

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS LOCAL 452,

Complainant,

vs.

CLARK COUNTY FIRE DISTRICT 6,

Respondent.

CASE 136546-U-23

DECISION 13810 - PECB

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

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On April 19, 2023, the International Association of Fire Fighters Local 452 (union) filed an unfair labor practice complaint against Clark County Fire District 6 (district or employer) with the Public Employment Relations Commission (Commission). In the complaint, the union alleged that the district discriminated against Captain Ryan Reese by failing to promote him to the rank of Battalion Chief, in reprisal for his union activities. Daniel Comeau, the assigned Examiner in this matter, held the hearing on this issue on October 24 and 25, 2023, in Clark County, Washington, and the parties submitted post-hearing briefs on January 5, 2024, to complete the record.

ISSUES

The issue in this case, as set forth in the May 17, 2023, cause of action statement, is as follows:

Employer discrimination in violation of RCW 41.56.140(1) [and if so, derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed, by denying Ryan Reese a promotional opportunity in reprisal for union activities protected by chapter 41.56 RCW.

Based on the record, the employer did not discriminate against Ryan Reese by denying him a promotional opportunity in reprisal for his union activity. The unanimous decision by the four district Chiefs to select Jeff Killeen was substantially motivated by Killeen's credentials and performance in the Chief's interview, not by union animus. Therefore, the union's unfair labor practice complaint is dismissed.

BACKGROUND

Clark County Fire District 6 is a fire district providing fire protection and advanced life support services to the public in Clark County, Washington. At all times relevant to the issues in the proceeding, the district had a collective bargaining relationship and a collective bargaining agreement (CBA) with the union. The union represents Battalion Chiefs, Captains, Firefighter/Paramedics, and Firefighters. Captain Ryan Reese is the Union President¹ and has been with the district for approximately 24 years, serving the district and community as a volunteer Firefighter, Firefighter/Paramedic, and Captain/Captain Paramedic. On or around October 26, 2022, the district promoted Captain Jeff Killeen to the rank of Battalion Chief, thereby passing over Reese, who had achieved a number one ranking in the "rule of three"² scenario for that same promotional opportunity. The union's contention in this case is that the district's decision to bypass Reese was the result of unlawful union animus harbored against Reese by Fire Chief Kristan Maurer.

The district's command structure and promotional process, generally

To better understand the contractual, promotional, and decision-making processes at issue in this case, it is important to first understand the district's governance and command structure. The district's governance consists of a three-member board, who were, at the time of hearing, Commissioners Brad Lothspeich, Chris Pfeifer, and Rocky Hanes. Fire Chief Maurer reports

¹ Captain Reese's tenure and experience as a union leader will be explained more fully below.

² The "rule of three" scenario is one in which the top three candidates for a promotional position are ranked after meeting certain criteria. Any of those candidates is eligible for the promotion based upon their performance in a final interview.

directly to the Board of Fire Commissioners, and she is also at the top of the command structure for the district. Serving under Maurer are three Assistant Chiefs: Administrative Assistant Chief David Schmitt, Logistics Assistant Chief Shawn Newberry, and Operations Assistant Chief David Russell. Russell, as Operations Assistant Chief, is the supervisor for the three Battalion Chiefs—A, B, and C—for each shift, which included the vacant Battalion Chief position at issue in this case. Each of the Chiefs identified above was involved in the decision-making process for promotion to the Battalion Chief position.

The parties' collective bargaining agreement contains language covering classification vacancies and the promotional process within the district. Article 20.3 lays out the steps through which candidates can apply for these vacancies. Candidates are subject to a written examination, an assessment center, and a peer interview panel. Once scored, the candidates are ranked. A minimum passing score of 70 percent is necessary, and the top three candidates (per vacancy)³ will move on to a Chief's interview. If there isn't yet a classification vacancy at the time the ranked list is created, the list is valid for up to 18 months.

The Chief's interview is the final step in the process, and each candidate is scored on this interview in relation to each other. Each of the Chiefs testified that the scoring system allows them to rank each candidate following the interview in relation to the candidate who had interviewed before. For example, the first candidate would be ranked number one, because they would have been the only interviewee. The next candidate would be ranked in relation to the first and so on. Once this process is complete, the Fire Chief, or any designees, would deliberate and make the final determination.

A major dispute in this case is Fire Chief Maurer's discretion under the CBA to hire from the rule of three candidate list. Article 20.3.3 of the CBA provides the following:

³ Three candidates are ranked for a single vacancy, and any additional vacancy adds one candidate to the list (i.e., four candidates for two vacancies, five candidates for three vacancies, etc.). This is so there are still at least three candidates if one is chosen for each vacancy.

Based on the Chief's Interview, the Fire Chief or designee may make a contingent promotional offer to a candidate. The offer will be contingent on the results of a management-level psychological evaluation, if required.

According to the district, this language allows the Fire Chief to delegate authority to a designee to make the promotional offer to a candidate.

If the internal candidate list is exhausted without filling the position, then the employer may seek candidates from outside of the district. Outside candidates are only eligible should the internal candidate list be exhausted. The parties' CBA defines the term exhausted as "when all of the candidates on the list have been: (a) promoted, or (b) interviewed and the Fire Chief has elected not to extend a promotional offer to any of the candidates."

Reese's experience and his application for the Battalion Chief promotion

Reese's work experience

Reese has been working for the district for over 24 years as a career Firefighter. He began his career with the district in 1992 as a volunteer Firefighter and was hired on June 1, 1999, as a Firefighter/Paramedic. He served in this role until 2013, at which time he was promoted to Captain/Paramedic, and he has worked in that classification to the present.

Regarding Reese's performance, he was an excellent Firefighter/Paramedic and an excellent Captain/Paramedic. The union presented Reese's performance evaluations from 2018, 2019, 2020, 2021, and 2022, each of which explicitly commended Reese on his work performance and the relationships he had with his chain of command. Maurer and Reese's supervisor, Battalion Chief Kevin Todd, observed Reese's leadership work, both within the district and with the union, and believed that Reese would make an excellent Battalion Chief, should the opportunity arise. Russell also testified that he believed Reese would make an excellent Battalion Chief.

