill as a supervisor of other firefighters. The manner in which you handled issues regarding Ms. Tadema, once she was placed on C shift, amply demonstrates this. You have developed a dysfunctional leadership style in which you maintain power, control and obeisance by making subordinate employees insecure in their status, afraid of falling out of your favor, and beholden to you for their comfort and success. What you have accomplished is molding a group of firefighters who are loyal to you, and not to the City or the department. While this style might work in the fire departments of old, or in wolf packs of today, it does not work in the diverse, modern work place where policies and procedures govern the employer/employee relationship, and much of what you have either done or allowed under your watch is clearly prohibited.

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17 Richards' statement included Erik Taylor.

The employer suspended Reiber without pay for one month and demoted him from his captain position to a firefighter position for a minimum of six months. He was required to successfully complete training on such issues as supervisory and management skills, communication, and anti-harassment.[18]

Reiber grievance

The union filed a grievance concerning Reiber's discipline with City Supervisor John Sherman on July 22, 2009. Sherman held a grievance meeting on July 28 and on August 10, issued a response denying the grievance. In Sherman's response, he recounted a written request he made of the union prior to the meeting in which he sought to clarify whether the allegations contained in the July 3 statements that Howell, Tadema, Taylor, and Turpin created "a sexually-hostile work environment were intended as a formal complaint or if it was intended to be part of their defense. . . ." Sherman wrote that in response to that question, "Attorney Urquhart stated that it was the union's intention that the city had been given 'legally sufficient notice' through the information provided within the grievance."

Near the end of Sherman's grievance response, he wrote that the employer started an investigation in response to the union's allegations and "disciplinary action will be taken as deemed appropriate for those work-related violations, as was done in this case."

Investigation stemming from allegations contained in statements

The employer initiated an investigation into the allegations against Howell, Tadema, Taylor, and Turpin. Sires conducted the investigation and completed a summary of the investigation in September 2009. The following resulted from the investigation:

Howell: Sires found that Howell's behavior had been inappropriate and offensive. As a result of the investigation, on October 5, 2009, the employer issued Howell a written warning concerning his inappropriate verbal behavior and use of obscene or uncivil language. The letter acknowledged his commitment to modifying his behavior and advised him that future violations of policy could lead to further discipline, up to and including termination.

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[18] After the six-month demotion, Reiber returned to his captain position.

Tadema: Sires found that the allegations against Tadema raised two concerns. One accusation against Tadema was that she and Howell slept together while on duty. Sires determined that there was no evidence that anything inappropriate had occurred. The other accusation involved Tadema using sick leave to be with Howell's children after they were injured in a car accident. Tadema admitted to using sick leave for that purpose and Sires advised her during the interview that that was not a permissible use of leave.

Taylor: Sires determined there were only two references to Taylor's use of inappropriate language, that he did not recall the first and did not concur with the second. The employer took no action.

Turpin: Sires indicated that some of the allegations against Turpin were similar to those made against Howell, although Turpin was also accused of not performing his duties as a supervisor. She found that it did not appear that Turpin had counseled Howell about a number of matters. According to Turpin's testimony, the employer counseled him as a result of the investigation.

Public records request

Taylor and Turpin submitted public records requests to the employer in September 2009. They sought various documents relating to the Reiber investigation, including communication between employees, union executive board members, and the union attorneys. The employer provided the requested documents, including communication between union officers and their attorneys.[19]

Retaliation complaints and investigation

In November 2009, Howell and Turpin each submitted a formal retaliation complaint to the employer. Both alleged that Fisher, Gollnick, Reiber, Richards, Volk, Wehrung, and J. Wilkins submitted false accusations against them in their July 3 statements in retaliation for their involvement in the employer's investigation of Reiber.[20] The employer retained the services of

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[19] One of the union officers used his work e-mail to communicate with the union's attorneys. Some of the e-mail communication between them was admitted into evidence without objection.

[20] Tadema and Taylor testified that they also suffered retaliation, including being shunned and isolated by their colleagues, but elected not to file a complaint.

attorney Beth Kennar[21] to conduct an investigation into Howell's and Turpin's retaliation complaints. The scope of the investigation was limited to determining whether any of the named employees violated the employer's policies against retaliation with respect to Howell's and Turpin's complaints. The union objected to the investigation as a violation of Chapter 41.56 RCW.

During the course of Kennar's investigation, Turpin alleged that in addition to the retaliation arising from the allegations against him contained in the employees' July 3 statements, the employees' behavior toward him was also retaliatory. Turpin alleged that someone urinated in his mouthwash, put a McDonald's job application in his box or locker, stole pictures from his locker, put rocks in his boots, put flammable jell foam in his boots, and treated him differently by giving him the cold shoulder, glaring at him, and other such conduct. He also alleged that employees were boycotting A shift by not coming in on callbacks, transfers, or overtime.

Kennar originally scheduled interviews with Fisher, Gollnick, Reiber, Richards, Volk, Wehrung, and J. Wilkins for November 2009 but, to accommodate union attorney Mark Makler's schedule, she rescheduled the interviews to January 2010. At the beginning of each of the January interviews, Kennar informed the employee that she was not trying to intrude on union business and asked that the employee and Makler sign an advisement of rights which stated:

> The purpose of this interview is to ask questions regarding complaints of retaliation in violation of City Policy that have been made against you. I will not ask any questions regarding Union policy, practice or strategy. The City of Pullman has a legitimate interest in protecting its employees from possible conduct that is retaliatory, discriminatory, and/or harassing. Consequently, questions pertaining to union members and conversations will be designed to illicit only those facts relating to the alleged violations of City Policy. If at anytime you believe a question may inquire into matters beyond the scope of the investigation as described above, please be sure and explain your concern. Please sign below indicating that you understand the scope of this investigation as has been described.

After completing the investigation, Kennar prepared reports with her findings concerning each employee. According to Kennar, each of the seven employees admitted that had Howell and

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[21] Kennar is an attorney practicing with Summit Law Group.

Turpin not been involved in the complaint against Reiber, they would not have made any complaints about them. In reaching her determinations, if the employees could articulate any factual support for their accusations, she found no retaliation. If they were unable to provide any factual support for their accusations, Kennar found that the statements were knowingly false and constituted evidence of retaliation. If the employees could articulate a non-retaliatory motive for making the allegations, then she did not find retaliation. She testified that she used a clear and convincing evidence standard and gave the employees the benefit of the doubt if there was conflicting evidence, even without corroborating evidence.

With respect to allegations of retaliation against Reiber, Kennar found insufficient evidence that he retaliated against Howell or Turpin. She explained that Reiber's statement of July 22, 2009, which was referenced in the retaliation complaint, was the union's official grievance and that was beyond the scope of her investigation; she reiterated that the scope of her investigation was limited to the conduct of employees in their individual capacity. She wrote:

> Capt. Reiber submitted the subject information to rebut the allegations against him, and presumably to show that those involved in the Reiber Investigation could not have been offended by his conduct given their own conduct in the workplace. It is important to note that, unlike substantially most of the other statements submitted, Capt. Reiber did not target only those involved in the Reiber Investigation, but discussed many in the Department, including members of the command staff. In addition, Capt. Reiber did not target only the wives of those involved in the Reiber Investigation, but provided information about many of the firefighters' spouses and his interactions with them on and off duty. For all of these reasons, I do not believe there is sufficient evidence of retaliation.

With respect to the other six employees, she found various levels of retaliation. With respect to Fisher, Kennar concluded that he made allegations against Howell and Turpin in retaliation for their involvement in the Reiber investigation. Fisher admitted that he would not have made the allegations against Howell and Turpin had they not been involved in the Reiber investigation. She wrote:

> However, Lt. Fisher did not simply submit a statement on behalf of the Union. Rather, he chose to act in his individual capacity and make specific allegations of misconduct against Lt. Turpin, FF Howell, FF Taylor and FF Tadema because he felt 'they had broken rank' by making accusations against Capt. Reiber. Lt.

> Fisher's statement did not provide a picture of the Department as a whole or explain how he felt Capt. Reiber's alleged misconduct was the norm for the Department as one would expect if the information was submitted solely to assist in the defense of Capt. Reiber. Rather, Lt. Fisher's statement specifically targeted those who had engaged in protected activity, and was disappointed when they were not severely disciplined. In contrast to providing information to assist in the defense of Reiber, these accusations were made offensively against FF Howell and others because of their participation in the Reiber Investigation.

She noted that Fisher submitted his July 3, 2009 statement to Chief Wilkins in his individual capacity and his official union capacity; she clarified that her "investigation relates solely to actions and decisions made by Fisher in his individual capacity. I did not investigate or review any decisions or actions he may have taken as a representative of the Union."

With respect to Gollnick and Richards, Kennar concluded that they each made allegations against Howell in retaliation for his involvement in the Reiber investigation and that they each knowingly submitted untrue statements against Turpin in retaliation for his involvement in the Reiber investigation. She noted that Richards answered "yes" when she asked whether he intended or expected the employer to discipline Howell and Turpin based upon his allegations.

With respect to Volk, Kennar concluded that he did not make allegations against Howell in retaliation for his involvement in the Reiber investigation but that he knowingly submitted one untrue statement against Turpin in retaliation for his involvement in the Reiber investigation. She noted that Volk submitted his July 3, 2009 statement to Wilkins in his individual capacity and his official union capacity and clarified that her "investigation relates solely to actions and decisions made by Volk in his individual capacity. I did not investigate or review any decisions or actions he may have taken as a representative of the Union."

Kennar concluded that Wehrung made allegations against Howell in retaliation for his involvement in the Reiber investigation and that he knowingly submitted untrue statements against Turpin in retaliation for his involvement in the Reiber investigation. She wrote:

> When asked why he raised these issues against FF Howell now when FF Howell had apparently stopped making inappropriate comments, FF Wehrung responded

> that it was because 'he was going after their captain.' According to FF Wehrung, he felt FF Howell and Lt. Turpin 'were going after a fellow fire fighter and it made (him) angry and so (he was) going to put it all out there.'

With respect to J. Wilkins, Kennar concluded that there was insufficient evidence that he made allegations against Howell in retaliation for his involvement in the Reiber investigation but that he knowingly submitted untrue statements against Turpin in retaliation for his involvement in the Reiber investigation.

Discipline and grievance resulting from retaliation investigation

By memorandum dated May 5, 2010, the employer informed Reiber that based upon Kennar's investigation, he had not engaged in retaliation so the matter was closed. The employer issued pre-disciplinary notices to the other six employees advising them of the discipline it intended to impose based upon Kennar's investigation and findings. The employer and union agreed to consolidate the pre-disciplinary meetings and held one meeting on May 28, 2010.

On June 3, 2010, the employer took the following disciplinary action: demoted Fisher from lieutenant to firefighter and suspended him without pay for 30 days; suspended Gollnick, Richards and Wehrung for six shifts; and suspended Volk and J. Wilkins for three shifts. The employer explained the following in the disciplinary letter:

> The reason why the City and the law prohibit retaliation is so that employees are not too intimidated by their employer *or their colleagues* from speaking out against harassment or other similar behavior. By engaging in retaliation, as you did, you sent a message to all firefighters in the Pullman Fire Department that they cannot complain about a fellow firefighter without fear of having accusations made against them in retribution for coming forward. By disciplining you for retaliation, the City is sending the message back to all employees that it considers unlawful retaliation to be grounds for substantial discipline.

The six disciplined employees, Fisher, Gollnick, Richards, Volk, Wehrung, and J. Wilkins, filed a group Step 3 grievance on June 17, 2010, which Sherman heard on July 6, 2010. In Sherman's grievance response dated July 20, 2010,[22] he noted that: "This is admittedly a very complex

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[22] Although this document post-dates the second amended complaint, neither party objected to its admission and I admitted it.

issue. Decisions regarding unlawful retaliation and lawful Association activity are by their very nature complex." He applied a standard that if a grievant provided "empirical or factual specific proof in support of a generalized accusation against Firefighter Andrew Howell or Lieutenant James Turpin, and further stated that he believed that to be factually correct, I have accepted that proof as sufficient to disprove retaliation." In accordance with that standard and based upon the information the employees shared at the Step 3 grievance meeting, Sherman reversed the discipline for Fisher, Gollnick, Volk, and Wehrung; he reduced the discipline for Richards and J. Wilkins.

Discrimination

The union alleges that the employer unlawfully discriminated against Reiber when it took disciplinary action against him for creating a hostile work environment. The union also alleges that the employer unlawfully discriminated against Fisher, Gollnick, Richards, Volk, Wehrung, and J. Wilkins when it disciplined them for retaliating against two bargaining unit employees who provided the employer with adverse information about Reiber.

1. Did the employer unlawfully discriminate against Eric Reiber when it disciplined him for creating a hostile work environment?

Union's *Prima Facie* Case

The union established a *prima facie* case of discrimination. The evidence demonstrated that Reiber engaged in extensive union activity, including serving as the union president and participating on the union bargaining team and in labor-management meetings. His discipline constituted the deprivation of a right or benefit, and circumstantial evidence supports a causal connection between Reiber's union activity and his discipline.[23]

Employer's Non-Discriminatory Reason

To rebut the union's *prima facie* case, the employer need only articulate a non-discriminatory reason for its action; it bears no burden of proof to establish the reason. My role is not to

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[23] In an effort to keep this decision to a reasonable length, I do not detail the circumstantial evidence supporting the causal connection. That evidence is discussed thoroughly below under "Union's Ultimate Burden."

determine whether the employer established just cause to suspend and demote Reiber or whether Reiber created a hostile work environment.[24] Instead, my role at this stage of the analysis is to determine whether the employer articulated a non-discriminatory reason for its action.

The employer maintains an anti-harassment policy that states, in part:

> It is the City's policy to foster and maintain a work environment that is free from discrimination and harassment. Towards this end, the City will not tolerate harassment of any kind in its employees' day-to-day communication with co-workers or members of the public. Employees are expected to show respect for each other and the public at all times, despite individual differences.

Based upon state and federal laws against discrimination, employers bear a responsibility to address hostile work environment allegations. This responsibility includes investigating allegations of inappropriate behavior and, if inappropriate behavior is found, taking steps to remedy the situation. As Sherman stated in his grievance response:

> As an employer, we must be concerned about the impact that our words and actions have upon subordinates. We are required to run a professional fire department utilizing modern legally-conformant workplace conduct standards. To be informed that offensive words and actions are taking place within the workplace and to do nothing about it is tantamount to creating a hostile work environment.

In this case, the employer received allegations that Reiber created a hostile work environment. The employer investigated the allegations and determined that Reiber violated its policies and created a hostile work environment. As a result, the employer disciplined Reiber. I find that the employer articulated a non-discriminatory reason for its disciplinary action.

Union's Ultimate Burden

The union bears the burden of proving discrimination by establishing either that the employer's non-discriminatory reason was pretextual or that the employer's action was substantially motivated by union animus. The union presents a variety of arguments in support of a finding of

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[24] The parties litigated the just cause issue in an arbitration hearing that took place during the pendency of this proceeding.

pretext and/or union animus. I review each argument individually and then address the arguments in their totality.

Sires' investigations. As described above, Sires conducted two investigations relevant to this proceeding. The employer relied on both investigations to determine whether disciplinary action was warranted. The union raises the following concerns about Sires' investigations and argues that what it perceives as faults with the investigations demonstrate pretext and/or union animus:

- Questions limited to Reiber. The union argues that Sires' interview questions in the Reiber investigation were specific to Reiber's behavior and that Sires should have asked questions about the total workplace, not just Reiber's behavior.

- Questioning of Operations Officer Heston. The union raises a concern that Sires did not ask Heston questions about interactions between Reiber and Tadema or about the meeting Heston held with the two of them.

- Did not interview wives. The union argues that the employer should have interviewed Taylor's and Turpin's wives.

- Motivation and credibility of witnesses. Sires did not consider the motivation or potential bias of the individuals raising negative information about Reiber. The union argues that each of the four employees who provided negative information about Reiber were biased against him, calling their credibility into question. The union asserts that Sires' failure to consider bias and motivation demonstrates pretext and/or union animus.