Reese's union activities and management's knowledge of those activities

Reese is also a long-term union leader and very active in the union local.⁴ He served in several leadership roles, including Vice President and President, and was elected to serve as the Fifth District Representative with the Washington State Council of Firefighters. In the latter position, Reese represented 29 locals in the southwest region of Washington State. He spoke at conferences, such as the Will Aitchison Conference in Las Vegas, Nevada, and he worked with the Young Members Conference and the Power through Participation program for the State Council. He also handled local negotiations and other labor relations issues for Local 452 within the district.

Reese's union activities were well known within the district. Maurer had, on more than one occasion, commented on his representation of the local and his union work at the state level. Specifically, she recognized the importance of his work for the State Council by commenting, "Your place on the State Council not only represents CCFD6 but strives to make improvements for the fire service." Chiefs Russell, Newberry, and Schmitt all testified to the importance of Reese's leadership roles in providing him with the necessary leadership qualities to become a Battalion Chief, so they were all aware of Reese's union activities.

Reese's application for Battalion Chief

On August 17, 2021, the district announced that it would hold a promotional examination to create an eligibility list for a Battalion Chief position. Reese applied for this examination and successfully completed the process. In or around November 2021, Reese, along with Captain Scott Johns and Captain Jeff Killeen, achieved the top three rankings for the eligibility list.

Reese was the number one candidate on the list, with a cumulative score of 87.27 from the written test, assessment center, and peer interview. Though Johns' and Killeen's test scores were not provided to Reese, Reese testified that they texted each other their respective scores. Based on this, Reese testified that Johns achieved a cumulative score of 79.17 and that Killeen achieved a cumulative score of 78.00. Thus, the final three candidates, in rank order, were Reese, Johns, and

⁴ The union local was previously Local 1805 but then merged to become Local 452.

Killeen. At the time of these results there were no Battalion Chief openings, so the eligibility list, under the CBA, was valid for up to 18 months.

The Amy Culver Grievance and Maurer's reaction to the Commissioners overturning the result

The Culver grievance

On or around July 8, 2022, Firefighter/Paramedic Amy Culver received a written reprimand for being absent without leave (AWOL) on June 29, 2022. The main contention was that Culver, who had put in for leave on that day, received verbal approval for it, though this was not correctly placed in the attendance system by her superiors. When her purported shift came up, she was contacted about why she was absent, and she explained and offered to come in for the shift but was instructed not to. The union, through Vice President Jeff Peterson, grieved the reprimand, and the grievance worked its way through the steps of the parties' grievance process under the CBA.

On or around August 1, 2022, Russell notified Peterson that the district was willing to reduce the written reprimand to a verbal reprimand. Specifically, he noted that district supervisors and management also held some responsibility for the issue. The union was not satisfied with this resolution and advanced the grievance to later steps in the process. Maurer, at the next step in the grievance process, concurred with Russell's proposed resolution of the grievance.

Under the parties' CBA, Step 3 of the grievance process allows the union to submit the grievance to the district's Board of Fire Commissioners at their next regularly scheduled meeting. The union, still unsatisfied with the proposed resolution of the grievance, submitted the grievance to the board. On August 17, 2022, the board issued a resolution to reduce the discipline even further than did Russell and Maurer, from a verbal reprimand to coaching and counseling. Thus, the board overturned the decision reached by both Russell and Maurer.

Maurer's Reaction to the board's decision on the Culver grievance

Maurer was not happy with the board's decision during the August 17, 2022, meeting. That same night, Maurer began to send angry text messages to Commissioner Hanes expressing her frustrations. Her strongly worded text messages centered on her frustration with the board's

decision and her perception of the relationship between Hanes and the union. Those text messages included⁵ the following:

“Disappointed. Obviously spending a whole week with Ryan [in] Canada paid off.... And the grievance is BS. I had members from the local in my office as well as those involved saying it was be [*sic*] and they were embarrassed. They were fine with it except Ryan and Peterson. Thanks.... Unethical attending union conferences with our local. To say the least.... And when I say local I mean Ryan and Peterson. There are great heads in that group who are disgusted with them. But they get bullied into staying quiet.... Have fun with them tonight! I’m sure it will be a celebration.... Hanging with the union is inappropriate. . .”

Hanes notified the other board members and provided these text messages to them. On August 20, 2022, they began their investigation into the matter, and on August 23, 2022, they decided to place Maurer on a performance improvement plan (PIP). In that PIP, Maurer was directed to communicate with the Commissioners with the highest level of professionalism; seek executive level coaching, at the board’s expense, to assist her in navigating the issues she confronts in her position; and write an apology to the board for her actions.

Maurer’s behavior following the board’s decision and the PIP

On August 24, 2022, Maurer emailed an apology to the board and began taking steps toward completing her PIP. On September 6, 2022, she provided an update to Commissioner Pfeifer about her progress. At that time, she and Russell were still searching for an appropriate Executive Coach. Maurer also notified her staff that she was on a PIP and explained the reasons for her being on that PIP. At hearing, Maurer testified that she personally spoke to everyone in the district to explain the situation and did not hide from this fact.

Later, on November 16, 2022, she updated Commissioner Pfeifer again on her progress. She indicated that she was having some difficulty in finding a life coach, she had purchased and

⁵ Each reference to “Ryan” is a reference to Captain Ryan Reese.

attended a presentation on board and chief functions, and she had funneled many of the union issues to Chief Schmitt and Chief Newberry.

On the latter point, there were several collective bargaining issues (e.g., Paid Family and Medical Leave, CBA Article 12 - Vacations) being negotiated between the district and the union leading up to the board's decision on the Culver grievance. Immediately following the board's decision, Maurer appeared to cease negotiations on those issues by notifying the union that the district was comfortable with the status quo. However, consistent with what she indicated to Commissioner Pfeifer, she had delegated those responsibilities to Schmitt and Newberry, who were eventually able to resolve the issues with the union.

Chief Reamer's retirement and the continuation of the Battalion Chief promotion process

The Chief's interviews

Battalion Chief Reamer announced that he was retiring effective January 31, 2023. Thus, the district began the promotion process for the vacant position in October 2022 utilizing the candidate eligibility list (Reese, Johns, and Killeen) from November 2021. On October 25, 2022, the district individually interviewed Reese, Johns, and Killeen, in that order, in a Chief's interview per the CBA. Schmitt,⁶ who was responsible for administering the promotional process, testified that there was no particular reason or established practice for the order in which candidates are interviewed. The order simply depended upon who was available either on-shift or coming on-shift.

The district presented evidence from each of the four Chiefs on the respective performances of each of the candidates. Beginning with Reese, each of the Chiefs believed that the answers he provided in his interview performance lacked depth and preparation. Specifically, Russell testified that Reese was providing answers like a "mid-level captain" or "like a captain who's been on the job a couple years, not like a Battalion Chief who – he's very capable of being." His answers were

⁶ Schmitt, as the Administrative Assistant Chief, is in charge of running all of the district's human resource functions. He came to the district only four years ago and has since been responsible for developing hiring and promotion tests and processes, as well as the occasional disciplinary/grievance follow-up.

generic and lacked depth, and both Newberry and Schmitt believed that Reese was “shooting from the hip.”

Schmitt provided more insight in his testimony regarding Reese’s performance. Specifically, Schmitt testified that Reese’s explanations for his answers confirmed for Schmitt that Reese came to the interview ill-prepared.⁷ They discussed question two of the interview, which asked candidates to identify their most challenging assignment and how they had prepared for it. Reese’s answer was “[b]eing a captain.” Schmitt felt that this answer required very little thought and preparation and that Reese seemed to be coming up with the first thing that came to his mind. He further believed that Reese had a wealth of experiences in union leadership that he could have drawn from, including his recent experience during the COVID pandemic where he, as a union leader and a Captain, had to deal with members at risk of losing their jobs over vaccinations issuing death threats and other emotionally charged threats.⁸

Conversely, the Chiefs provided testimony of their opinions as to how well Killeen performed in his interview. Russell provided a stark contrast between Reese and Killeen on their answers to question number two of the interview. Killeen’s answer related to the challenges he had faced while serving as acting Battalion Chief for two months.⁹ Russell testified that Killeen served in that capacity longer than was normal and that Killeen had been tasked with terminating a very well-liked member of the crew during that time. The crew member had been dishonest about something very critical, and Killeen had to manage that. Russell testified that Killeen’s answer showed a lot of depth and understanding for the Battalion Chief position.

⁷ These explanations were provided by Reese during the October 26, 2022, meeting with Maurer and Schmitt, where they delivered the news of Killeen’s promotion.

⁸ All of the Chiefs believed Reese could have spoken to his union experiences. Both Maurer and Russell believed that Reese’s work on the State Council would have been fertile ground for his answers.

⁹ Reese, in contrast to Killeen, had no prior Battalion Chief experience.

Reese testified that he was instructed by Russell not to discuss his union activities or the contentious relationship he had with management and with Maurer. According to Reese, this occurred when he sought out and informally met with Russell to discuss Reese's anxiety leading up to the interview. Russell acknowledged having a discussion with Reese on this subject but denied instructing him to refrain from discussing his union activities. Russell testified that, when Reese asked him if he should bring up the history between him and Maurer or Newberry, Russell indicated that it was the "elephant in the room" and that avoiding it would make the interview seem fake. Russell went on to testify that he told Reese that Reese had good things to bring up in the interview and that he needed to be authentic. Indeed, the one question on which Russell had rated Reese the highest was when Reese was honest about these past relationships and had answered "we're all works in progress."

The Chiefs also testified about Killeen's preparation for the interview itself. Killeen's preparation for the interview included meeting and interviewing nearly every member of the district, including secretaries, to gather input for the Battalion Chief position. Killeen even interviewed Fire Chiefs from neighboring fire districts. Both Russell and Schmitt testified that they had extensive experience in administration and conducting interviews, and both were extremely impressed by Killeen's initiative in this regard. Schmitt testified specifically that he had never seen a candidate do that before.

The 360 survey

When Schmitt began working for the district, he brought with him the idea of using a 360 survey as a tool to assist in the evaluation of candidates. He testified that having such a tool was helpful to Chiefs, such as him and Russell, who did not have the level of tenure that other Chiefs or district members had with each other. Furthermore, he testified that it provided members with a mechanism for engagement and a method to provide input on candidates as well.

The survey itself is a collection of approximately ten questions that asks participants to rate how much they either agree or disagree with statements regarding promotional candidates and their possession of various traits or characteristics. Employees are forced to choose from options ranging from strongly agree to strongly disagree, with a midpoint of zero, which meant that the

participant neither agreed nor disagreed or was (basically) abstaining from an answer. In addition to the rating, participants were given an opportunity to type in additional answers or input, and those answers were then collected and compiled by Schmitt following the closure of the survey. Maurer and Schmitt testified that a participant can answer each question *only* once.¹⁰

In this case, the survey was being used for the second time since its introduction in the district, with the first time being for the 2020 Captain promotion, and it was used an additional time after this case in a Training Captain promotion. There was a significant number of participants who rated each of the candidates (Reese, Killeen, Johns) and a significant number of participants who provided narrative comments to the questions. Overall, the responses were generally positive for Reese but for a few instances where participants explained his tendency to be abrasive in his command techniques or where Reese lacked presence in the station because of his outside union responsibilities. Regarding the results, Maurer and Schmitt testified that the data was not given any weight in the overall scoring but was instead simply a tool to understand the candidate from a different perspective. Finally, Maurer testified that, to the extent there were any responses in the data that referred to Reese's union activity, those answers were disregarded.