- Sires' treatment of Tadema. The union complains about Sires' behavior when she interviewed Tadema as part of the investigation into allegations against Tadema and the others who reported adverse information about Reiber to the employer.

- Naked pictures. The investigation report and disciplinary letter identify that Reiber asked colleagues or their wives for pictures of the wives naked. The union argues that the evidence does not support this assertion and that the employer's finding to the contrary demonstrates pretext and/or union animus.

The union raises some legitimate questions about Sires' investigations. As explained in more detail below, however, I do not conclude that any deficiencies with Sires' investigations demonstrate pretext, were motivated by union animus, or resulted in discriminatory disciplinary action.

The union asserts that as part of the Reiber investigation, Sires only asked questions about Reiber's conduct and did not ask about the work environment as a whole. The union states that as a result, the employer did not understand the general atmosphere of the department and took disciplinary action against Reiber for conduct that was widespread throughout the department. The record supports that during her first investigation, Sires focused her questions on Reiber's conduct. Sires testified that the allegations she received concerned Reiber and she was specifically investigating whether he created a hostile work environment. She asked specific questions based on the allegations. Although I agree that alternate approaches to interviewing witnesses, including asking more open-ended questions, may have been better practice, the record does not establish that Sires' approach was motivated by union animus or that it led to a discriminatory result.

With respect to Sires' interview of Heston as part of the Reiber investigation, she asked him the same set of questions she asked each person she interviewed. She did not tailor the questions to address Heston's role as Reiber's supervisor or the interactions Heston had with Reiber and Tadema. I agree that another approach, including asking Heston specific questions about interactions he had with Reiber and Tadema, was warranted, especially given his role as Reiber's supervisor. Again, however, the record does not establish that Sires' approach was motivated by union animus or that it led to a discriminatory result.

Furthermore, the union is accurate that Sires did not interview the spouses of employees. According to Sires, Turpin's wife refused to participate in an interview. The record is less clear about the willingness of other wives to be interviewed. Reiber admitted to making various comments to the wives of bargaining unit employees, jokingly implying a sexual relationship between them, often including the insinuation that he had fathered their children. Although I understand the union's concern about the employer relying on information from statements

written by wives without interviewing them, I do not find that Sires' failure to interview employee spouses was motivated by union animus or led to a discriminatory result.

With respect to witness bias, Sires did not question the motives of any witnesses; she did not consider their possible bias against Reiber or their potential self-interest. She felt there was no reason to question witness credibility. She testified that she does not believe that because two people may be in conflict with each other that they will lie about each other. Sires demonstrated this perspective with the four who raised concerns with Reiber's conduct as well as those who supported Reiber.[25]

I agree that investigators often find it relevant to explore motivation when evaluating the credibility of witnesses. In this case, the evidence at hearing established the following: Tadema feared for her job; there existed ongoing tension between Reiber and Turpin; Howell and Reiber had been close personally and professionally; Howell and Tadema were close personally and professionally and many in the department perceived they were having an affair; Fisher, Reiber and another officer raised concerns with Heston in 2008 about the perception that Howell and Tadema were having an affair; and Howell and Turpin may have been on promotion lists.

Sires' failure to consider potential witness bias, including the above-stated facts, may raise questions about her skill and/or experience as an investigator. In the context of this hearing, however, I do not find that Sires' failure to consider potential witness bias leads to a conclusion that her actions were motivated by union animus or led to a discriminatory result. When Tadema raised her concerns with Turpin, he took them seriously and forwarded them to Chief Wilkins. Wilkins took the concerns seriously and forwarded them to Sires for investigation. Regardless of who raised the concerns, regardless of why they raised the concerns, the employer had a responsibility to investigate. Upon investigating the concerns, the employer determined, based

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[25] For example, in October 2009 when Sires investigated a reserve firefighter's complaint against Gollnick and another employee, the senior reservist told her that he sent an e-mail to Fisher about the reserve's concerns. When she interviewed Fisher, he said that he had not received an e-mail. Sires took Fisher's word at face value and did not appear to consider any potential motivation for him to be dishonest. She testified: "I had to assume that it [the e-mail] either didn't get sent or got lost wherever those e-mails that you send get lost."

largely on Reiber's own admissions, he engaged in inappropriate conduct.[26] Ultimately, the investigation revealed problems that the employer had a responsibility to rectify, regardless of anyone's motivation for raising the concerns.

Sires interviewed Tadema as part of her second investigation, the investigation resulting from the allegations against those who reported adverse information about Reiber. At the time of the interview, Sires had completed the investigation concerning Reiber and had already concluded that Tadema had been subjected to a hostile work environment. At the end of Sires' interview of Tadema, Sires talked about how "incredibly brave" Tadema had been to raise the concerns about Reiber and how she had not done anything wrong. At hearing, Sires acknowledged that some of her comments to Tadema were inappropriate. She testified that "instead of the investigator hat, I had put on my Human Resources hat. It's very difficult to keep those apart. But that's not a justification." Although I agree that Sires' conduct during the interview was not appropriate in her role as the investigator, I do not find Sires' behavior during Tadema's interview evidence of pretext or union animus.

With respect to the naked picture issue, the evidence demonstrates the following:

- In Turpin's April 28, 2009 statement to Wilkins, he wrote that several months previously, Taylor mentioned that Reiber asked for nude pictures of Taylor's wife and made comments to her on the phone about engaging in sexual conduct. He also reported that Taylor said that he was asked to provide nude pictures of his wife again and that he knew of others who had been asked the same thing.

- By letter dated May 4, 2009, Taylor informed Wilkins:

> This letter is in regards to your inquiry about comments made by a department member about my wife. I affirm that the department member that was the subject of the aforementioned inquiry made inappropriate comments about my wife to my wife and in the presence of others. I would like to state that I, in no way, initiated this matter and am merely corroborating the existence of suggestions made in the public domain.

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[26] Reiber admitted to much of the conduct that he was accused of, although he justified his behavior in a variety of ways, including that some statements were taken out of context or otherwise misinterpreted.

- On the same day, May 4, 2009, Taylor clarified his letter indicating that the department member was Reiber and that the comments were "in a sexually explicit manner."

- When Sires interviewed Taylor on or about May 6, 2009, as part of the Reiber investigation, he answered "no" to the question whether he or anyone he knew had been asked to give Reiber "sexually explicit" photos. The only employees who answered "yes" to that question were Howell and Turpin.[27] When Sires interviewed Turpin on or about May 10, 2009, he identified that Reiber had asked his wife for photos of herself and when Sires interviewed Howell on or about May 10, 2009, he reported that he was aware of it happening to Taylor's and Turpin's wives.

- By communication to the employer dated May 12, 2009, Taylor's wife wrote that she wanted to make a general statement and shared that on several occasions she had conversations with Reiber in which "he made inappropriate comments with sexual undertones" that left her feeling uncomfortable. She identified that her only "true concern" was a phone call in which Reiber talked about Taylor's work performance after making some crude comments. She wrote nothing about naked photos.

- By communication to the employer dated May 14, 2009, Taylor clarified the circumstances in which he had shared with Turpin a conversation between Taylor's wife and Reiber that he estimated occurred about one year before.[28] Taylor also explained that the details were hazy and he described that in light of prior experiences he had with a similar situation in a previous career, he had developed a coping mechanism in which he ignored statements of a questionable nature. He wrote: "I can say that a request for explicit photos of my wife is in-line with the type of statements made."

- At hearing, Taylor testified that he would "not necessarily" recall Reiber requesting that Taylor provide Reiber with sexually suggestive photos of Taylor's wife because of his

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27 When Sires interviewed the department's administrative secretary, she responded that she had heard a rumor.

28 Testimony revealed that the conversation actually occurred in May 2007. At that time, Taylor sought the advice of several colleagues, including Turpin, on how to handle Reiber's allegedly inappropriate telephone conversation with Taylor's wife.

strategy for ignoring such information. He testified that Reiber asking for nude photos of his wife would have "just gone in one ear and out the other." Taylor testified that he did not recall such requests.

- At hearing, Taylor credibly responded "no" to the question, "Did you feel that Chief Wilkins was trying to suck you into affirming this naked photo representation against your will?" Rather than demonstrate frustration toward Sires or Wilkins, during his testimony Taylor demonstrated frustration with the union.[29]

- On or about June 16, 2009, Turpin's wife initiated a meeting with Wilkins. According to Wilkins' e-mail to Sires about the conversation, she referred to "sexual comments" from Reiber. She made no reference to requests for naked photos.

In Reiber's disciplinary letter, the employer states: "During the investigative interview, you either admitted or did not deny all behavior attributed to you with the exception of asking colleagues or their wives for naked photos of the wives. This accusation I found to be credible."

Based upon the record before me, Sires and Wilkins had reason to question the accuracy of the naked picture allegation. It is not clear from the evidence why Sires and Wilkins found the naked picture allegation to be credible. It is noteworthy, however, that the employer does not appear to attribute much significance to that allegation. The disciplinary letter, for example, makes the one limited reference to the naked photo allegation which is quoted in the immediately preceding paragraph. In contrast, the disciplinary letter goes into more detail describing the employer's concerns with Reiber referring to employees as "buttmunch," "dickscratch," and "dickhead." The union tries to characterize the naked picture issue as the only serious allegation against Reiber. The evidence does not support that.

Given the above-described evidence concerning the naked picture allegation, it concerns me that Sires and Wilkins both found the allegation to be credible without explaining why. Despite the

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[29] Taylor testified: "I didn't think I was being – I think I was not being represented by the E. Board, and I felt even further that I was essentially being targeted by the E. Board for something that I didn't think I had done wrong." The evidence does not support the union's assertion in its briefing that there is "strong circumstantial evidence" that Taylor and his family felt pressured by Wilkins or Sires to support "false" allegations.

concern on this issue, the union did not establish that the employer's action in this respect demonstrated pretext or was motivated by union animus.

In summary, the evidence reveals several concerns with Sires' investigations. Faulty investigation techniques, however, do not automatically establish pretext or union animus. In looking at the entire record, no evidence even hinted that Sires disliked Reiber or the union, let alone that she bore union animus. The union points to no evidence of union animus associated with Sires. Furthermore, the record contains no evidence that anyone within the employer's organization encouraged, pressured, or in any way influenced Sires to reach a particular outcome. The union argues that Sires was "a willing accomplice" to Wilkins' "animus-fueled" actions. The union did not establish this. I found Sires to be an entirely credible witness. She testified in a straight-forward and direct manner. She took responsibility for some errors she made. She did not make excuses, exaggerate, or minimize. The union failed to establish that the employer's investigation deficiencies represented pretext, were motivated by union animus, or led to discriminatory disciplinary action.

Singled out. The union argues that by singling out and disciplining Reiber for behavior "everyone" in the department participated in, the employer demonstrated that its action against Reiber was pretext and motivated by union animus. The union also argues that Wilkins set the negative example for the department with his own behavior.

Until 2005, Wilkins also served as chief of Washington State University's (WSU) fire department in Pullman.[30] In 2005, WSU investigated allegations that Wilkins engaged in inappropriate conduct at WSU. The union argues that as a result of Wilkins' conduct at WSU, which was reported in the local news, he set the standard of acceptable behavior and that Reiber acted within the standards of acceptability. The record provides insufficient evidence to find that allegations against Wilkins at WSU from 2005 were relevant to the Pullman Fire Department in 2009 and 2010. I do not find Reiber's conclusory assertions to the contrary credible. Furthermore, the record revealed little specific evidence that Wilkins modeled inappropriate conduct within the department. One firefighter testified that Wilkins joked about starting a

[30] Later in 2005, the WSU fire department was transferred to the employer's jurisdiction.

bikini barista coffee stand in the city and referenced the attractive women on campus who could work there. Another testified that he had seen Wilkins take part in "coarse humor," but provided no details. The evidence does not support the assertion that Wilkins engaged in inappropriate behavior that set the department's workplace standard and that Reiber acted within such standards.

Additionally, the record does not support that Reiber was disciplined for behavior that "everyone" participated in. Some of the bargaining unit employees who testified gave contradictory reports about the work environment and their personal involvement, or lack of involvement, in the sexual conversation and/or sexual joking. The evidence revealed that there was considerable sexual conversation and joking on C shift and that multiple employees engaged in the conversation and joking. The evidence established that at least while Howell was on C shift, he actively engaged in explicit sexual conversation and joking in the workplace. With respect to other shifts, however, the evidence was not as clear and witness testimony conflicted. I found Tadema credible when she testified that if A and B shift personnel engaged in sexual conversation and joking as they did on C shift, they did so when she was not present.

The union put on considerable testimony from bargaining unit employees such as Gollnick and Richards who said that they never saw Reiber treat anyone, including Tadema, in a manner they found inappropriate and that they never perceived that anyone, including Tadema, felt uncomfortable by Reiber's actions and language. Their standards of appropriateness and their perceptions of others' comfort or discomfort offer no credible standard, especially given some of the testimony about their workplace conduct. Instead, I credit Tadema's testimony about her discomfort with the sexual conversations and joking that existed on C shift.[31]

The union focused considerable attention on Howell's behavior and described that he was the instigator of much sexual discussion. The evidence appears undisputed that at least while he was

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[31] Some of the witnesses and the union seem to argue that Tadema could not have been uncomfortable with the sexual conversations because she was having an affair with a married man, a man who spoke extensively about sex. Even if Howell and Tadema were having an affair, she could still be uncomfortable and/or offended by behavior and discussion in the workplace. Furthermore, any suggestion that Howell spoke inappropriately in front of Tadema appears to be countered by the July 3, 2009 statements from Wehrung and J. Wilkins which included: "It is especially troubling that he [Howell] speaks frequently of his sexual conduct with his wife when Tadema is not present."

on C shift, Howell spoke extensively and often graphically about sex. Although the evidence revealed that Howell made some employees uncomfortable, Reiber did not address any concerns about this in Howell's evaluations during the years that Reiber supervised him.[32] Additionally, some witnesses, such as Richards, testified that Howell's behavior changed significantly and he curtailed much of his sexual discussions. Richards timed the change as coinciding with when Tadema was hired. Turpin timed the change as coinciding with when Howell moved from Reiber's C shift onto A shift.

After the union advised the employer that it was "on notice" of the complaints contained in the July 3 statements, the employer completed an investigation. In a notice of intent to discipline letter, the employer advised Howell:

> You have acknowledged that there have been times that your behavior was not appropriate and you have made poor decisions on the use of vulgar language and your responsibility to be aware of and abide by the above-referenced policies. You have indicated that when you were counseled to correct your behavior by a new supervisor on a different shift, you have strived to do so.

The employer issued Howell a written warning acknowledging his commitment to modifying his behavior while warning him that any future violations of policy relating to inappropriate language could lead to disciplinary action, up to and including termination from employment.

To the extent the union argues that the employer disciplined Howell and Reiber unequally and that doing so demonstrated pretext or union animus, I disagree. The evidence demonstrated that Howell and Reiber were not similarly situated and treating them differently did not amount to discrimination. The employer disciplined Reiber for his own inappropriate conduct as well as his conduct as a supervisor who did not address the inappropriate conduct of subordinate employees. The July 3 statements demonstrated to the employer that not only did Reiber engage in behavior that at least one employee found offensive, he also condoned the behavior of others,

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[32] Any argument the union makes that the department's management was aware of Howell's behavior appears to be contradicted by Volk's July 3, 2009 statement to Wilkins in which he criticizes Howell's behavior and reports: "You and Mike [Heston] really do not witness the day to day department interactions between personnel and how they have evolved. Drew [Howell] has one on [sic] the dirtiest mouths in the department. . . ." This suggests that at least Volk did not believe that Wilkins or Heston were fully aware of Howell's behavior.

even when employees, besides Tadema, were apparently offended. As the examiner in *City of Renton*, Decision 7476-A (PECB, 2002), commented:

> A union official is never immune from criticism of his or her day-to-day work merely by reason of being a union official, and a union official who accepts the increased status and pay usually associated with being a supervisor should reasonably expect greater criticism and scrutiny concerning operational issues than if he or she was merely a rank-and-file employee.