Killeen's promotion to Battalion Chief and Reese's reaction

On or around October 26, 2022, Maurer announced Killeen's promotion to replace retiring Battalion Chief Reamer. That same day, Maurer and Schmitt met with Reese to discuss the process with him. According to Reese, Maurer told Reese that they had selected Killeen because of his softer approach and because he was someone who would be present and could relate to the younger generation of employees.¹¹

¹⁰ The union spent quite a bit of hearing time exploring this aspect of the survey and, on brief, continued to insinuate that there is no way to be sure that the survey couldn't have been sabotaged. Schmitt credibly testified, as the developer and keeper of the data, that there was simply no way for a participant to get into the survey more than once or answer more than once.

¹¹ Russell testified that they were looking for a "servant/leader" who "works for the people" because the previous battalion chief was a gruff, "bark out orders," and "stay-in-your-office" type of chief.

During that conversation, Maurer reviewed the 360 survey with Reese, and Schmitt explained the scoring process. Schmitt asked Reese how Reese felt he performed in the interview, to which Reese replied that he did well but acknowledged that there were answers on which he could have improved and that he “didn’t even mention that [he] was mentoring Andrew as an officer, so [he] realized he could have done better.”

Reese claimed in his notes from that interview that Maurer and Schmitt wanted to know why Reese didn’t discuss or bring up examples from his leadership responsibilities with the union. To that question, Reese indicated that Russell had instructed him not to discuss that during the interview. Maurer then indicated to Reese that he had been misguided and that she was sorry for the misguidance. Reese claims that he responded to Maurer by saying it was “no secret ... how you feel about me as union president and my role as president of 452.” He then noted that Maurer said, “it’s obvious you’ve been talking to Commissioner Hanes!”

Prior promotional examinations and the use of the eligibility list

The district presented evidence regarding prior promotional processes in which candidates that were higher on the eligibility list were passed over for promotions. In total, since 2008, the district identified six instances¹² where the candidate with a lower technical score passed a candidate with a higher technical score. In 2008, Maurer (number 2) passed Simukka (number 1) for the Lieutenant position. In 2016, Reamer (number 3) passed Baum (number 2) for a Battalion Chief position. Maurer, who was number one on that list, had already been selected for a Temporary Battalion Chief position. In 2017, Greeley (number 2) passed Gehring (number 1) for a Captain position. In 2020, Killeen (number 2) passed Greeley (number 1) for the Temporary Battalion Chief position. Finally, in 2021, Scott (number 3) was selected over Gehring (number 2), and Renne (number 5) was selected over both Gehring and Bacon (number 4).

¹² One of those instances post-dated the promotion at issue in this case, which was for the position of Training Captain. In that case, Renne (number 2) passed Scott (number 1) for the promotion.

ANALYSISApplicable Legal Standard(s)

An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee's exercise of statutorily protected rights. *Educational Service District 114*, Decision 4361-A (PECB, 1994). The complainant maintains the burden of proof in a discrimination case. *Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46 (1991); *Allison v. Seattle Housing Authority*, 118 Wn.2d 79 (1991); *see also Port of Tacoma*, Decision 4626-A and 4627-A (PECB, 1995). To prove discrimination, the complainant must first establish a prima facie case showing the following:

1. [t]he employee participated in an activity protected by the collective bargaining statute or communicated to the employer an intent to do so;
2. [t]he 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.

City of Vancouver v. Public Employment Relations Commission, 180 Wn. App 333, 348-349 (2014); *Educational Service District 114*, Decision 4361-A.

Ordinarily, an employee may use circumstantial evidence to establish the prima facie case because respondents do not typically announce a discriminatory motive for their actions. *Clark County*, Decision 9127-A (PECB, 2007). Circumstantial evidence consists of proof of facts or circumstances that, according to common experience, give rise to a reasonable inference of truth of the fact sought to be proved. *See Seattle Public Health Hospital (AFGE Local 1170)*, Decision 1911-C (PECB, 1984).

If the complaining party establishes a prima facie case, the burden of production shifts to the respondent. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. at 349. The respondent may articulate a legitimate, nondiscriminatory reason for the adverse employment decision. *Id.* If the respondent meets its burden of production, the complainant bears the burden of

persuasion to show that the employer's stated reason was either pretext or that union animus was a substantial motivating factor for the employer's actions. *Id.*

Application of Standard(s)

The union in this matter carries the ultimate burden of proof to establish that the district discriminated against Reese by passing him over for promotion to Battalion Chief. *Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46; *Allison v. Seattle Housing Authority*, 118 Wn.2d 79; *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. 333. To do so, the union must first establish, prima facie, that the decision was based upon union animus. Then, if the district articulates a legitimate, non-discriminatory reason for the promotion decision, the union's evidence must establish that the district's reason was either pretext or that union animus was a substantial motivating factor for the decision. In this case, the union has not met its burden to ultimately prove that either the district's reasons for the promotion were pretext or that the decision was substantially motivated by union animus.

The union established a prima facie case for discrimination.

On this record, the union has established a prima facie case of discrimination. Reese was a long-term member of the union and held several leadership positions within the local. His most recent leadership position as Union President placed him in the position to handle negotiations and grievances (along with Vice President Peterson) on behalf of the union and deal directly with management, including Maurer. Though the grievance at issue, the Culver grievance, was primarily handled by Peterson, Reese was specifically identified by Maurer in her texts to Hanes, wherein she voiced her frustration and anger over the grievance outcome and the union/Commissioner relationship. Furthermore, Reese was deprived of the benefit of the promotion to the higher-ranking status of Battalion Chief. These issues are not in dispute.

The district, instead, disputes the causal connection between Reese's protected activities and the decision to deny him the promotion. The employer argues that there was no causal connection for two main reasons. The first reason is that Maurer was angry and frustrated at Commissioner Hanes, not at Reese or the union. The second reason was that Maurer was not the decision maker in Killeen's promotion in that she delegated her authority to make the decision to Chief Russell.

Neither of these arguments is persuasive at this step of the analysis for the purposes of establishing causation.

Maurer's frustration was intense and was directed at both the union and Reese.

Maurer's expression of anger and frustration toward Commissioner Hanes extended well beyond just him. Indeed, Maurer specifically identified and referenced both Reese and Peterson¹³ in her communications and insinuated in several text messages that Hanes, Reese, and the union were engaging in inappropriate behavior by attending conferences together. In addition, there was an insinuation that Hanes— given that the union had campaigned for him— should run the district together with the union (with Reese and Peterson) instead of her.

Furthermore, the evidence demonstrates Maurer's clear frustration with the outcome of a grievance process that the union had a right to utilize under the parties' CBA. In her testimony, she explained that she was frustrated that the union was not satisfied with management's previous reduction in Culver's discipline and that it was able to have the board overturn management's decision. This, in her view, was a way of empowering the union and specifically Reese and Peterson. To be so frustrated over union empowerment, even if it was directed at Hanes, raises an implicit understanding that she held some notion that union empowerment was a bad thing.

*Maurer admitted that she held the ultimate authority in the promotional decision.*¹⁴

The district also argues that the decision maker in this matter was Chief Russell, not Maurer. Under Article 20.3.3 of the parties' collective bargaining agreement, the Fire Chief or the Fire Chief's designee may make a contingent promotional offer to a candidate. In this case, Maurer admitted that she ultimately held the responsibility for deciding who to promote, even if she sought input

¹³ While it is true that this case is not about Peterson, Maurer's text messages were so intense and broad that there was evidently plenty of frustration and animus for everyone involved.

¹⁴ The decision-making dynamic is significant in this case but for the reasons explained below in the pretext/substantial motivation analysis. For the purposes of the prima facie case, however, the union has sufficient evidence to establish its burden and compel the district to articulate a legitimate, non-discriminatory reason.

from others during the process. In addition, the Assistant Chiefs who testified at hearing all acknowledged that Maurer had the ultimate authority in this regard.

In their entirety, these facts sufficiently raise the inference of causation.

Maurer's behavior immediately following her texts to Hanes is sufficient to raise the inference that she not only harbored animus toward the union but that she was also willing to shift her behaviors, in an adverse way, because of it. There were several issues being negotiated at the time between the district and the union, and immediately after the board's decision and her texts to Hanes, Maurer notified the union that the district was satisfied with the status quo on those issues and appeared to conclude those negotiations. Since these communications occurred in late August 2022, which preceded the Chief's interview and the conclusion of the promotional process by approximately six weeks (on or about October 26, 2022), the timing of the events is sufficiently proximate to infer that the decision to bypass Reese for a promotion was caused by union animus.

The district articulated a legitimate, non-discriminatory reason for passing over Reese for a promotion.

With the union having established a prima facie case, the burden of production shifts to the district, which must assert a legitimate and non-discriminatory reason for its action. In this case, the district asserts that its reasons for passing Reese for the promotion in favor of Killeen were that Killeen outperformed Reese in the final Chief's interview and that Killeen fit the "servant leader" characteristic much more than did Reese. These asserted reasons appear to be legitimate and non-discriminatory in support of the district's decision.

The district's reason was neither pretextual nor substantially motivated by union animus.

The remaining issue in this matter concerns whether the articulated reasons for the employer's decision are the true reasons or whether the district's decision was substantially motivated by union animus. On this issue, the union carries the ultimate burden of persuasion. *Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46. Given the weight of the evidence in this case, the union has not met its burden to persuasively establish that the decision to promote Killeen over Reese was pretext or substantially motivated by union animus.

The “servant/leader” criterion and the comparative interview performances are not pretextual.

The union takes issue with several of the reasons that the district put forward, with the most relevant being that the district was looking for a softer “servant/leader,” as that term was related by both Maurer and Russell, and that Killeen surpassed Reese in performance during the interview. According to the union’s argument, Reese tested so far ahead of both Johns and Killeen in the technical portion that Killeen’s performance in the interview could not possibly have resulted in Killeen’s selection without the existence of union animus.

In this case, the evidence demonstrates that the desire for a softer and more compassionate Battalion Chief was legitimate. The Commission has found that the use of subjective, elusive, and often ill-defined terms or criteria can be indicators that management’s given reasons are pretext for union animus. *Port of Tacoma*, Decision 4626-A. In *Port of Tacoma*, Decision 4626-A, the Commission found that management’s “team building”¹⁵ criterion was subjective and related to the candidate’s grievance filing as a way of disqualifying the candidate for the promotion. The facts in this case, however, distinguish themselves from the facts in *Port of Tacoma*.

First, Russell provided a clearer and more defined explanation of a “servant/leader.” In his testimony, he described the incumbent and outgoing Battalion Chief and the desire to move away from the incumbent Chief’s leadership approach. Specifically, Russell described the former Battalion Chief as being a “gruff,” “old-school,” “stay-in-your-office” kind of Chief who tended to be rough around the edges and bark out orders. The district was not looking to replace the retiring Chief with another Chief who would command and lead in a similar fashion.

Instead, it was looking for a candidate who would engage more with the crew and orient toward a leadership style that served the crew first. Russell testified that one of Killeen’s answers, the “dinner example,” exemplified the idea of a servant/leader. In that example, Killeen relayed a

¹⁵ The union argues that “servant/leader” is just another term for “team player,” which was a criterion used by management in *Port of Tacoma*, Decision 4626-A.

situation where his crew¹⁶ had been at dinner but were called away to an emergency before being able to eat. Killeen, for fear that his crew would not be able to eat while on an important call, wrapped the food in foil and brought it to his crew. Russell testified and indicated in his interview notes that Killeen's answer perfectly exemplified what the district was looking for and that Killeen "crushed" the question.

Most importantly, the servant/leader criterion in this case has very little, if anything, to do with union activity. This criterion is not a negative expression against filing grievances, taking bargaining positions, challenging management decisions, or team building around like-minded management beliefs. Instead, it is a criterion centered on a more fostering and service-oriented leadership style, as demonstrated by Killeen in the example he provided in the interview, which differs from the harsher top-down and directive leadership style of the previous Battalion Chief. Therefore, the servant/leader criterion was not pretextual.