The union did not establish that Reiber was singled out and disciplined for conduct that "everyone" engaged in or that Wilkins set a standard that Reiber acted within.

Harshly disciplined. The union argues that the employer's harsh discipline of Reiber evidences union animus. My role is not that of an arbitrator to determine whether the employer proved just cause to discipline Reiber and whether it meted out the right level of discipline. Instead, my role is to determine whether the employer's action was discriminatory. Even though the just cause standard does not apply in this situation, the Commission and its examiners may elect to draw negative inferences when an employer takes what appears to be overly severe disciplinary action. *City of Winlock*, Decision 4784-A (PECB, 1995). In this case, I draw no negative inference from the harsh disciplinary action.

The union minimizes the seriousness of Reiber's actions and trivializes the concerns raised by Tadema. In its brief, the union characterizes some of the C shift sexual discussion as "benign banter." The record does not support the union's efforts to downplay the seriousness of Reiber's inappropriate conduct and the work environment that he created and sustained. Although the employer did not articulate how it determined the level of Reiber's discipline, the employer's disciplinary letter makes clear that the employer was seriously concerned about: the work environment Reiber fostered; Reiber's leadership skills; and Reiber's unwillingness to assume responsibility for his behavior. The evidence presented at hearing supported the employer's concerns and demonstrated that the concerns were not pretextual or motivated by union animus.

For example, Reiber's evaluations had noted communication concerns for several years, well-before Tadema raised any issues. As early as Reiber's 2005 evaluation, signed in April 2006,

Operations Officer Heston informed Reiber of concerns with his communication skills and encouraged him to work on refining them. Reiber's evaluation for 2006, signed in January 2007, counseled him about being "overly blunt" and, under "development activities," Heston wrote that he wanted Reiber to work on several areas, including: "Continue to improve yourself professionally and refining your communications skills as an officer in a diplomatic manner." Reiber's 2007 evaluation, signed in March 2008 addressed his "overly strong" opinions and being "sometimes negative in his comments towards others, policies and administration."[33] Again, Heston counseled him to refine his "communications skills as an officer." His evaluation for 2008, signed on April 3, 2009, prior to Tadema reporting any concerns, stated:

> Eric's strong and personal opinions about other people, shifts and programs get in the way of his communication at times and can alienate him from staff and administration. He frequently makes inappropriate comments and uses inappropriate language. This is an area that I want Eric to strongly focus on and I will be monitoring this. We have discussed this before but it needs to improve.

During the course of Reiber's testimony and in his written statements, Reiber consistently focused on the positive intentions behind his actions and discounted others' negative reactions. For example, in his rebuttal statement, Reiber stated: "I will not deny that I may have commented on the appearance of some particular visitor to the department. If I did it was with appreciation and not in any derogatory sense. I do not generally make comments with a disregard for who hears them. If I said it I didn't think it was offensive." Also in his rebuttal statement, Reiber admitted using the term "scrawny blonde" to refer to Tadema and stated that he did not know that she was offended. He wrote, "I did not get the impression that she or anyone else was uncomfortable. There certainly wasn't any reason for them to have been." Similarly, Reiber testified that he meant no harm and had no sexual intent when he referred to a firefighter's wife as "hot," explaining: "I would much prefer someone thought my wife was hot than a troll."[34]

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[33] The evidence demonstrated that Reiber referred to Wilkins as an "idiot" in front of his subordinates and also talked negatively about other officers and shifts.

[34] The record reveals that with some frequency Reiber referred to women who came into the station, women on television, and wives of employees as "hot."

Although the employer's choice of disciplinary action appears harsh given Reiber's lengthy and positive work record, based upon the entire record, including the credibility of witnesses, I do not draw negative inferences from the harsh action and do not find it evidence of pretext or union animus.

Contentious relationship. The union characterized its relationship with Wilkins as contentious and cited the relationship as evidence of the employer's union animus. Fisher, Reiber, and Volk each testified about their frustrations with Wilkins. They believe that conflict with Wilkins began sometime prior to a 1998 union vote of no-confidence in Wilkins and has gotten worse in recent years. Fisher, Reiber, and Volk pointed to Wilkins' behavior at labor-management meetings and the bargaining relationship in support of their frustrations. They described that Wilkins does not like to have his authority challenged and that when he is challenged, he engages in a variety of behaviors such as "shutting down," turning red, pouting, raising his voice, remaining silent, and/or repetitively clicking his pen. Some described fist-pounding and finger-pointing. The testimony revealed that it was easier to deal with Wilkins on issues that did not affect him; he often referred controversial matters to Heston. Fisher testified that it was hard to track where Wilkins was on issues because he kept changing his mind. He also testified that Wilkins got confused about the role of the union officers in relationship to their role as shift officers and would get upset when Fisher would approach him after a staff meeting and say that they needed to talk about an issue at a labor-management meeting.

Fisher and Reiber also expressed frustration that they routinely resort to mediation to reach agreement on their collective bargaining agreement. In the spring of 2009, the parties had been bargaining and reached a tentative agreement; the bargaining unit employees voted down the tentative agreement on or about May 5, 2009, the same day Reiber was placed on administrative leave. Reiber testified that during the time he has been on the union executive board, which has been eight to ten years, "there really isn't any bargaining on the City's part." Reiber testified that the union has filed 20 grievances over a two-year period, including the seven grievances relating to events addressed in this proceeding.

Fisher, Reiber, and Volk each testified about what I find to be their firmly held beliefs that Wilkins treats them differently because of their union activities. The union, believing that Wilkins harbors resentment toward the union from the 1998 union vote of no-confidence, argues that "President Reiber was brought down because he was the embodiment of Chief Wilkins' long-simmering animus against the union." The evidence does not establish that the 1998 vote bore any relevance to Reiber's disciplinary action or that Wilkins harbors animus toward the union.

Additionally, I draw no inference of union animus from conflicts at the bargaining table, in the context of labor-management meetings, or the filing of grievances. While I understand parties may prefer to resolve contracts and other disputes without the assistance of a third party, the fact that parties go to mediation and file grievances is not itself indicative of one party's discriminatory intent or inappropriate behavior. According to Sires' uncontested testimony, bargaining with the union was not unique and the employer's relationship with the union was similar to its bargaining relationship with its other unions. Furthermore, with respect to the bargaining that took place during the time leading up to and through the Reiber investigation and discipline, limited evidence was introduced of the bargain, the failed ratification vote, or how the employer and union addressed the failed ratification vote. The record does not establish any connection between the bargaining and the employer's disciplinary action.

What Fisher, Reiber, and Volk described in their testimony about the labor-management meetings and negotiations does not amount to union animus. Instead, the record demonstrates that when the opinions of the members of the union's executive board and the opinions of Wilkins differ, conflict arises. From the testimony, it appears that both sides tend toward stubbornness and hold onto their positions on issues. Because of Wilkins' long tenure in the same position, frustrations may compound for both him and the union employees. Frustrations with the labor-management relationship do not equate to union animus.

With respect to Wilkins' testimony, I find that it lacked clarity at points and Wilkins appeared to have difficulty remembering some events that one could have anticipated him remembering.

Although his testimony and lack of memory on some relatively recent events raised some questions for me, I do not find that he was being evasive or intentionally difficult.

The record does not support that union animus motivated Wilkins' actions.

Alleged statements. In 12 days of hearing that covered many years of the parties' long-term relationship, other than a couple of witnesses speculating that Reiber's discipline reflected a power struggle between Wilkins as the chief and Reiber as the union president, the union introduced limited testimony suggesting Wilkins made anti-union remarks. The hearsay testimony included the following:

- Reiber testified union members reported that Wilkins made the following comments: "Well, the union's the reason this is a problem, the reason you've got this issue is because of the union." "You need to get unrepresented by that union." Reiber could not say who reported these alleged statements and provided no dates, times, or context.

- Reiber testified that in January or February of 2010 the union executive board learned from the chief and commissioners of Fire District 12 that Wilkins had communicated negative misinformation to the chief and commissioners of Fire District 12 about the union's position on a medic issue.

Two employees testified about comments Heston made about the union:

- Chris Wehrung testified that in May or June of 2009 when there was discussion relating to the lieutenant list expiring, Heston said: "It's the union's fault, the union is to blame for this." "Somebody needs to get in there and take those guys down. The E. Board is just ruining this Department."

- Reiber testified that Heston made the following comment in front of him: "You union dickheads are the problem with this." He did not testify as to the date, time or the context for the alleged statement.

The hearsay statements Reiber attributes to Wilkins are not probative evidence from which I can infer union animus. With respect to Heston's alleged comments to Reiber and Wehrung, the evidence does not show that Heston played any role in Reiber's disciplinary action.

Events pre-dating Reiber investigation. During the hearing and in some of its post-hearing briefing, the union appears to argue that several events pre-dating Reiber's investigation, and therefore beyond the statute of limitations for an independent cause of action, show a pattern of employer hostility toward Reiber and the union. The union suggests that these employer actions demonstrate that the employer was "going after" union officers and that the employer's disciplinary action was pretext. I review each of the events below:

- "Old man" comment. In January 2009, Wilkins was talking with his wife and a car salesman who had come to the fire station with a car that Wilkins' wife was interested in. Reiber, considering the salesman a long-time friend, came out to where the three were talking and made the following comment to Wilkins: "Hey, old man, why don't you buy her the car. You've got the money." Wilkins was offended by this comment and raised it with Sires. Sires met with Wilkins and Reiber, ensured that Reiber knew that Wilkins found the statement offensive, and reminded Reiber of the employer's anti-harassment policies. Reiber testified that he meant no harm by his comment and felt the comment was taken out of context. He testified that in a conversation between Wilkins and him in February 2009, Wilkins referenced himself as "old."

  Reiber did not believe that Wilkins was offended by the comment and that Wilkins was using the incident as an opportunity to "get" him.[35] Rather than demonstrating that Wilkins was out to get Reiber, this incident demonstrates one of the employer's concerns with Reiber: he focuses on his positive intentions rather than on the actual impact his words have on others. During Reiber's testimony, he appeared cognizant of Wilkins'

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35 The union asserts in its briefing: "It was clear from Wilkins' demeanor during his testimony [regarding the old man comment] that he is still fixated and ruminating on this perceived slight. His animus toward Reiber soon thereafter manifested itself in a baseless and willfully malicious disciplinary action designed to forever tarnish Reiber's professional reputation, authority within Local 1892, and standing within the Department and the community as a whole which directly impacted the interests of Local 1892."

sensitivity about his age.[36] Despite this knowledge, he referred to the department's chief as "old man" in front of the chief's wife and a community member.[37] Rather than demonstrating any kind of employer animus toward the union, this situation demonstrates Reiber's insensitivity and the employer's legitimate concern in addressing it.

- 2008 equipment damage. In August 2008, Volk and Reiber responded to a dumpster fire call in the department's pumper ladder truck. Their presence was not required so they decided to go into the apartment complex to see if the vehicle would fit. While doing so, the vehicle's drive-line broke. In their effort to tow the pumper ladder truck with another department vehicle, they damaged that vehicle as well. Volk acknowledged that the cost of repairing both vehicles may have been as much as $10,000. As a result, Wilkins and Heston issued separate memoranda to Volk and Reiber dated August 19, 2008. The memo to Volk referenced that it was not the first incident involving damage to the pumper ladder truck while under his control. They advised him that they would remove his status as an assigned driver/operator until his supervisor and Heston felt that he could be reassigned. The memo to Reiber identified performance deficiencies that the incident highlighted, including leadership, decision making, personal growth and development, and human relations.

The union appears to argue that the employer's handling of this matter represents evidence of union animus and unfair treatment. Volk testified that he and Reiber "were persecuted" for the same type of incident for which another employee who was not a union leader received no real critique. He testified that he felt it was part of a pattern of union officers being intimidated with potential discipline when others were not. The evidence, however, does not support the union's position. With respect to the employee who Volk specifically referenced, the evidence was, at best, minimal. There was evidence, however, that by memoranda dated August 19, 2008, the same date as Volk's and Reiber's memoranda, Wilkins and Heston criticized how two other employees, one a

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36 Reiber testified that he heard from the mayor that the employer feared an age discrimination suit from Wilkins. Wilkins testified that he was aware that Reiber referred to him at the station as a "dinosaur."

37 It is unclear to me how Reiber can view this as similar to a private conversation between Reiber and Wilkins where Wilkins refers to himself as "old."

firefighter and the other a captain, handled matters involving department equipment. Neither of those employees served as union leaders. In the memorandum to the firefighter, Wilkins and Heston advised him that he was being reassigned and would lose his driving privileges until his supervisor and Heston felt he could be reassigned. The memorandum to the captain identified deficiencies in his leadership capabilities as well as his ability to supervise, manage and control the affairs of his assigned shift.

This example demonstrates that the employer treated Reiber and Volk similarly to how it treated what appeared to be similarly situated employees who did not serve in union leadership roles.

- Pancake feed. Volk and the union appear to argue that how the employer handled its participation in a union-sponsored pancake feed represented evidence of union animus. Volk had been coordinating the event and the employer's participation in it for several years. He testified that it was not until after he joined the union's executive board as secretary/treasurer that the employer started restricting use of its equipment for the event.

Both parties acknowledged that one of the issues in contention between them had been the use of the department's equipment in a number of settings, including responding to calls, making trips to the store, and supporting charity events. In 2008, the employer restricted use of department equipment at the pancake feed, as well as at other charitable events that were not department-related. Despite not allowing department equipment to be used at the pancake feed, both Wilkins and Heston came to the event and helped serve breakfast.

Although Volk appeared to genuinely believe that his role on the union's executive board was the reason the department wouldn't allow its equipment to be used at the pancake feed, the evidence does not support this belief or that union animus played any role in the employer's actions.

Totality. I have carefully reviewed the extensive record in this case and have fully considered each of the union's and employer's arguments. The union raises some legitimate concerns about the employer's investigation and the harsh disciplinary action it imposed on a valuable veteran employee with a very good work record. At the same time, however, the record demonstrates genuine concern on the employer's part about Reiber's inappropriate conduct and the work environment that he created and sustained. Although the evidence described above was sufficient to find a causal connection between Reiber's union activity and the employer's disciplinary action against him, it is insufficient for the union to meet its ultimate burden of proving discrimination by establishing either that the employer's non-discriminatory reason was pretextual or that the employer's action was substantially motivated by union animus. The employer did not discriminate against Reiber in violation of RCW 41.56.140(1) when it disciplined him for creating a hostile work environment.

2. Did the employer unlawfully discriminate against Fisher, Gollnick, Reiber, Richards, Volk, Wehrung, and J. Wilkins by conducting an investigation into allegations that they retaliated against bargaining unit employees who participated in the Reiber investigation and by disciplining six of the seven of them?

Howell and Turpin filed formal complaints with the employer alleging that Fisher, Gollnick, Reiber, Richards, Volk, Wehrung, and J. Wilkins violated the employer's policies and state law by retaliating against them for their involvement in the Reiber investigation. The union alleges that by investigating the seven employees and by disciplining six of the seven, the employer unlawfully discriminated against them. In analyzing the issues involved, I will first review some basic principles, I will then apply the *Educational Service District 114* test to determine whether the employer committed unlawful discrimination, and I will then address several other issues involved with Kennar's investigation.

Basic Principles

Unions maintain a variety of rights relating to the support and assistance of bargaining unit employees who are the subject of employer investigations. For example, unions have a right to investigate issues relating to the potential disciplinary action of an employee. Unions also have the right to represent employees through the disciplinary and grievance process. Such rights in

these processes, however, are not absolute. *Vancouver School District v. SEIU Local 92*, 79 Wn. App. 905 (1995), *review denied*, 129 Wn.2d 1019 (1996). Employees and unions do not enjoy immunity for all conduct they engage in while defending employee rights. In *Vancouver School District*, the Washington State Court of Appeals adopted a reasonableness test for assessing whether otherwise protected behavior loses its protection. The Court held:

> Thus, employee activity loses its protection when it is unreasonable–but reasonableness is gauged by what a reasonable person would do in the midst of industrial strife, and not by what a reasonable person would do in the more ordinary affairs of life. Employee activity may be unreasonable when measured against ordinary social intercourse, yet reasonable in the context of a labor dispute.