Second, the district was able to clearly define the distinction between Reese's interview performance and Killeen's interview performance. Regarding Reese, each of the interviewing Chiefs testified to the rather mundane way he performed in his interview. Even Schmitt—who had only been with the district as an Assistant Chief for four years and had little, if any, interaction with Reese on union matters—believed that Reese failed to fully prepare for the interview and was "shooting from the hip." He further testified that he was disappointed in some of the answers that Reese gave, such as simply answering "being a captain" when asked about the most challenging assignment he had faced.

Russell, who appeared to have been one of Reese's most staunch supporters (as indicated in Reese's performance evaluations), was disappointed in Reese's interview performance. For example, Russell noted on the first interview question that Reese's answer was a "mid-level captain answer" and that he left "points on the table" for not fully defining or describing his

¹⁶ This will be explained in more detail below, but the reference to Killeen's crew is one that arises from Killeen previously serving as an interim Battalion Chief. This is a level of experience Killeen possessed that neither Reese nor Johns possessed.

preparation for the Battalion Chief role. In his overall opinion, Russell felt as though Reese was answering “like a captain who’s been on the job a couple years, not like a Battalion Chief who – he’s very capable of being.”

Reese testified that he was instructed by Russell *not* to raise any of his union activities or experiences in the interview. Russell denied making such a statement or giving such a direction and testified that he said the interview would seem fake or contrived if Reese failed to discuss his “rocky history with Chief Maurer and Chief Newberry.” Whether or not Russell specifically instructed Reese not to discuss his union activities, or whether Reese understood it that way, Reese’s own testimony about his performance in the interview underscores the ratings and impressions given unanimously by Russell, Newberry, and Schmitt. In his own words, he felt like there were areas in which he could have improved. Reese’s notes from his post-interview meeting with Maurer further acknowledge that he “didn’t even mention that [he] was mentoring Andrew as an officer, so [he] realized [he] could have done better.”¹⁷

More importantly, the weight of the evidence does not lend sufficient credibility to Russell having given such a direction. Each of the Chiefs, including Russell, had long careers in the fire service and had been union members or even held leadership positions in the union. They further testified about the importance of Reese drawing from those experiences and difficulties to establish a connection to serving in a leadership capacity as a Battalion Chief.

Furthermore, an Assistant Chief instructing a union leader *not* to bring up union activities in a promotion interview could, on its face, be challenged as unlawful interference. Yet Reese, with his long-term experience as a Firefighter, Captain, and union leader, never challenged Russell’s directive or included Russell in the claim for union animus. Therefore, the evidence is insufficient to conclude that Reese was instructed not to talk about his union activities.

¹⁷ Also, Reese testified that he told Maurer that he didn’t understand why he should bring up his union leadership, stating, “obviously, I was, you know, testing for a Battalion Chief position. I wasn’t testing for a union-related position.”

In summary, the reasons articulated by management were not pretextual. The servant/leader criterion was a legitimate and non-discriminatory reason for not promoting Reese that was adequately defined, and this criterion was met by the answers Killeen gave in his interview. In addition, the district's evidence established that Killeen performed well above Reese in answering the interview questions and in expressing his (Killeen's) approach to leading as a Battalion Chief.

The 360 survey, and other purported irregularities in the process, also fail to support pretext or union animus.

A change in the nature of the promotion process, particularly if that change is inexplicable or arbitrary, can lead to the conclusion that the process was pretextual or that union animus was a substantial motivating factor. *Port of Tacoma*, Decision 4626-A. The use of the 360 survey, the order in which the candidates were interviewed, and the interview questions themselves do not support the conclusion that there was animus involved.

The 360 survey was a tool encouraged and developed by Schmitt who, again, was a newer Assistant Chief with the district. In his view, having such an evaluative tool would provide valuable information to newer Human Resource Assistant Chiefs, like himself, who were not as familiar with district members as longer-term Assistant Chiefs. In addition to providing this value, the survey also provided "buy-in" and value in allowing for district members to provide their input on the candidate, as well as a learning and accountability tool for the candidate themselves.

Schmitt testified that the 360 survey had been used in his previous experiences in other fire districts, and this was not the first time Schmitt used the survey in Clark County Fire District 6. The survey had been used previously regarding a Captain promotion in 2020 and for another Captain promotion in 2022 prior to its use in this instance for the Battalion Chief promotion. Thus,

its use in this case is not sufficiently out of the ordinary or arbitrary to conclude that it was a pretext for covering up union animus.¹⁸

The union's main argument against the survey is that the questions could have been used to allow individuals an opportunity to sabotage the outcome for Reese. In other words, one individual could write multiple negative comments in their answer to cast Reese in a bad light. However, contrary to this assertion, the evidence established that the 360 survey allowed for an individual to enter *only* one comment at a time or to not comment at all. Thus, the union's argument in this regard is supposition.¹⁹

Furthermore, the Chief's interview questions for all three candidates were sufficiently standardized. Unlike in *Port of Tacoma*, the district did not alter or otherwise modify questions for any candidate, let alone to Reese's detriment or Killeen's benefit.²⁰ The questions for each candidate were the same, and each candidate was given the same opportunity to provide their answers in the sixty-minute interview. Thus, differences between the three candidates would be attributable only to the quality of their answers.

Finally, the union contended that the order in which the interviews were conducted, from first to third rather than third to first, was also irregular and evidence of animus. Schmitt explained that going from third to first, or vice versa, was not something that was standardized during the process.

¹⁸ Both parties seemed to be framing their arguments around whether the 360 survey was or was not an established practice. That issue is not before me as an Examiner. The issue instead is whether the evidence demonstrates its use was part of a pretextual scheme, serving as a guise to hide union animus. In this case, the evidence does not demonstrate that the survey was used for that purpose.