The Court of Appeals reiterated some of the principles from *Vancouver School District* in its decision in *PERC v. City of Vancouver*, 107 Wn. App 694 (2001), *review denied*, 145 Wn.2d 1021 (2002), including that: "not all union activity is absolutely protected by RCW 41.56. . . . We have held that conduct may fall outside of the protections of labor statutes if the conduct is irresponsible and abusive. We imposed a reasonableness test under which to evaluate such conduct. . . . The action need not be unlawful, but merely unreasonable."

In *PERC v. City of Vancouver*, as part of the city's investigation into the behavior of several sergeants, the investigator interviewed a police officer named Sharma. At a union meeting and at union executive board meetings, employees allegedly made disparaging remarks about Sharma's interview and comments about possibly retaliating against him because of the information he gave. After an employee told Sharma of the discussions and expressed concern for Sharma's safety, Sharma reported it to a lieutenant. The lieutenant filed allegations that lead to an investigation. The employer interviewed 26 bargaining unit employees about the allegations of possible retaliation against Sharma. The Court of Appeals stated:

> We conclude that a conspiracy to retaliate against a fellow police officer was not a reasonable exercise of union activity.
>
> Additionally, if the allegations proved true and were violations of police department policy, an employee could not reasonably believe that any resulting discipline interfered with union activity. Union activity that is not reasonable is

> not 'protected activity' within the meaning of RCW 41.56.140. We hold that the City did not interfere with protected union activity and the City did not commit an unfair labor practice.

Union's *Prima Facie* Case

To establish a *prima facie* case, the union must first establish that the employees engaged in union activity.

Reiber, Fisher, and Volk – union activity. Reiber, Fisher, and Volk each engaged in protected activity as union office-holders and as members of the union's bargaining team. Their roles as union leaders do not automatically convert everything that they do into protected activities and I review each in turn to determine whether they engaged in union activity when they submitted their July 3, 2009 statements.

I find that Reiber engaged in protected activity when he participated in his pre-disciplinary hearing and when he submitted additional information on his own behalf on July 3, 2009, and in the course of his grievance.

Fisher, who has served on the union's executive board since 1993, nearly his entire career with the employer, assumed the role of acting union president when the employer placed Reiber on administrative leave. He included the following in his July 3, 2009 statement:

> In that Association President Captain Eric Reiber has been placed on administrative leave as a result of the pending investigation (some might say assassination) of his character and conduct, I speak for the Association in this matter. I also wish to be heard in my individual capacity regarding the accusations of Chelsey Tadema, James Turpin and Andrew Howell, the driving force behind this investigation."

Volk, who served as the union's secretary/treasurer, included in his statement the following: "I provide this statement both as a firefighter and an elected union representative who has closely witnessed Captain Eric Reiber's interactions with department members and area residents."

As both Fisher and Volk indicated, they submitted their statements in both their individual capacity as well as in their union leadership capacity. Furthermore, Fisher was engaged in union activity when he solicited, drafted, edited, compiled, and submitted to the employer a packet of

statements. As described in more detail below, to the extent Fisher and Volk were engaged in protected union activity in submitting their statements, they lost the protection.

Gollnick, Richards, Wehrung, and J. Wilkins – union activity. The testimony revealed that J. Wilkins served as the union's sergeant of arms, but the record contains no information about what that role entailed, that the employer knew of that role, or that J. Wilkins was acting in that role when he submitted his statement. The others, Gollnick, Richards, and Wehrung hold no union office and, except for the issue of the disputed statements, the evidence does not show that they engaged in any particular union activity.

The union argues that the submission of statements was a union activity. The statements from Gollnick, Richards, Wehrung, and J. Wilkins were directed to Chief Wilkins. The "from" line of each statement indicates the employee's role in the department, for example: "Fire Fighter Blake Richards." The testimony revealed that Fisher solicited statements in support of Reiber from bargaining unit employees at union meetings. Fisher and attorney Urquhart drafted and/or edited the statements from Gollnick, Richards, Wehrung, and J. Wilkins. Fisher compiled the statements from Gollnick, Reiber, Richards, Volk, Wehrung, J. Wilkins, himself, and a few others and submitted them together to the employer with a cover sheet listing each of the statements. In response to union counsel's questions at hearing, Gollnick, Richards, Wehrung, and J. Wilkins testified that they thought they were engaged in union activity when they submitted their statements.

Generally, the Commission holds that individual conduct in defense of an employee does not rise to the level of protected union activity, unless the employee serves as a union representative or is engaged in activity related to the collective bargaining relationship, like a grievance. *Dieringer School District*, Decision 8956-A (PECB, 2007).[38] In *State - Corrections*, Decision 10998-A (PSRA, 2011), the Commission recently held that although "an employee's intent is not necessarily determinative of whether a communication is protected, an employee's statement about his or her intent is the type of probative evidence that assists in making such a determination."

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[38] Chapter 41.56 RCW includes no "concerted activity" clause similar to Section 7 of the National Labor Relations Act.

In this case, Gollnick, Richards, Wehrung, and J. Wilkins worked closely with the acting union president and with the union's attorney to prepare statements in defense of Reiber. Although their testimony on the topic appeared stilted and rehearsed, they each indicated that they believed they were engaged in union activity. I find that in submitting their July 3 statements to the union, Gollnick, Richards, Wehrung, and J. Wilkins were engaged in protected union activity although, as described in more detail below, they lost the protection.

Deprivation of right or benefit and causal connection. After an outside investigator determined that each of the seven employees, except Reiber, engaged in retaliation violating the employer's policies, the employer imposed disciplinary action.[39] The employer based its determination of retaliation on the July 3, 2009 statements, thus establishing a causal connection between the employees' union activity and the discipline. The union established a *prima facie* case of discrimination.

Employer's Non-Discriminatory Reason

My role is not to determine whether the employer established just cause to take disciplinary action against the six employees or to determine whether the employees engaged in retaliation in violation of the employer's policy. Instead, my role at this stage of the analysis is to determine whether the employer articulated a non-discriminatory reason for its action.

Section 2.6 of the employer's Discrimination Complaint Procedure states: "No one shall be penalized or retaliated against in any way by an employee of the City for initiation or participation in a complaint procedure." Section 12.2 of the employer's Employee Appeal Procedure states:

> Retaliation against an employee for using this appeal process is prohibited. MOREOVER, RETALIATION against any employee who in good faith reports unsafe work practices, discrimination, wrong doing, or any other activity on the part of co-workers or supervisors that may violate the spirit and intent of this manual is prohibited.

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[39] The fact that the employer reversed most of the disciplinary action during the grievance process does not impact this determination.

Howell and Turpin submitted formal, written complaints alleging that seven of their colleagues retaliated against them because of their involvement in the Reiber investigation. During the course of the investigation, Turpin alleged that his colleagues engaged in additional retaliatory action against him. Sires testified that upon receiving the retaliation complaints, the employer had an obligation to investigate. Reiber acknowledged that the employer needed to investigate the complaints.[40]

The employer retained Beth Kennar, an outside attorney, to conduct an investigation into the complaints. The evidence demonstrates that Kennar conducted the investigation and, as described above, used a process to make her determinations that gave the employees who were being investigated the benefit of the doubt. Kennar found that six of the seven employees engaged in retaliation. As a result, the employer took disciplinary action. The employer included the following in the disciplinary letter:

> The reason why the City and the law prohibit retaliation is so that employees are not too intimidated by their employer *or their colleagues* from speaking out against harassment or other similar behavior. By engaging in retaliation, as you did, you sent a message to all firefighters in the Pullman Fire Department that they cannot complain about a fellow firefighter without fear of having accusations made against them in retribution for coming forward. By disciplining you for retaliation, the City is sending the message back to all employees that it considers unlawful retaliation to be grounds for substantial discipline.

The employer rebutted the union's *prima facie* case.

Union's Ultimate Burden

To prevail in establishing discrimination, the union bears the burden of proving that the employer's stated reason was pretextual or that the employer's action was substantially motivated by union animus. The union argues that the employer's investigation violated the employees' rights and that the employees were unlawfully disciplined because of their protected activity. As described in detail below, I find that the union did not establish that the employer's reason was pretextual or that the employer's action was substantially motivated by union animus.

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[40] Reiber testified: "When it came down to it, Andrew [Howell] and James [Turpin] filed complaints. And as such, the City has to investigate that. I have no issue with that." He testified that what he had an issue with is how the employer handled the matter from there.

After considering the entire record, I find that the July 3, 2009 statements were unreasonable in light of the totality of the circumstances, and that the employees' action in submitting them lost their status as protected union activity.

July 3 statements. On July 3, 2009, the union submitted to Chief Wilkins a packet of statements from Fisher, Gollnick, Reiber, Richards, Volk, Wehrung, J. Wilkins, an employee's spouse, and three other bargaining unit employees. A former employee also submitted a statement on or about July 3 directly to Wilkins. The statements from Fisher, Gollnick, Reiber, Richards, Volk, Wehrung, and J. Wilkins were each directed to Wilkins with the following "regarding" line: "Investigation of the Conduct of Captain Eric Reiber and his Accusers."[41] The evidence established that at the time they prepared their statements, the employees knew that Howell, Tadema, Taylor, and Turpin had reported adverse information about Reiber to the employer. Fisher, Gollnick, Reiber, Richards, Volk, Wehrung, and J. Wilkins each focused much of their statements on what they perceived to be the inappropriate conduct of Howell, Tadema, and Turpin. Richards also shared his perception of Taylor's inappropriate conduct.

Fisher's statement included the following:

- "It is clear that Howell has been engaged in an active sexual relationship with Chelsey Tadema for many years."[42]
- "This begs the question of what goes on in an ambulance when Tadema and Howell are returning from patient transfers to Spokane."
- Howell "is coarse, uncouth and obsessed with sexual matters, and talks about intercourse all the time with everyone in the workplace. He flaunts a swinging

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41 The former employee's statement is similarly fashioned. The other employees submitted statements that looked different from those submitted by Fisher, Gollnick, Reiber, Richards, Volk, Wehrung, and J. Wilkins. Not only did the formatting differ, but the wording and tone of the other employees' statements were significantly less hostile toward those who raised concerns about Reiber. Neither Howell nor Turpin accused those employees of retaliation and those employees were not investigated or disciplined.

42 With respect to this allegation, Fisher testified: "Do I have proof that it's happening? No. But I have a high suspicion that it's occurring. And that's why I'm inviting the employer to take a look at it and investigate the workplace."

lifestyle and his interest in 'S&M' sex, and expects everyone to tolerate it regardless of how uncomfortable they are."

- "Howell has on several occasions urged me to shave my genitals as well as my wife's, offering to explain how it enhances sexual pleasure. He has not been deterred by my telling him, 'I'm not going to do that (shave).'"

- "I recently learned that Turpin and his wife have bragged about having sex at home on duty while a firefighter waited outside in an ambulance. It is not uncommon for the duty crews to run home and get food items or other misc. things that they forgot to bring to work. It personally infuriates me now to know that I may have been taken advantage of because I have waited in an ambulance outside his old Dal Street house under false pretenses."

- "Needless to say, the conduct of these people constitutes their creation of a sexually hostile work environment for the rest of us."

As referenced earlier in this decision, Gollnick, Richards, and J. Wilkins submitted statements with four nearly identical paragraphs. The only difference is that Richards included Taylor as one of the individuals responsible for "pushing sexual matters." The first and fourth paragraphs state:

> These charges are unfair, because the people making these accusations are the ones who are most responsible for sex-related and disrespectful speech, and an environment that makes many of the rest of us uncomfortable.
>
> Captain Reiber is not guilty of these charges. Lt. Turpin, Andrew Howell, Chelsey Tadema are the ones responsible for pushing sexual matters in the face of the rest of us.

Wehrung's statement also included the above-quoted sentences. Gollnick, Richards, and J. Wilkins testified that they had no idea that their statements had identical paragraphs. Gollnick testified that he wrote it and that the union attorney edited it. J. Wilkins testified that the statement was framed by the attorney. Richards testified that it could have been a coincidence

that the four paragraphs were identical. None of them were able to credibly articulate how Tadema was responsible for sex-related and disrespectful speech; instead, they each referenced the perceived affair between Howell and Tadema.

Gollnick's statement includes the following:

> My wife, Margaret, and Lisa Turpin have been friends for a few years. They talk about life as fire fighter's wives and things that go on. Lisa Turpin told my wife that she and Lt. Turpin have had sexual intercourse on the fire engine. The Turpins appear to enjoy discussing sexual matters, and are very open about their sexual adventures. My wife is prepared to testify to this should you wish further information.

With respect to the fact that his statement focused on Howell, Tadema, and Turpin, Gollnick testified that "it happens to be those people." He admitted in his interview with Kennar that he addressed Howell's and Turpin's conduct in his statement because he knew they initiated part of the complaint against Reiber.

According to Richards' statement: "It is clear that Howell, despite being married, has been engaged in an active sexual relationship with Chelsey Tadema for many years." Wehrung's statement includes the same sentence.

Volk included the following in his statement:

- "If you're concerned about derogatory and offensive comments, one of the biggest offenders is Drew Howell. He often will discuss sexual positions he has or would like to try with no regard to whether those in the room care to hear about it."

- The allegations brought against Eric [Reiber] are incredibly unfair. The offenses by Drew [Howell] and James [Turpin] associated with sexual conduct imposed on this workplace, and derogatory, back-biting, self-serving speech, are much worse, and much more destructive to this department."

- "Chelsey [Tadema] has now been reassigned to A Shift Station 1. This now puts her in a safe-haven that further protects her due to the fact that James [Turpin] and Drew [Howell] are on the same shift at station 2 and can watch over her. This seems to be another ill-thought choice by management."

During his interview with Kennar, Volk described the July 3 statements submitted by the union as "basically leveling the playing field."

Wehrung acknowledged in his interview with Kennar that he knowingly targeted those who reported adverse information about Reiber. He told Kennar:

> I guess they're going after a fellow firefighter who was just trying to help them. And it made me angry and, all right, fine. Gloves are off. We're going to say this. We're going to let it all out. We're going to put it all out there."

Wehrung testified that at a union meeting somebody called the people bringing allegations against Reiber "rats." He said that Fisher told them not to get into name calling and to be professional. Wehrung testified: "I, juvenile as I can be, said, 'Why not? They are.'"

J. Wilkins' statement includes the following:

> When I joined the Department five years ago and was on probation, I was immediately informed by Andrew Howell that he and Lt. Turpin were involved in 'swinger' lifestyles with their wives. I was invited to take part. I was very uncomfortable about being approached, and that these matters were being discussed openly in the workplace with the apparent approval of Lt. Turpin.

J. Wilkins also included the following in his statement: "Andrew Howell talks frequently in the workplace about his sexual activities with his wife, and their involvement in 'S&M' and experiments with intercourse positions. He has made many of us very uncomfortable. Howell frequently brought hard-core pornography magazines into the station." Richards' statement included this same language, except he added the following to the last sentence: "until other members asked him to please stop."[43]

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[43] The evidence revealed that the fire department administrators banned pornographic magazines several years prior to the Reiber investigation.

In Kennar's interviews with Fisher, Gollnick, Richards, Volk, Wehrung, and J. Wilkins, they each identified that had Howell and Turpin not been involved in the Reiber investigation, they would not have raised the issues that they did.

Events post-July 3 relating to statements. As described earlier in this decision, in response to the employer's inquiry, union attorney Urquhart advised the employer that through the statements the employer "had been given legally sufficient notice." City Supervisor Sherman advised the union in his grievance response that the employer would investigate and take appropriate action for work-related violations. The employer investigated the seven employees' allegations against Howell, Tadema, Taylor, and Turpin contained in the July 3 statements and took action based upon the findings of the investigation.

Regardless of how the union, Fisher, Gollnick, Richards, Volk, Wehrung, and J. Wilkins elected to characterize the July 3 statements, their statements contained serious allegations against the bargaining unit employees who reported adverse information about Reiber.[44] At least by the time the union received Sherman's August 10, 2009 grievance response, the union, Fisher, Gollnick, Richards, Volk, Wehrung, and J. Wilkins knew or should have known that the employer would investigate the allegations contained in their statements and that the investigation could lead to disciplinary action against the employees who shared adverse information about Reiber.