¹⁹ Indeed, any intended use of the 360 survey as a tool to sabotage Reese or place him at a disadvantage would have been a large gamble on the part of the district. Even if Maurer, Newberry, Russell, or Schmitt intended to lower Reese's ranking by utilizing negative responses from the survey questions, their comments could have paled in comparison to 50-60 other positive comments about Reese. Alternatively, it could have also backfired in finding that most district members thought negatively about Killeen. The link is simply too attenuated, and the district (Schmitt) did not come across as sufficiently calculated to have desired to put this into motion as a pretext.

²⁰ In *Port of Tacoma*, management had shifted from technical questions to more subjective questions relating to a "team building" approach. Such actions are not evident in this case.

He would typically determine the order of the interviews by who was either on shift or who may be arriving or leaving for a shift. It was not due to a desire to disadvantage Reese in the process.

This was not the first time that a lower ranked candidate surpassed a higher ranked candidate.

The employer also effectively rebutted the union's claim that Reese, as the number one candidate on the rule-of-three list, should have expected that he would be selected. There were six examples from previous promotion exams where a lower ranked candidate on the technical portion surpassed a higher ranked candidate following the Chief's interview. Two of those examples were for Battalion Chief positions.

In 2020, Killeen, who was number two on the eligibility list, passed Clint Greeley, who was number one, for the position of Temporary Battalion Chief. Earlier, in 2017, Greeley, who was number two on the list, passed Gehring, who was number one, for the position of Captain. In the other Battalion Chief example, Scott Reamer, who was number three, passed Bryan Baum and was selected as Temporary Battalion Chief. Suffice it to say, these examples demonstrate that there was no established practice to select the top technical candidate or that there was a reasonable expectation of entitlement to the position by the top candidate.

In addition to effectively rebutting the claim that the number one candidate should have the expectation of being selected, the previous examples are consistent with the parties' CBA. Article 20.3.3 of the CBA shows an agreement between the parties to grant the Fire Chief the discretion to make a promotional offer to a candidate "[b]ased on the Chief's interview." Article 20.4.1 also grants the Fire Chief the discretion to select an outside candidate should the Fire Chief decide "not to extend a promotional offer to any of the candidates" on the eligibility list.

The unanimous decision by the Chiefs, and Killeen's credentials, establish union animus was not a motivating factor.

The unanimous decision by the Chiefs to promote Killeen creates a situation like that in *Tacoma School District*, Decision 8140 (PECB, 2003). The unanimous decision of the interviewers in the *Tacoma School District* case weighed heavily against the complainant, and the unanimous decision by the Chiefs in this case weighs heavily against Reese. The Chiefs' unanimity demonstrates that

the decision was substantially motivated by Killeen's interview performance and not by Chief Maurer's individual union animus.

To reach the conclusion that the decision to promote Killeen instead of Reese was tainted by union animus, the Examiner would need to find that Maurer "worked her will to retaliate by convincing or coercing the other members on the committee to vote for the successful applicant in order to punish [Reese] for his past union activities." *Tacoma School District*, Decision 8140 at 14. However, the weight of the Assistant Chiefs' testimony turns this theory on its head. Each of the Assistant Chiefs (Newberry, Schmitt, Russell) testified that Russell was the one urging the selection of Killeen, *not* Maurer. Indeed, each of the Chiefs testified that Maurer was highly deferential to the Assistant Chiefs during the interviews, and the Assistant Chiefs wanted to promote Killeen.

As explained above, the Assistant Chiefs believed Killeen performed extremely well in his interview. In addition to this, the evidence at hearing established that the Assistant Chiefs used reasonable and non-discriminatory criteria for their decision. For example, Killeen related during his interview the difficult experience he had when he previously served as a Temporary Battalion Chief, which was that Killeen was tasked with firing a district member who was going through a difficult situation. Prior experience in a position for which you are applying is typically considered by management when weighing whether a candidate is fit for a promotion.

Moreover, Killeen possessed this prior experience, whereas Reese did not. When taken in conjunction with the other factors explained above (Killeen's effort and preparation and the depth and insight of his answers), the weight of the evidence suggests that the district's decision to promote Killeen over Reese was substantially motivated by Killeen's credentials rather than by union animus. Therefore, the union failed to meet its burden of persuasion in the matter.

This decision does not excuse or condone Maurer's actions.

Before concluding this decision, it is important to understand that this record clearly establishes that Reese was and is an experienced and *extremely* capable Captain Firefighter/Paramedic and a strong and capable tactician. Each of the district Chiefs expressed this during their testimony at

hearing, and the district took this position at hearing and in its brief. Conversely, what this record also demonstrates is that Reese appeared to take the final steps of the promotion process for granted, given his high technical score, and allowed himself to be taken over by self-handicapping thoughts of getting “screwed.” Instead, Reese could have prepared for the interview by focusing on his strengths and work experience and using those to his advantage. He did not; Killeen did.

Furthermore, this decision must not be viewed as acceptance or tolerance, in any way, of the behaviors exhibited by Maurer in her frustration over the handling of the Culver grievance. Whether or not her language and behavior were intended specifically for Hanes, the situation clearly raised the specter that she was frustrated with the union and its leadership. However, she faced consequences within the district and was very open about her mistakes with members of the district. As part of her PIP, she distanced herself from much of the ongoing labor relations issues and was very deferential regarding the decision to promote Killeen. Her behaviors are not excused, but under these facts they also didn’t unlawfully influence the decision to promote Killeen.

CONCLUSION

Based on the foregoing, the employer did not discriminate against Ryan Reese by denying him a promotional opportunity in reprisal for his union activity. The unanimous decision by the four district Chiefs to select Jeff Killeen was substantially motivated by Killeen’s credentials and performance in the Chief’s interview, not by union animus. Therefore, the union’s unfair labor practice complaint is dismissed.

FINDINGS OF FACT

1. Clark County Fire District 6 (employer) is a public employer within the meaning of RCW 41.56.030(13).
2. The International Association of Fire Fighters Local 452 (union) is a bargaining representative within the meaning of RCW 41.56.030(2).