As described in the background section of this decision, I admitted into evidence, with no objection from the union, several e-mails between Fisher and Urquhart. On July 31, 2009, Fisher e-mailed Urquhart to let her know that of the four employees who shared adverse information about Reiber, all but Tadema had contacted George Brown, the bargaining unit employee the union designated to serve as their union representative. Fisher noted: "so she is getting another free pass." In response, Urquhart wrote: "Oh, the City has a tiger by the tail! What fun! (Except for Eric, of course). Somebody's gonna get eaten by the tiger!"

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[44] Testimony conflicted about whether the union, Fisher, Gollnick, Richards, Volk, Wehrung, and J. Wilkins intended their July 3 statements to serve as complaints.

In an e-mail from Urquhart to Fisher dated September 29, 2009, Urquhart wrote: "So what's your bet on which of the guys is going to get no more than a wrist-slap on October 1st? If it's Howell and not Turpin, it's gold for the arbitration. If it's empty discipline against Turpin, it's still gold, of course." In a follow-up e-mail to Fisher dated October 2, 2009, Urquhart wrote:

> Hi, I'm still in the office, my head reeling from how incredibly asinine Pullman administrators are. How in the HELL do they not impose discipline on these people after what they've put Eric through??!! This is like Alice in friggin' Wonderland!! I've honest to god never seen anything like this in all my years of public service. We should sell tickets to the arbitration.
>
> AAAAAHHHHH!!!!

Union did not carry burden. The union did not carry its burden of establishing that the employer's stated reason for discipline was pretextual or that union animus substantially motivated the disciplinary action against the six employees. None of the union's arguments establish that the employer took the action because of the employees' union activity.

During the course of the employer's investigation and throughout the hearing, the employees gave varying accounts of why they focused their statements on Howell, Tadema, and Turpin and what they were attempting to accomplish with their statements. Their shifting and various explanations, including Gollnick's "it happens to be those people," lacked credibility and undercut their positions. The union's second amended complaint and the statements themselves acknowledge that the union's investigation targeted the employees, stating that the union leadership asked employees questions about "Reiber's conduct in the workplace, and the conduct of those employees making accusations against him." The statements themselves identified in the "regarding" line "Investigation of the Conduct of Captain Eric Reiber and his Accusers."

The employees were not disciplined because they spoke out in support of Reiber. The statements were not, as the union asserts in its briefing "nothing more than a reasoned response to topics of discussion raised by the City itself." The employees were disciplined because the employer determined that they engaged in retaliation that violated the employer's policies. Retaliation is not protected activity. The employer has a legitimate, non-discriminatory interest in protecting

its employees from retaliation. The employer took action, not based upon Howell's or Turpin's subjective reaction to the statements, but based upon the credible findings of an outside investigator that the employees engaged in retaliation.

Activity lost protection – unreasonable. In light of the totality of the circumstances, I find that the July 3, 2009 statements from Fisher, Gollnick, Richards, Volk, Wehrung, and J. Wilkins were unreasonable and that their action in submitting them lost "protected union activity" status.

I fully recognize and appreciate that when it comes to disciplinary matters, it is common and generally accepted practice for employees and unions to support bargaining unit employees by contesting the truthfulness of allegations, establishing witness bias, and demonstrating unequal enforcement of work rules and disproportionate penalties. Employees and unions representing employees justifiably try to show employers why and how proposed disciplinary action does not meet just cause standards. That is not, however, what occurred in this case.

This is not a case about employees simply submitting statements in support of a colleague who is the subject of an investigation. This is not a case about employees including in their statements descriptions of an overall workplace climate to assist the employer in seeing that the subject employee's behavior was consistent with the general workplace.[45] This is not a case about employees trying to show unequal enforcement of work rules or disparate disciplinary action.

Instead, the evidence established that this is a case about six employees who prepared, signed, and submitted statements to their employer attacking and targeting the individuals who they knew submitted adverse information about Reiber. This is a case in which employees went from using their statements as a shield, to defend a bargaining unit employee, to using their statements as a sword, to attack other bargaining unit employees who they felt were responsible for the Reiber investigation. As the evidence demonstrated, including the cited e-mails, the employees

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[45] The union argued, and some of the witnesses testified, that the statements were intended to portray the general atmosphere of the fire department and demonstrate that the culture in the department accepted sexual discussion and joking and that Reiber's behavior was not unusual. I did not find that testimony credible, particularly considering the fact that most of the statements did not focus on the department as a whole and, instead, focused only on those employees who submitted negative information about Reiber to the employer. Additionally, the statements' "regarding" line demonstrates the focus: "Investigation of the Conduct of Captain Eric Reiber and his Accusers."

in this case went after their colleagues, or as the union attorney wrote "these people after what they've put Eric [Reiber] through."

It is not protected union activity for employees to encourage an employer to investigate and potentially discipline other bargaining unit employees in retaliation for those employees providing negative information about a captain. Despite some of their protests to the contrary, the evidence demonstrates that is what Fisher, Gollnick, Richards, Volk, Wehrung, and J. Wilkins did. As Fisher wrote in his statement: "Needless to say, the conduct of these people constitutes their creation of a sexually hostile work environment for the rest of us." Engaging in retaliatory conduct is not protected by Chapter 41.56 RCW. In this case, the employees exceeded the bounds of what was reasonable under the circumstances and lost the protection of Chapter 41.56 RCW.

Kennar Investigation

In its second amended complaint and in its briefing, the union makes several allegations concerning Kennar's investigation. The union asserts that Kennar's interviews were conducted in bad faith to seek a basis for disciplinary action against the employees because of their union activities. The complaint asserts that Kennar's "highly accusatory treatment of the named individuals in the interviews, and her disparagement of their testimony in her conclusory reports . . . produced a reasonable belief on their part that they faced unlawful retaliatory action by the City based on their Reiber *Loudermill* statements."

Distinguished between union and individual activities. It is not per se unlawful for an employer to interrogate or interview employees regarding union activities. *PERC v. City of Vancouver*, 107 Wn. App 694. In that case, the Court of Appeals, applying federal law under the National Labor Relations Act, stated:

> An employer with a legitimate reason to inquire may interrogate employees on matters that relate to their collective bargaining rights without incurring liability under the NLRA, 29 U.S.C. 158(a)(1). *NLRB v. Ambox, Inc.*, 357 F.2d 138 (5th Cir. 1966); the interrogation becomes illegal when the words themselves or the context in which they are used suggests an element of coercion or interference with protected union-related activities. *Ambox, Inc.*, 357 F.2d at 141.

In *PERC v. City of Vancouver*, an interference case, the Court determined that the employer did not interfere with employees' collective bargaining rights, stating:

> Although the questioning was part of a formal investigation, it was not a formal investigation into union activity, but into possible violations of City and VPD [Vancouver Police Department] conduct that happened to take place at a union meeting. It was not an investigation into union activity itself. Any discipline or reprisals resulting from the investigation would not be for protected union activity, but because of harassing, discriminatory, or retaliatory conduct that violated City and police policy.

In this case, the employer was investigating allegations of retaliation; it was clearly not investigating internal workings or policies of the union. Kennar carefully addressed this issue with Fisher, Gollnick, Reiber, Richards, Volk, Wehrung, and J. Wilkins. Kennar informed each employee of her role in the investigation and presented each of the seven employees with an advisement that each signed, along with the union attorney, informing them as follows:

> The purpose of this interview is to ask questions regarding complaints of retaliation in violation of City Policy that have been made against you. I will not ask any questions regarding Union policy, practice or strategy. The City of Pullman has a legitimate interest in protecting its employees from possible conduct that is retaliatory, discriminatory, and/or harassing. Consequently, questions pertaining to union members and conversations will be designed to illicit only those facts relating to the alleged violations of City Policy. If at anytime you believe a question may inquire into matters beyond the scope of the investigation as described above, please be sure and explain your concern. Please sign below indicating that you understand the scope of this investigation as has been described.

This advisement is very similar to the one used by the employer in *PERC v. City of Vancouver*, where the Court of Appeals held:

> [A]n employer may ask questions regarding discussions occurring at a union meeting so long as they do not amount to interference with collective bargaining rights protected by RCW 41.56, which the questions here did not. We also hold that RCW 41.56, which protects union activity, is subject to a reasonableness test, and that because the officer's safety was a legitimate concern of the employer, the employer could ask narrowly tailored questions of employees concerning the union meeting. Therefore, no reasonable employee would perceive that the City was interfering with collective bargaining rights. Thus we hold that the City did not commit an unfair labor practice.

In Kennar's investigation as well as in her report and findings, she carefully drew a distinction between employee union activity and individual actions. She based her findings on each employee's individual actions, not employee union activity.

General conduct. It is difficult to try to reconcile the union's allegations about Kennar and her "highly accusatory treatment" of the employees with the actual evidence in this case, which includes both the transcribed interviews Kennar conducted as well as the recordings. For example, Richards testified about Kennar as follows:

> And at this point I'm two days post-op surgery for an arm, and I have been badgered by her for two hours,[46] and quite honestly I wanted to get out of there. I would have told her that I was the first person on the moon, and that I was there on the grassy knoll, you know, when JFK got shot. I would have told her that. Honest to God, I was ready to get out of there. I mean, it wasn't going to stop until I told her what she wanted to hear. It wouldn't have. Honest to God.

I did not find Richards to be a credible witness. As the above-cited testimony demonstrates, he exaggerated and dramatized some events in what appeared to be an effort to make others look bad while, at other points in his testimony, minimizing his own conduct involving sexual comments and behavior.[47]

Additionally, having read the transcripts and listened to the interviews that were admitted into evidence, I find no indication that Kennar behaved in the manner the union alleges. Mark Makler, one of the union's attorneys, was present for the interviews of Fisher, Gollnick, Reiber, Richards, Volk, Wehrung, and J. Wilkins and raised no concerns about Kennar's behavior. In reviewing Kennar's notes and reports, I find that she maintained her focus on the investigation she was conducting, rather than being sidetracked on aspects of the Reiber investigation which were not part of her investigation. Kennar credibly testified about her investigation and the conclusions that she reached.

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46 The evidence reflects the interview lasted one hour, ten minutes, and 22 seconds.

47 At hearing when union counsel asked Wehrung about sexual pranking, he testified as follows: "There has been some -- I wouldn't call it pranking, just jokes. I don't know how to say this without it being -- Blake Richards likes to show his sister to the fire station. He'll jump out of the shower, he tucks his stuff, genitals, between his legs and stands there, 'Look at my sister.' That's a sexual, what I would consider sexual joke." Richards also discussed "hoggin'" in the work place, a term he defined as: "Hoggin is when you go to the bar and you have one bar tab with your buddies. The person that sleeps with the ugliest woman does not have to pay for the bar tab."

Furthermore, the union complained that Kennar "conferred regularly" with employer attorney Bolasina, including sending him drafts of her investigative findings. The evidence reveals that during the course of her investigation, Kennar had contact with Makler, one of the union's attorneys, and to a more limited extent, contact with Bolasina. When Kennar completed drafts of her reports, she forwarded them to Bolasina for comment; she received no response from him. The union suggests some kind of impropriety based upon Kennar forwarding drafts to Bolasina and not Makler. The evidence does not reveal that this action represents any type of inappropriate conduct.

I reject the union's allegations that Kennar's behavior in any way violated employees' rights or compromised the results of the investigation.

Confidential internal union information. The union asserts that the employer unlawfully solicited and accepted confidential information concerning the union's internal affairs and that such behavior constituted interference and retaliation. This complaint stems from information Turpin disclosed to Kennar during the course of the investigation into Howell's and Turpin's retaliation complaints.

Turpin began documenting his observations of the workplace in a journal after he felt he was being retaliated against for his involvement in the Reiber investigation.[48] During his interview with Kennar, Turpin told Kennar that he was keeping a journal. Kennar asked if she could take a copy of it and he agreed. When Turpin later informed Kennar that the retaliation was continuing, she asked if he would send her the updated journal. He agreed.[49] Turpin also provided Kennar with all of the documents he received in response to his public records request.[50] As discussed earlier in this decision, some of the documents included e-mail communication between union officers and union counsel that took place using the employer's e-mail system. According to

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48 Kennar, an experienced employment attorney and investigator, testified that it is not uncommon when an employee alleges retaliation for the employee to keep a journal of concerns.

49 Turpin's journal included a variety of information. In addition to information about his colleagues, the journal included information about Turpin's attempts to access support from his union.

50 When Kennar first interviewed Turpin, she told him that it was not his job to figure out what events constituted retaliation and filter the information that he shared. She instructed him to provide her with the information and that she would make the determination as to what was relevant.

Kennar, many of the documents that Turpin provided her were not relevant to the investigation she was conducting so she did not consider them.

Kennar testified that after her investigation was over, the employer's attorney contacted her for a copy of her file. She shared what she had, including copies of Turpin's journal and the records from Turpin's public records request. There is no evidence that prior to this hearing any of the employer's management-level employees had possession of Turpin's journal or read his journal. The union did not establish that the employer retaliated against anyone or interfered with employee rights with respect to Turpin's journal or documents received from his public records request.

Conclusion

Although the union established a *prima facie* case, the union did not carry its burden to establish that the employer's actions were either pretextual or substantially motivated by union animus. The employer had an obligation to investigate Howell's and Turpin's retaliation complaints. It secured an investigator who conducted a thorough investigation that carefully drew a distinction between employee union activity and individual actions. The investigator found that Fisher, Gollnick, Richards, Volk, Wehrung, and J. Wilkins engaged in retaliation in violation of the employer's policies. The employer based the resulting disciplinary actions on the findings of retaliation, not on the employees speaking out in support of Reiber or on Howell's or Turpin's subjective reaction to the statements.

Furthermore, based upon the entire record, Fisher, Gollnick, Richards, Volk, Wehrung, and J. Wilkins exceeded the bounds of what was reasonable under the circumstances and lost the protection of Chapter 41.56 RCW by submitting statements in retaliation for Howell and Turpin providing negative information about Reiber.

Interference

The union asserts that a variety of employer actions or events constitute employer interference. I review each below.

June 26, 2009 letter from Sires to Fisher

As referenced above in the background section, after learning that Fisher was looking into a "tea-bagging" incident involving an individual who provided information critical of Reiber, Sires sent a letter to Fisher reminding him of the employer's policies against retaliation and cautioning him that targeting those who complained against Reiber could be considered retaliation. The union asserts that the letter constitutes unlawful interference. The letter reads as follows:

> I have been told that you personally contacted a firefighter seeking derogatory information about certain colleagues who participated in my investigation and reported negative information regarding Captain Eric Reiber. You may believe that you are entitled to 'dig up dirt' on these colleagues as a union official who is assisting Captain Reiber in an ongoing disciplinary matter.
>
> I am writing to remind you of the City's policy against retaliation, and caution you that you may be subjecting yourself to disciplinary action if you violate it.
>
> As you know, my investigation was initiated after I received a complaint of sexual harassment/discrimination against Captain Reiber. Under City policy, anyone who comes forward and complains, and anyone who cooperates in an investigation of the complaint, is entitled to protection from retaliation. Section 2.6 of the Pullman Personnel Policies and Procedures succinctly states:
>
> > **No one shall be penalized or retaliated against in any way by an employee of the City for initiation or participation in a complaint procedure.**
>
> RCW 49.60.210 provides similar protection against retaliation.
>
> The purpose of the law against retaliation is to encourage employees to speak up when they believe anyone's rights under the law are being violated. The law initially recognized that employees would not come forward, particularly against a supervisory employee, if the consequences in doing so could be termination or another form of discipline. The law, however, has evolved to be broader in defining what constitutes retaliation. Retribution in the form of social isolation or shunning, assignment of menial or undesirable duties, or any other adverse changes in an employee's work life can constitute retaliation as well. Finally, engaging in Watergate-era tactics of digging up undesirable personal information about one's perceived detractors can constitute retaliation because the threat of such a crusade can successfully intimidate employees from coming forward.
>
> While I am certain that intimidation, punishment and dissuasion of adverse witnesses are not your intent, the City will not tolerate any activity that has this impact, regardless of what the intent is. At this juncture, I do not intend to initiate

> a retaliation investigation against you or any other colleague who has engaged in similar 'investigation.' You should, however, consider yourself warned that such behavior is either at the line or over it, and additional conduct along these lines will be subject to its own investigation and potential discipline.

According to Fisher, the letter "scared the hell" out of him. He shared the letter with the union's executive board; the executive board did not share the letter with employees. Instead, Fisher told those in attendance at a union meeting that "I had received a letter, basically telling me to back off of the investigation." Fisher testified that the employees "couldn't believe it." Wehrung testified that the union informed them that the employer was "coming after the union for conducting an investigation to defend Captain Reiber, and they're actually threatening Rudy with disciplinary action." On cross examination, the employer's attorney asked Wehrung: "Did the executive board or anyone else at that union meeting tell you that the City warned about focusing or targeting the four people who were associated with the hostile work environment complaint might be viewed by the City as retaliation?" Wehrung responded: "No, sir."

The union alleges that Sires' letter interfered with protected employee rights because employees backed away from activities involved with the investigation, such as submitting statements, because of fear of adverse consequences from the employer. I do not find that Sires' letter to Fisher constituted unlawful interference either with respect to Fisher and the union's executive board or with respect to other bargaining unit employees. I address each separately.

In *Grant County Public Hospital District 1*, Decision 8378-A (PECB, 2004), the Commission differentiated between statements made to union leaders and those made to rank-and-file bargaining unit employees. The Commission explained:

> This Commission has previously held that employers must use caution when making statements to rank-and-file bargaining unit members as compared to statements made to union officials. In *City of Bremerton*, Decision 3843-A (PECB, 1994), a management official told a union official that management had ways of finding out about what occurred at union meetings. The Commission found that a reasonable union official familiar with the history of the bargaining unit would be able to hold a private meeting, and thus no interference could be found.

In *City of Renton*, Decision 7476-A (PECB, 2002), the examiner explained that:

> [U]nion officials should be accustomed to controversial situations, and can be expected to receive and interpret harsh words, criticism, and displeasure. . . . The longer a union official is involved in representing the interests of bargaining unit employees, the less reasonable are their claimed perceptions of threats and coercion.

I do not find that a typical union officer who, like Fisher, had served as an executive board member for over 15 years, could reasonably perceive Sires' letter as an attempt to discourage protected activity. Sires' letter was blunt. With the letter's reference to "Watergate-era tactics," it could even be described as "colorful." The point of the letter, however, was clear: Sires' letter discouraged retaliatory activity that would violate the employer's policies or state law. Her letter discouraged *unprotected* activity. The letter was designed to promptly advise Fisher of the concern of potential retaliation and possible consequences for engaging in retaliation without telling the union how it should or should not conduct its investigation. Reminding the union of the employer's policy against retaliation and how it could apply in the present situation was legitimate, timely guidance designed to ensure awareness and protect all concerned, especially given the fact that an employee had just raised the issue of retaliation.

With respect to the other bargaining unit employees, the union's executive board elected to share limited information about the employer's letter and to mischaracterize it. As both Fisher's and Wehrung's testimony demonstrated, the union did not communicate to employees the employer's concern about potential retaliation which was the clear purpose of the letter. Instead, the union communicated that the employer was threatening Fisher with discipline for conducting an investigation. To the extent employees perceived that the employer was trying to discourage protected activity based upon the letter as described by the union, the employees' perceptions were based upon misinformation. For action to constitute interference, an employee must reasonably perceive *the employer's* actions as a threat of reprisal or force, or promise of benefit, associated with their union activity. Here, the employer cannot be held responsible for the impact of the union's mischaracterization of the employer's letter. Furthermore, I do not find that a typical employee who read the employer's June 26, 2009 letter to Fisher could reasonably perceive that the employer was threatening his or her protected rights. The union did not establish that the letter constituted unlawful interference.

The union also asserts that the employer promptly gave a copy of Sires' letter to those who complained about Reiber or otherwise informed them of the contents of the letter. The union asserts doing so constituted interference. The union failed to establish that the employer promptly gave a copy of the June 26 letter to Howell, Tadema, Taylor, or Turpin or otherwise communicated with them about the letter. Rather, the record establishes that the employer provided Turpin a copy of the letter in response to his September 2009 public records request; I infer that the employer also gave Taylor a copy of the letter in response to his public records request. The employer did not interfere with employee rights in doing so.

Tadema's missing keys

The evidence revealed that "pranking" was common within the fire department. One prank involved taking and hiding an employee's car keys. In one version of the prank, C shift employees placed a colleague's keys in a container with water and put the container in the freezer. Reiber talked about getting a police officer involved in the prank but that did not happen.

On June 27, 2009, a few days after Reiber's pre-disciplinary meeting and after Tadema transferred from C shift to A shift, Tadema could not locate her keys. She was ending her shift and C shift employees were beginning their shift. Tadema had followed her common practice of leaving her keys in her open vehicle so that colleagues could move her car if they wanted to play basketball. On this day, however, her keys (including her house keys) were missing when she went to her vehicle. Nothing else was missing.

After looking for her keys without success, Tadema walked the five to six miles to her home and then drove another vehicle back to the station and still could not find the keys. She decided to report the missing keys to the police so that she would have documentation.[51] Two officers talked with her. One of the officers asked if she suspected anyone and she responded that she was having some problems with C shift. Another officer said that it sounded like a prank that went too far and that he would talk with the firefighters about it. The police investigated by talking with the employees on C shift and filing a written report. While Tadema was installing

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[51] She spoke with Turpin on the phone while she was walking home; he suggested contacting the police.

new locks at her home one of the officers called her, told her that they weren't well received when they went to the fire station, and told her she could "expect to catch some flack" from the guys. Nothing came of the investigation.

The union argues that eight bargaining unit employees who were working on C shift, Chuck Caessens, John Gollnick, Mark Johnson, Tony Nuttman, Blake Richards, Chris Wehrung, Jason Wilkins, and James Young, were accused of stealing Tadema's keys and that the police investigation constituted employer interference.

I disagree. The union did not establish employer interference. The record demonstrates that no employer representative played any part in Tadema's decision to call the police or in the resulting police investigation.[52] The evidence does not establish that a typical employee could reasonably perceive this situation as an employer attempt to discourage protected activity.

Furthermore, this issue was not raised in a timely manner. The union did not raise this issue until it filed its amended complaint on January 13, 2010, more than six months after the incident.

Wolf pack

In the July 10, 2009 disciplinary notice to Reiber, Chief Wilkins states, in part, as follows:

> Perhaps most importantly, the investigation showed that your skill as a tactical firefighter did not translate into skill as a supervisor of other firefighters. The manner in which you handled issues regarding Ms. Tadema, once she was placed on C shift, amply demonstrate this. You have developed a dysfunctional leadership style in which you maintain power, control and obeisance by making subordinate employees insecure in their status, afraid of falling out of your favor, and beholden to you for their comfort and success. What you have accomplished is molding a group of firefighters who are loyal to you, and not to the City or the department. While this style might work in the fire departments of old, or in wolf packs of today, it does not work in the diverse, modern work place where policies and procedures govern the employer/employee relationship, and much of what you have either done or allowed under your watch is clearly prohibited.

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[52] Although I take administrative notice of the fact that the employer also operates the police department, the record contains no evidence that any employer or fire department administrator played any part in the police investigation.

City Supervisor Sherman included the same statement when he quoted the disciplinary letter in his Step 3 grievance response dated August 10, 2009. The union alleges the "wolf pack" statement refers to those employees who submitted statements in support of Reiber. The union asserts that by making the "wolf pack" statement, the employer was sending a message about what it thought of the union and that the employer thereby interfered with employee rights. I disagree.

This is another situation where the union's executive board chose to interpret the employer's words in a way that the evidence does not support. The union's executive board did not share the disciplinary letter or grievance response with employees. Instead, the union's executive board shared its interpretation of the letter, telling bargaining unit employees that Wilkins and Sherman called those who submitted statements in defense of Reiber a wolf pack. The employees did not see the words used or the context in which they were used. The evidence further reveals that the union embellished the description and asserted that the employer referred to the employees who supported Reiber as a "cowering wolf pack." The union's original complaint, which was later amended to delete the word "cowering", alleged: "In the [sic] Reiber's discipline letter and report Chief Wilkins depicted those members of the Association who came forward in Captain Reiber's defense as a cowering 'wolf pack.'" Wehrung testified that the union told them that Wilkins referred "to the people who brought statements forward in defense of Captain Reiber as a cowering wolf pack."

The record reveals no evidence that Wilkins, Sherman, or any other employer representative ever used the term "cowering wolf pack." The only employer references to "wolf pack" included the one in Wilkins' letter and Sherman's letter quoting it. Wilkins testified that by "wolf pack" he was referring to C shift. I find his testimony on this point credible and consistent with the evidence. The evidence demonstrated that the employer had expressed concerns to Reiber about his leadership before the hostile work environment investigation began and it was logical that the employer would articulate the concerns in the disciplinary letter.[53] In reviewing the employer's

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[53] For example, the August 2008 memorandum to Reiber about the equipment damage expressed concerns about Reiber's leadership. Also, prior to the submission of the July 3 statements, the employer's June 8, 2009 notice of intent to discipline letter called into question Reiber's ability to perform in a supervisory role. Heston's testimony also supports that the employer had concerns about the impact Reiber's negativity had on those he supervised.

actual words and the context of the words in light of all the evidence, I do not find that a typical employee could reasonably perceive the employer's letter as a threat of reprisal for engaging in protected activity. The union did not establish that the employer's letter to Reiber constitutes interference.

Sires investigations

The union makes several allegations with respect to the Sires investigations. Allegations relating to Sires' first investigation are addressed below in the section relating to untimely allegations. Sires' second investigation commenced after Reiber's Step 3 grievance as a result of the union attorney's statement that the employer was "on notice" of their allegations against Howell, Tadema, Taylor, and Turpin. The union's second amended complaint, which expanded on an allegation included in its original complaint, alleged that Sires conducted interviews of Fisher, Gollnick, Reiber, Richards, Volk, Wehrung, and J. Wilkins "in bad faith for the purpose of seeking some basis for disciplinary action against them. Her accusatory treatment of these named individuals in the interviews, and her disparagement of their testimony in her conclusory report, produced a reasonable belief on their part that they faced unlawful retaliatory action by the City based on their Loudermill statements."

The evidence does not support this allegation. A typical employee, knowing that the union attorney informed the employer that the employer was "on notice" of its allegations against Howell, Tadema, Taylor, and Turpin would expect the employer to conduct an investigation into the allegations and could not reasonably perceive the situation as an employer attempt to discourage protected activity. The union did not establish interference. Furthermore, as stated earlier in this decision, the Commission dismisses interference complaints when they are based upon the same set of facts that fail to constitute a discrimination violation. *Reardan-Edwall School District*, Decision 6205-A. Because this interference complaint is based upon the same set of facts that fail to constitute a discrimination violation, it must be dismissed.

August 25, 2009 training

The employer started a series of trainings in the summer/fall of 2009 to address some of the issues in the fire department. The first training, taught by an outside consultant, covered

harassment, retaliation, and discrimination. The next training, held on August 25, 2009, and taught by Sires, covered "managing change." The union's complaint alleges that at the August training, Fisher, Volk, and/or Andrew Chiavaras were told to "back off" and that this constituted interference.

The limited evidence on this allegation demonstrates that Captain Scott Thompson e-mailed Fisher on September 5, 2009, confirming a conversation they had about Chief Wilkins' concerns that some of the questions and behavior displayed by Fisher and Volk at the training were inappropriate and disruptive to the training. The e-mail expressed: "I trust that we have an understanding of the Chief's concerns and that proper decorum will be maintained in future classes."

When Fisher e-mailed about the concerns, Sires replied, in part: "I was approached at the end of training with comments that individuals felt you and Chris Volk were rude with snickering and making it obvious you felt the training was a waste of time. . . ."

A typical employee could not reasonably perceive the above-described situation as an employer attempt to discourage protected activity. The record does not support that the employer's actions constituted interference.

October 2009 complaint from reserve firefighter

On October 21, 2009, a reserve firefighter submitted a written complaint to the employer that Gollnick and another employee made him uncomfortable by accusing him of "so many crude, unprofessional, and disrespectful things." The reserve stated that he asked them to stop but that they did not. Although the reserve reported that the comments started in December 2007, he wrote that the most recent incident had occurred just days before he submitted his complaint. The reserve alleged that in December 2008, in response to additional behavior, he spoke with the senior reservist who e-mailed the concern to Fisher, his supervisor. The reserve wrote that "the harassment stopped until the latest incident," referring to an October 17, 2009 incident.

Sires conducted an investigation that included interviewing the reserve, the senior reservist, Fisher, Gollnick, and the other employee. According to Sires, the senior reservist said he e-

mailed Fisher about the situation. Sires interviewed Fisher. Sires testified that Fisher told her that he had not received an e-mail from the senior reservist and that, as a result, "I had to assume that it either didn't get sent or got lost wherever those e-mails that you send get lost." The employer took no action against Fisher. The employer counseled Gollnick and the other employee about their behavior.

The union appears to argue that the way the employer handled this matter constituted interference. For example, Volk testified that his perception was that the employer was "going after" Fisher. The evidence, however, does not support the union's assertion or Volk's perception. The evidence showed that the employer investigated a reserve's complaint and addressed the resulting concerns. A typical employee looking at this situation could not reasonably perceive the employer's actions as discouraging employees from engaging in union activities.

Subjected to greater scrutiny – swearing and personal protective equipment

The union alleges that the employer subjected those employees who spoke out in favor of Reiber to greater scrutiny, investigations, and discipline after they came forward and that such behavior constituted unlawful interference. The union specifically points to incidents involving swearing and personal protective equipment.

The evidence demonstrates that during the summer of 2009 tensions mounted between those who raised concerns about Reiber and those who supported Reiber. Tensions appeared to run particularly high between Turpin and those who made allegations against him. Turpin maintained a journal of events, including his perception of infractions committed by other employees. He reported at least two of the perceived infractions.

On or about October 10, 2009, two incidents caused Turpin concern while he was serving as the officer-in-charge; one incident involved swearing and the other involved personal protective equipment. While on shift that day, Fisher, Gollnick and others watched a televised football game. Gollnick swore about a call in the game, saying words to the effect of "fucking bullshit."

Turpin, hearing the profanity, came out of the officer's office and saw that Fisher was there and had not corrected Gollnick's behavior.

On the same day, Fisher and Gollnick were the first on the scene of a possible structure fire. Once on the scene, Fisher cancelled other units except Turpin's, which was placed on stand-by observing from about a block away. Fisher and Gollnick entered the home wearing no protective gear. They determined the source of the concern was a smoldering phone book in the home's fireplace. Gollnick picked up the smoldering phone book, still wearing no gloves or respiratory protection, and carried it outside. When he stepped outside, the phone book flamed up. Gollnick dropped the phone book to the ground and stomped out the flames.[54] When they returned to the station, Turpin addressed his concerns about the lack of protective gear with Fisher who disagreed with Turpin's concerns.

Both Fisher and Turpin reported the incident up the chain of command and both ended up meeting with Chief Wilkins and Operations Officer Heston. According to Turpin, at the meeting Wilkins told both Fisher and him words to the effect of: "Come on guys, we need to grow up." No disciplinary action was taken. Gollnick received an oral counseling about swearing.

Fisher's testimony indicated that he was frustrated with what he perceived as "extra high" scrutiny of his actions. The evidence reveals that Turpin watched, documented, and in some instances, reported concerns. The evidence does not demonstrate that Turpin's actions were at the direction of the employer or in any way encouraged by the employer. The employer did not initiate the discussions on swearing or the protective equipment. Both Fisher and Turpin took the protective gear issue up the chain of command and Wilkins and Heston addressed the issue in a manner that resulted in no disciplinary action. A typical employee looking at this situation could not reasonably perceive the employer's action as a threat of reprisal for engaging in protected activity.

I do not find that the union established that the employer engaged in interference.

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[54] When interviewed by Kennar, Fisher said that the flames were six inches. In this proceeding, he testified that they were "maybe two-inch flames."

Statute of limitations, failure to include allegation in complaints

In addition to the allegations addressed above, the union's briefing asserts that several additional events constitute unlawful interference. As described in more detail below, several of these events either occurred outside of the statute of limitations and/or the union failed to include the allegation in its original or amended complaints and did not seek to amend its complaint to conform to the evidence. Because I do not have jurisdiction to rule on such issues, they are dismissed. I briefly outline these issues below:

- Reiber investigation. The union's complaint and amended complaints filed on December 16, 2009, January 13, 2010, and June 18, 2010, and the union's briefing make several assertions relating to the Reiber investigation and argue that parts of the investigation constitute independent interference. For example, the union's second amended complaint raised allegations about Sires' May 2009 questions of Reiber. These allegations are not timely because the employer completed the Reiber investigation more than six months prior to the union filing its original complaint. Furthermore, because this interference complaint is based upon the same set of facts that fail to constitute a discrimination violation, it must be dismissed.

- May 5, 2009 letter. The employer's May 5, 2009 letter to Reiber placing him on administrative leave restricted him from being present at fire department facilities and from discussing the issues relating to his leave with others. Allegations relating to this letter are not timely because the letter was issued more than six months prior to the union filing its original complaint.

- Refusal to provide information/withholding evidence. In its post-hearing briefing the union argues at length that the employer violated the collective bargaining agreement, engaged in interference, and committed a refusal to provide information violation when it failed to provide the union a copy of Howell's and Turpin's April/May 2009 documentation until the day before the step 3 grievance meeting in late July 2009. The union did not raise these allegations of employer refusal to provide information or withholding of evidence in its original complaint or either of its two amended complaints. Nor did the union seek to amend its complaint at hearing. As a result, this issue is not

properly before me. Additionally, complaints of collective bargaining agreement violations fall outside of the Commission's jurisdiction. *Seattle School District*, Decision 9858-A (EDUC, 2009).

To the extent the union cites this matter as evidence of employer misconduct demonstrating employer pretext or union animus, I do not find that the evidence supports such a position.

- September 15, 2009 alleged comments. The union filed its second amended complaint on June 18, 2010. In the second amended complaint, the union raised for the first time that on September 15, 2009, Volk overheard a conversation between Sires, Turpin, and Chief Wilkins in which Wilkins allegedly said words to the effect that the "accusers will be dealt with" and "they need to realize that false accusations will not be tolerated." Because this was not raised within the six-month statute of limitations, it is not timely and cannot form the basis of an independent interference violation. To the extent the union raises this as evidence demonstrating employer pretext or union animus, I do not find that the evidence supports such a position.

- Scrutiny throughout the fall of 2009. The union's second amended complaint filed on June 18, 2010, raised an allegation that throughout the fall of 2009, Chief Wilkins and Sires subjected Reiber to unfair and unreasonable workplace scrutiny and censure in retaliation for the union's support of him. This was not timely filed. Furthermore, the evidence does not support this allegation.

- Aid and support of Howell and Turpin. In its second amended complaint filed on June 18, 2010, the union asserted that the employer's attorney conferred with Howell and Turpin about lodging their complaints and that the employer "otherwise actively aided and supported Turpin and Howell in their presentation of the charges." Howell and Turpin filed their complaints in November of 2009. This allegation was not filed in a timely manner. To the extent the union raises this to show pretext or union animus, I do not find that the evidence supports such a position.

- Favoritism and collusion. The union's post-hearing brief asserts that the employer demonstrated favoritism toward Reiber's "accusers" by accepting false accusations against him, by expressing gratitude for their cooperation, and "granting them desired station and shift assignments." [55] The union also asserts that the employer afforded the "accusers" special access to services and information from its attorney. Because the union did not raise this allegation in its original complaint or its two amended complaints, it is not properly before me. To the extent the union raises this to show pretext or union animus, I do not find that the evidence supports such a position.

- Enhanced disciplinary sanction. The union alleges in its briefing that the employer engaged in an unfair labor practice by enhancing Reiber's disciplinary sanction from what it articulated in its notice of intent to discipline. The union asserts that the employer did so because union employees came forward in Reiber's defense. The union did not raise this allegation in its original complaint or its two amended complaints. As a result, the issue is not properly before me. To the extent the union raises this issue to demonstrate pretext or union animus, I do not find that the evidence supports such a position.

- *Loudermill* violation. The union's complaint alleged that the employer violated the law by not accepting testimony from union employees who attended Reiber's pre-disciplinary meeting. Because *Loudermill* rights are constitutionally based, alleged violations fall outside of the Commission's jurisdiction. *City of Bellevue*, Decision 4324-A (PECB, 1994).

FINDINGS OF FACT

1. The City of Pullman (employer) is a public employer within the meaning of RCW 41.56.030(13) and maintains a fire department (department).

2. The International Association of Fire Fighters, Local 1892 (union), is a bargaining representative within the meaning of RCW 41.56.030(2).

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[55] The evidence revealed that the employer followed the established procedure contained in the collective bargaining agreement to allow employees, including Howell, Tadema, and Turpin, to bid on their shifts and stations.

3. The employer and union were parties to a collective bargaining agreement at all times material to this proceeding.

4. Patrick Wilkins has served as chief of the department since 1984. Mike Heston serves as the fire operations officer.

5. The union represents a bargaining unit comprised of all employees within the fire department except Wilkins, Heston, and the administrative secretary; the unit includes captains, lieutenants, and firefighters.

6. Eric Reiber, Rudy Fisher, and Chris Volk work within the fire department and make up the union's executive board and, along with legal counsel, the union's bargaining team. Reiber serves as a captain in the department and as the union's president; Fisher serves as a lieutenant in the department and as the union's vice president; Volk serves as a firefighter in the department and as the union's secretary/treasurer.

7. The employer hired Chelsey Tadema into a regular firefighter/paramedic position in June 2008. During the time in question for this matter, Tadema served as the employer's only female career firefighter.

8. As is customary with probationary employees within the department, Tadema worked for several months on each of the three shifts. She worked on A and B shift without incident. Tadema rotated to C shift, her last rotation, in January of 2009. Reiber served as captain of C shift.

9. Tadema found C shift to be different from the other shifts and was uncomfortable with some of the discussion and behavior of personnel on C shift although she did not say anything about it until April 2009. Tadema testified that if A and B shift personnel made sexual comments and jokes, they did not do it in front of her, unlike C shift.

10. Prior to rotating to C shift, no one raised any performance concerns with Tadema. On March 11, 2009, Reiber met with Tadema and provided her with his written evaluation of her performance. The evaluation praised her work and noted no concerns. After reviewing the evaluation, Reiber shared some concerns with Tadema that he heard from others on C shift.

11. In early April 2009, Reiber met with Tadema again and told her that others on C shift were complaining that she was not contributing as much as she should to morning chores and that there had been issues relating to grocery store runs. On April 27, 2009, while Tadema was with colleagues awaiting the start of a training session, Reiber asked her to come with him and led her to a meeting in Heston's office about her performance.

12. Tadema was upset about the interactions described in Findings of Fact 10 and 11 and felt her job was in jeopardy. After the meeting with Heston and Reiber, Tadema sought advice from Andrew ("Drew") Howell, a firefighter with whom she had a close personal relationship. Howell suggested that Tadema talk with Lieutenant James Turpin, Howell's supervising officer.

13. On April 28, 2009, after Tadema spoke with Turpin, Turpin shared Tadema's concerns with Wilkins. During the course of the conversation, Turpin also shared with Wilkins the concerns he previously heard from other employees about Reiber, including concerns from Howell and another firefighter, Erik Taylor. Turpin submitted a statement to Wilkins.

14. After the meeting with Turpin, Wilkins met with Tadema. She came to the meeting with notes and, upon Wilkins' request, provided him with the notes.

15. Wilkins met individually with Howell and Taylor and asked them to document the information that they shared with him; they complied and submitted statements to Wilkins.

16. Wilkins forwarded the statements to Karen Sires, the employer's human resources manager, and asked that she conduct an investigation. After working one more C shift, the employer transferred Tadema to A shift, consistent with her request to transfer off C shift.

17. Tadema had not raised concerns about C shift earlier because she was a probationary employee and understood that her role was not to be heard. Although she believed that she was subjected to a sexually hostile work environment, when Tadema raised concerns in April 2009, she chose not to share examples of inappropriate comments and jokes on C shift because, as the only female career firefighter, she did not want to be "'*that*' girl."

18. The record contains extensive testimony concerning the suspicion on the part of many in the department that Howell and Tadema were having an affair.

19. On May 5, 2009, the employer placed Reiber on paid administrative leave pending the outcome of the investigation into allegations that he created a hostile work environment.

20. Sires conducted the investigation. She formulated interview questions based upon the information she had from Howell, Tadema, Taylor, and Turpin and asked the same questions of each employee she interviewed.

21. By letter dated June 8, 2009, the employer informed Reiber of its intent to discipline him by demoting him to the rank of firefighter. The letter provided him notice of his pre-disciplinary meeting and included Sires' investigative report. The report gave examples demonstrating the type of environment Reiber allegedly created, including:

- Reiber referring to women visiting the department as "hot."
- Touching and standing close to female employees in the department.

- Suggestive comments to employees' wives such as "When are you going to sneak off with me?" "When are you going to leave that loser?" "When are you going to tell him about the other night?"

- Demeaning others by calling them "dickhead," "buttmunch," and "dickscratch."

- Making negative comments about fire department and city administrators in front of subordinates and peers.

- Requesting naked photos of the wives of other firefighters.

22. Sires' report reviews the employer's previous efforts to address concerns with Reiber's performance, including: comments in Reiber's evaluation relating to improving his communication; documentation of a situation involving Reiber using the term "old man" to describe Chief Wilkins in front of Wilkins' wife and a car salesman; and documentation of Reiber's role in a situation involving damage to two department vehicles.

23. On June 24, 2009, Reiber attended his pre-disciplinary meeting along with a union attorney, Fisher, Volk and a number of other employees. The employer denied the union's request to introduce testimony from employees other than Reiber, his union representative, and union attorney, but offered the union the opportunity to submit written statements by July 3, 2009.

24. With Reiber on leave, Fisher assumed the role of acting union president and led the union's efforts in support of Reiber, including preparing statements to be submitted to the employer and some investigation. Fisher and one of the union's attorneys, Patricia Urquhart, drafted and/or edited most of the statements.

25. The union's investigation included the union leadership asking employees questions about Reiber's conduct in the workplace and the conduct of those employees making accusations against him.

26. Fisher looked into a "tea-bagging" incident between Howell and another employee. When Turpin learned that Fisher had questioned the employee about the "tea-bagging" incident, he informed Sires that he felt he was being retaliated against.

27. Concerned about potential retaliation in violation of the employer's policies, Sires sent Fisher a letter dated June 26, 2009 reminding him of the employer's policies against retaliation and cautioning him that he could subject himself to disciplinary action if he were to engage in retaliatory conduct.

28. On June 27, 2009, Tadema could not locate her keys. She was ending her shift and C shift employees were beginning their shift. After looking for her keys without success, Tadema walked the five to six miles to her home and then drove another vehicle back to the station and still could not find the keys. She decided to report the missing keys to the police so that she would have documentation. Two officers talked with her. One of the officers asked if she suspected anyone and she responded that she was having some problems with C shift. Another officer said that it sounded like a prank that went too far and that he would talk with the firefighters about it. The police investigated by talking with the employees on C shift and filing a written report. Nothing came of the investigation.

29. On July 3, 2009, the union submitted statements from ten current employees and an employee's spouse. A former employee also submitted a statement on or about July 3 directly to Chief Wilkins. The statements from Reiber, Fisher, and Volk, as well as from firefighters John Gollnick, Blake Richards, Chris Wehrung, and Jason Wilkins, made allegations against Howell, Tadema, Taylor, and/or Turpin, the employees who provided the employer with adverse information about Reiber. The statements of Gollnick, Richards, and J. Wilkins contained four nearly identical paragraphs; the only difference is that one of the paragraphs in Richards' statement included a name that the others did not. A portion of the identical paragraphs included:

> These charges are unfair, because the people making these accusations are the ones who are most responsible for sex-related and disrespectful speech, and an environment that makes many of the rest of us uncomfortable.

> . . . .
> Captain Reiber is not guilty of these charges. Lt. Turpin, Andrew Howell, Chelsey Tadema are the ones responsible for pushing sexual matters in the face of the rest of us.

Wehrung's statement also included the above-quoted sentences.

30. By letter dated July 10, 2009, Wilkins concluded that Reiber engaged in a pattern of behavior that included making rude and demeaning comments toward others, touching employees inappropriately, and creating a work environment that was, at least for one person, unwelcoming and offensive due to his own behavior as well as condoning the inappropriate behavior of subordinates. The letter included several examples and the following:

> The statements that colleagues provided on your behalf after the meeting were significant in several respects. It was noteworthy that many of the statement providers claim that they brought the sexualized comments and behavior of other firefighters to your attention because they found it to be offensive. Despite your role as a supervisor who is tasked with enforcing City and fire department policy, you did nothing in response to curb the offensive behavior or address their concerns. Indeed, no mention of such comments or behavior was ever brought forth by you until you found it necessary to attack the credibility of your accusers. The most likely explanation for this failure is that such sexualized comments and behavior was not only tolerated, but condoned and modeled, under your leadership. I am not letting you, as a supervisor, off the disciplinary hook because you have accused subordinate firefighters of acting in a similar fashion. What you do not appear to understand is that you, as a fire captain, have an obligation to lead by example and that you have an obligation to correct misbehavior of subordinates, not cite it as a reason why you should not be disciplined for also violating policy.
>
> Perhaps most importantly, the investigation showed that your skill as a tactical firefighter did not translate into skill as a supervisor of other firefighters. The manner in which you handled issues regarding Ms. Tadema, once she was placed on C shift, amply demonstrates this. You have developed a dysfunctional leadership style in which you maintain power, control and obeisance by making subordinate employees insecure in their status, afraid of falling out of your favor, and beholden to you for their comfort and success. What you have accomplished is molding a group of firefighters who are loyal to you, and not to the City or the department. While this style might work in the fire departments of old, or

> in wolf packs of today, it does not work in the diverse, modern work place where policies and procedures govern the employer/employee relationship, and much of what you have either done or allowed under your watch is clearly prohibited.

31. The employer suspended Reiber without pay for one month and demoted him from his captain position to a firefighter position for a minimum of six months. He was required to successfully complete training on such issues as supervisory and management skills, communication, and anti-harassment.

32. The union filed a grievance concerning Reiber's discipline with City Supervisor John Sherman on July 22, 2009. Sherman held a grievance meeting on July 28 and on August 10, issued a response denying the grievance. In Sherman's response, he recounted a written request he made of the union prior to the meeting in which he sought to clarify whether the allegations contained in the July 3 statements that Howell, Tadema, Taylor, and Turpin created "a sexually-hostile work environment were intended as a formal complaint or if it was intended to be part of their defense. . . ." Sherman wrote that in response to that question, "Attorney Urquhart stated that it was the union's intention that the city had been given 'legally sufficient notice' through the information provided within the grievance." Near the end of Sherman's grievance response, he wrote that the employer started an investigation in response to the union's allegations and "disciplinary action will be taken as deemed appropriate for those work-related violations, as was done in this case."

33. The employer initiated an investigation into the allegations against Howell, Tadema, Taylor, and Turpin. Sires conducted the investigation and completed a summary of the investigation in September 2009. The following resulted from the investigation:

Howell: Sires found that Howell's behavior had been inappropriate and offensive. As a result of the investigation, on October 5, 2009 the employer issued Howell a written warning concerning his inappropriate verbal behavior and use of obscene or uncivil language. The letter acknowledged his commitment to modifying his

behavior and advised him that future violations of policy could lead to further discipline, up to and including termination.

Tadema: Sires found that the allegations against Tadema raised two concerns. One accusation against Tadema was that she and Howell slept together while on duty. Sires determined that there was no evidence that anything inappropriate had occurred. The other accusation involved Tadema using sick leave to be with Howell's children after they were injured in a car accident. Tadema admitted to using sick leave for that purpose and Sires advised her during the interview that that was not a permissible use of leave.

Taylor: Sires determined there were only two references to Taylor's use of inappropriate language, that he did not recall the first and did not concur with the second. The employer took no action.

Turpin: Sires indicated that some of the allegations against Turpin were similar to those made against Howell, although Turpin was also accused of not performing his duties as a supervisor. She found that it did not appear that Turpin had counseled Howell about a number of matters. According to Turpin's testimony, the employer counseled him as a result of the investigation.

34. Taylor and Turpin submitted public records requests to the employer in September 2009. They sought various documents relating to the Reiber investigation, including communication between employees, union executive board members, and the union attorneys. The employer provided the requested documents, including communication between union officers and their attorneys.

35. In November 2009, Howell and Turpin each submitted a formal retaliation complaint to the employer. Both alleged that Fisher, Gollnick, Reiber, Richards, Volk, Wehrung, and J. Wilkins submitted false accusations against them in their July 3 statements in retaliation for their involvement in the employer's investigation of Reiber.

36. The employer retained the services of attorney Beth Kennar to conduct an investigation into Howell's and Turpin's retaliation complaints. The scope of the investigation was limited to determining whether any of the named employees violated the employer's policies against retaliation with respect to Howell's and Turpin's complaints. The union objected to the investigation as a violation of Chapter 41.56 RCW.

37. During the course of Kennar's investigation, Turpin alleged that in addition to the retaliation arising from the allegations against him contained in the employees' July 3 statements, the employees' behavior toward him was also retaliatory. Turpin alleged that someone urinated in his mouthwash, put a McDonald's job application in his box or locker, stole pictures from his locker, put rocks in his boots, put flammable jell foam in his boots, and treated him differently by giving him the cold shoulder, glaring at him, and other such conduct. He also alleged that employees were boycotting A shift by not coming in on callbacks, transfers, or overtime.

38. Kennar originally scheduled interviews with Fisher, Gollnick, Reiber, Richards, Volk, Wehrung, and J. Wilkins for November 2009 but, to accommodate union attorney Mark Makler's schedule, she rescheduled the interviews to January 2010. At the beginning of each of the January interviews, Kennar informed the employee that she was not trying to intrude on union business and asked that the employee and Makler sign an advisement of rights which stated:

> The purpose of this interview is to ask questions regarding complaints of retaliation in violation of City Policy that have been made against you. I will not ask any questions regarding Union policy, practice or strategy. The City of Pullman has a legitimate interest in protecting its employees from possible conduct that is retaliatory, discriminatory, and/or harassing. Consequently, questions pertaining to union members and conversations will be designed to illicit only those facts relating to the alleged violations of City Policy. If at anytime you believe a question may inquire into matters beyond the scope of the investigation as described above, please be sure and explain your concern. Please sign below indicating that you understand the scope of this investigation as has been described.

39. After completing the investigation, Kennar prepared reports with her findings concerning each employee. According to Kennar, each of the seven employees admitted that had Howell and Turpin not been involved in the complaint against Reiber, they would not

have made any complaints about them. In reaching her determinations, if the employees could articulate any factual support for their accusations, she found no retaliation. If they were unable to provide any factual support for their accusations, Kennar found that the statements were knowingly false and constituted evidence of retaliation. If the employees could articulate a non-retaliatory motive for making the allegations, then she did not find retaliation. She testified that she used a clear and convincing evidence standard and gave the employees the benefit of the doubt if there was conflicting evidence, even without corroborating evidence.

40. With respect to allegations of retaliation against Reiber, Kennar found insufficient evidence that he retaliated against Howell or Turpin. She explained that Reiber's statement of July 22, 2009, which was referenced in the retaliation complaint, was the union's official grievance and that was beyond the scope of her investigation; she reiterated that the scope of her investigation was limited to the conduct of employees in their individual capacity.

41. With respect to the other six employees, she found various levels of retaliation.

42. With respect to Fisher, Kennar concluded that he made allegations against Howell and Turpin in retaliation for their involvement in the Reiber investigation. Fisher admitted that he would not have made the allegations against Howell and Turpin had they not been involved in the Reiber investigation. She wrote:

> However, Lt. Fisher did not simply submit a statement on behalf of the Union. Rather, he chose to act in his individual capacity and make specific allegations of misconduct against Lt. Turpin, FF Howell, FF Taylor and FF Tadema because he felt 'they had broken rank' by making accusations against Capt. Reiber. Lt. Fisher's statement did not provide a picture of the Department as a whole or explain how he felt Capt. Reiber's alleged misconduct was the norm for the Department as one would expect if the information was submitted solely to assist in the defense of Capt. Reiber. Rather, Lt. Fisher's statement specifically targeted those who had engaged in protected activity, and was disappointed when they were not severely disciplined. In contrast to providing information to assist in the defense of Reiber, these accusations were made offensively against FF Howell and others because of their participation in the Reiber Investigation.

43. Kennar noted that Fisher submitted his July 3, 2009 statement to Chief Wilkins in his individual capacity and his official union capacity; she clarified that her "investigation relates solely to actions and decisions made by Fisher in his individual capacity. I did not investigate or review any decisions or actions he may have taken as a representative of the Union."

44. With respect to Gollnick and Richards, Kennar concluded that they each made allegations against Howell in retaliation for his involvement in the Reiber investigation and that they each knowingly submitted untrue statements against Turpin in retaliation for his involvement in the Reiber investigation. She noted that Richards answered "yes" when she asked whether he intended or expected the employer to discipline Howell and Turpin based upon his allegations.

45. With respect to Volk, Kennar concluded that he did not make allegations against Howell in retaliation for his involvement in the Reiber investigation but that he knowingly submitted one untrue statement against Turpin in retaliation for his involvement in the Reiber investigation. She noted that Volk submitted his July 3, 2009 statement to Wilkins in his individual capacity and his official union capacity and clarified that her "investigation relates solely to actions and decisions made by Volk in his individual capacity. I did not investigate or review any decisions or actions he may have taken as a representative of the Union."

46. Kennar concluded that Wehrung made allegations against Howell in retaliation for his involvement in the Reiber investigation and that he knowingly submitted untrue statements against Turpin in retaliation for his involvement in the Reiber investigation. She wrote:

> When asked why he raised these issues against FF Howell now when FF Howell had apparently stopped making inappropriate comments, FF Wehrung responded that it was because 'he was going after their captain.' According to FF Wehrung, he felt FF Howell and Lt. Turpin 'were going after a fellow fire fighter and it made (him) angry and so (he was) going to put it all out there.'

47. With respect to J. Wilkins, Kennar concluded that there was insufficient evidence that he made allegations against Howell in retaliation for his involvement in the Reiber investigation but that he knowingly submitted untrue statements against Turpin in retaliation for his involvement in the Reiber investigation.

48. By memorandum dated May 5, 2010, the employer informed Reiber that based upon Kennar's investigation, he had not engaged in retaliation so the matter was closed. The employer issued pre-disciplinary notices to the other six employees advising them of the discipline it intended to impose based upon Kennar's investigation and findings. The employer and union agreed to consolidate the pre-disciplinary meetings and held one meeting on May 28, 2010.

49. On June 3, 2010, the employer took the following disciplinary action: demoted Fisher from lieutenant to firefighter and suspended him without pay for 30 days; suspended Gollnick, Richards and Wehrung for six shifts; and suspended Volk and J. Wilkins for three shifts. The employer explained the following in the disciplinary letter:

> The reason why the City and the law prohibit retaliation is so that employees are not too intimidated by their employer *or their colleagues* from speaking out against harassment or other similar behavior. By engaging in retaliation, as you did, you sent a message to all firefighters in the Pullman Fire Department that they cannot complain about a fellow firefighter without fear of having accusations made against them in retribution for coming forward. By disciplining you for retaliation, the City is sending the message back to all employees that it considers unlawful retaliation to be grounds for substantial discipline.

50. The six disciplined employees, Fisher, Gollnick, Richards, Volk, Wehrung, and J. Wilkins, filed a group Step 3 grievance on June 17, 2010, which Sherman heard on July 6, 2010.

51. In relation to the employer's disciplinary action against Reiber for creating a hostile work environment, the union established a *prima facie* case of discrimination. Circumstantial evidence supports a causal connection between Reiber's union activity and his discipline.

The employer articulated a non-discriminatory reason for its disciplinary action against Reiber.

52. The union failed to establish that the employer's investigation deficiencies represented pretext, were motivated by union animus, or led to discriminatory disciplinary action.

53. The union did not establish that Reiber was singled out and disciplined for conduct that "everyone" engaged in or that Wilkins set a standard that Reiber acted within.

54. Based upon the entire record, including the credibility of witnesses, the employer's harsh disciplinary action against Reiber was not based upon pretext or union animus.

55. The record does not support that union animus motivated Sires' or Wilkins' actions.

56. The hearsay statements attributed to Wilkins and Heston are not probative of discriminatory intent.

57. In relation to the employer's disciplinary action against Fisher, Gollnick, Richards, Volk, Wehrung, and J. Wilkins for retaliation against bargaining unit employees who provided the employer with adverse information about Reiber, the union established a *prima facie* case of discrimination. The employer based its determination of retaliation on the July 3, 2009 statements, thus establishing a causal connection between the employees' union activity and the discipline. The employer articulated a non-discriminatory reason for its disciplinary actions against Fisher, Gollnick, Richards, Volk, Wehrung, and J. Wilkins and the union did not carry its burden of establishing that the employer's stated reason for discipline was pretextual or that union animus substantially motivated the disciplinary action against them.

58. The investigator found that Fisher, Gollnick, Richards, Volk, Wehrung, and J. Wilkins engaged in retaliation in violation of the employer's policies. The employer based the resulting disciplinary actions on the findings of retaliation, not on the employees

speaking out in support of Reiber or on Howell's or Turpin's subjective reaction to the statements.

59. In Kennar's investigation as well as in her report and findings, she carefully drew a distinction between employee union activity and individual actions. She based her findings on each employee's individual actions, not employee union activity.

60. Kennar's behavior did not in any way violate employees' rights or compromise the results of the investigation.

61. The union did not establish that the employer retaliated against anyone or interfered with employee rights with respect to Turpin's journal or documents received from his public records request.

62. Based upon the entire record, Fisher, Gollnick, Richards, Volk, Wehrung, and J. Wilkins exceeded the bounds of what was reasonable under the circumstances and lost the protection of Chapter 41.56 RCW by submitting statements in retaliation for Howell and Turpin providing negative information about Reiber.

63. A typical union officer who, like Fisher, had served as an executive board member for over 15 years, could not reasonably perceive the June 26, 2009 letter referenced in Finding of Fact 27 as an attempt to discourage protected activity.

64. A typical employee who read the employer's June 26, 2009 letter referenced in Finding of Fact 27 could not reasonably perceive that the employer was threatening his or her protected rights.

65. The record does not show that the employer promptly gave a copy of Sires' June 26, 2009 letter referenced in Finding of Fact 27 to Howell, Tadema, Taylor, or Turpin or otherwise communicated with them about the letter.

66. With respect to Tadema's missing keys as described in Finding of Fact 28, the record demonstrates that no employer representative played any part in Tadema's decision to call the police or in the resulting police investigation. The evidence does not establish that a typical employee could reasonably perceive this situation as an employer attempt to discourage protected activity.

67. With respect to the "wolf pack" allegation, in reviewing the employer's actual words and the context of the words in light of all the evidence, I do not find that a typical employee could reasonably perceive the employer's letter as a threat of reprisal for engaging in protected activity.

68. A typical employee, knowing that the union attorney informed the employer that the employer was "on notice" of its allegations against Howell, Tadema, Taylor, and Turpin would expect the employer to conduct an investigation into the allegations and could not reasonably perceive the situation as an employer attempt to discourage protected activity.

69. The limited evidence concerning the August 25, 2009 training demonstrates that Captain Scott Thompson e-mailed Fisher on September 5, 2009, confirming a conversation they had about Chief Wilkins' concerns that some of the questions and behavior displayed by Fisher and Volk at the training were inappropriate and disruptive to the training. The e-mail expressed: "I trust that we have an understanding of the Chief's concerns and that proper decorum will be maintained in future classes." When Fisher e-mailed about the concerns, Sires replied, in part: "I was approached at the end of training with comments that individuals felt you and Chris Volk were rude with snickering and making it obvious you felt the training was a waste of time. . . ." A typical employee could not reasonably perceive this situation as an employer attempt to discourage protected activity.

70. On October 21, 2009, a reserve firefighter submitted a written complaint to the employer that Gollnick and another employee made him uncomfortable by accusing him of "so many crude, unprofessional, and disrespectful things." Sires conducted an investigation that included interviewing the reserve, the senior reservist, Fisher, Gollnick, and the other

employee. According to Sires, the senior reservist said he e-mailed Fisher about the situation. Sires interviewed Fisher. Sires testified that Fisher told her that he had not received an e-mail from the senior reservist and that, as a result, "I had to assume that it either didn't get sent or got lost wherever those e-mails that you send get lost." The employer took no action against Fisher. The employer counseled Gollnick and the other employee about their behavior. A typical employee looking at the employer's handling of this in the context of the entire record could not reasonably perceive the employer's actions as discouraging employees from engaging in union activities.

71. On or about October 10, 2009, while Turpin served as the officer-in-charge, Gollnick swore about a call in the televised football game, saying words to the effect of "fucking bullshit." Turpin, hearing the profanity, came out of the officer's office and saw that Fisher was there and had not corrected Gollnick's behavior. On the same day, Fisher and Gollnick were the first on the scene of a possible structure fire. They entered the home wearing no protective gear. They determined the source of the concern was a smoldering phone book in the home's fireplace. Gollnick picked up the smoldering phone book, still wearing no gloves or respiratory protection, and carried it outside. When he stepped outside, the phone book flamed up. Gollnick dropped the phone book to the ground and stomped out the flames. When they returned to the station, Turpin addressed his concerns about the lack of protective gear with Fisher who disagreed with Turpin's concerns. Both Fisher and Turpin reported the incident up the chain of command and both ended up meeting with Chief Wilkins and Operations Officer Heston. According to Turpin, at the meeting Wilkins told both Fisher and him words to the effect of: "Come on guys, we need to grow up." No disciplinary action was taken. Gollnick received an oral counseling about swearing. A typical employee looking at these incidents could not reasonably perceive the employer's involvement as a threat of reprisal for engaging in protected activity.

72. The additional allegations described in this decision on pages 66 through 68 are dismissed because they are either not timely, not included in the union's complaints, or otherwise not properly before the Commission.

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 employer's actions, as described in Findings of Fact 16, 19 through 23, 27, 30 through 40, 48, 51 through 56, and 59 through 61 did not violate RCW 41.56.140(1) and the employer did not discriminate against Eric Reiber.

3. The employer's actions, as described in Findings of Fact 27, 33 through 39, 41 through 50, and 55 through 62 did not violate RCW 41.56.140(1) and the employer did not discriminate against Rudy Fisher, John Gollnick, Blake Richards, Chris Volk, Chris Wehrung, or Jason Wilkins.

4. The employer's actions, as described in Findings of Fact 27, 28, 30, 32, 33, 66, and 69 through 71 did not unlawfully interfere with employee rights in violation of RCW 41.56.140(1).

ORDER

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

ISSUED at Olympia, Washington, this 24th day of August, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Jamie L. Siegel

JAMIE L. SIEGEL, 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

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:/S/ ROBBIE DUFFIELD

CASE NUMBER:	22912-U-09-05845	FILED:	12/16/2009	FILED BY:	PARTY 2
DISPUTE:	ER MULTIPLE ULP				
BAR UNIT:	FIREFIGHTERS				
DETAILS:	Eric Reiber disciplinary investigation				
COMMENTS:					

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