3. The union was a party to a collective bargaining agreement (CBA) with the employer that was effective through 2024.
4. The parties' CBA contains language covering classification vacancies and the promotional process within the district. Candidates for promotion are subject to a written examination, an assessment center, and a peer interview panel and, once scored, the candidates are ranked. A minimum passing score of 70 percent is necessary, and the top three candidates (per vacancy) will move on to a Chief's interview.
5. If a classification vacancy does not exist at the time the candidate ranking list is created, the list will remain valid for up to 18 months.
6. The Chief's interview is the final step in the process, and each candidate is scored on this interview in relation to each other. Once this process is complete, the Fire Chief, or any designees, would deliberate and make the final determination.
7. Article 20.3.3 of the CBA authorizes the Fire Chief or designee to make a contingent promotional offer to a candidate. If the internal candidate list is exhausted without filling the position, then the employer may seek candidates from outside of the district.
8. At all times relevant to these proceedings, Kristan Maurer was the Fire Chief.
9. Reese has been working for the district for over 24 years as a career Firefighter. He began with the employer in 1992 as a volunteer Firefighter and was hired on June 1, 1999, as a Firefighter/Paramedic. He served in this role until 2013, at which time he was promoted to Captain/Paramedic, and he has worked in that classification to the present.
10. Reese was an excellent Firefighter/Paramedic and an excellent Captain/Paramedic. The union presented Reese's performance evaluations from 2018, 2019, 2020, 2021, and 2022, each of which explicitly commended Reese on his work performance and the relationships he had with his chain of command.
11. Reese served in several union leadership roles, including Vice President and President, and was elected to serve as the Fifth District Representative with the Washington State Council

- of Firefighters. In the latter position, Reese represented 29 locals in the southwest region of Washington State. He spoke at conferences, such as the Will Aitchison Conference in Las Vegas, Nevada, and he worked with the Young Members Conference and the Power through Participation program for the State Council. He also handled local negotiations and other labor relations issues for Local 452 within the district.
12. Fire Chief Maurer and Reese's supervisor, Battalion Chief Kevin Todd, observed Reese's leadership work, both within the district and with the union, and believed that Reese would make an excellent Battalion Chief should the opportunity arise.
 13. Operations Assistant Chief David Russell, Logistics Assistant Chief Shawn Newberry, and Administrative Assistant Chief David Schmitt were also aware of Reese's extensive union activities.
 14. On August 17, 2021, the district announced that it would hold a promotional examination to create an eligibility list for a Battalion Chief position. Reese applied for this examination and successfully completed the process. In or around November 2021, Reese, along with Captain Scott Johns and Captain Jeff Killeen, achieved the top three rankings for the eligibility list. Reese was ranked number one on the list.
 15. At the time of these results, there were no Battalion Chief openings, so the eligibility list, under the CBA, was valid for up to 18 months.
 16. On or around July 8, 2022, Firefighter/Paramedic Amy Culver received a written reprimand for being absent without leave (AWOL) on June 29, 2022. The union, through Vice President Jeff Peterson, grieved the reprimand, and the grievance worked its way through the steps of the parties' grievance process under the CBA.
 17. On or around August 1, 2022, Russell notified Peterson that the district was willing to reduce the written reprimand to a verbal reprimand.

18. The union was not satisfied with this resolution and advanced the grievance to later steps in the process. Maurer, at the next step in the grievance process, concurred with Russell's proposed resolution of the grievance.
19. Under the parties' CBA, Step 3 of the grievance process allows the union to submit the grievance to the district's Board of Fire Commissioners at their next regularly scheduled meeting. The union, still unsatisfied with the proposed resolution of the grievance, submitted the grievance to the board. On August 17, 2022, the board issued a resolution to reduce the discipline even further than did Russell and Maurer, from a verbal reprimand to coaching and counseling. Thus, the board overturned the decision reached by both Russell and Maurer.
20. Maurer was not happy with the board's decision during the August 17, 2022, meeting. That same night, Maurer began to send angry text messages to Commissioner Hanes expressing her frustrations.
21. Her texts to Hanes included the following:

“Disappointed. Obviously spending a whole week with Ryan [in] Canada paid off.... And the grievance is BS. I had members from the local in my office as well as those involved saying it was be [sic] and they were embarrassed. They were fine with it except Ryan and Peterson. Thanks.... Unethical attending union conferences with our local. To say the least.... And when I say local I mean Ryan and Peterson. There are great heads in that group who are disgusted with them. But they get bullied into staying quiet.... Have fun with them tonight! I'm sure it will be a celebration.... Hanging with the union is inappropriate....”
22. On August 23, 2022, the Commissioners placed Maurer on a performance improvement plan (PIP). In that PIP, Maurer was directed to communicate with the Commissioners with the highest level of professionalism; seek executive level coaching, at the board's expense, to assist her in navigating the issues she confronts in her position; and write an apology to the board for her actions.
23. At the time, there were several collective bargaining issues (e.g., Paid Family and Medical Leave, CBA Article 12 - Vacations) being negotiated between the district and the union

leading up to the board's decision on the Culver grievance. Immediately following the board's decision, Maurer appeared to cease negotiations on those issues by notifying the union that the district was comfortable with the status quo. On November 16, 2022, she informed the Commissioners that she had funneled many of the union issues to Chief Schmitt and Chief Newberry.

24. Battalion Chief Reamer announced that he was retiring effective January 31, 2023. Thus, the district began the promotion process for the vacant position in October 2022 utilizing the candidate eligibility list (Reese, Johns, and Killeen) from November 2021. On October 25, 2022, the district individually interviewed Reese, Johns, and Killeen, in that order, in a Chief's interview per the CBA.
25. On or around October 26, 2022, Maurer announced Killeen's promotion to replace retiring Battalion Chief Reamer.
26. Based on Maurer's texts to Commissioner Hanes and the temporal proximity to the decision to promote Killeen, there is sufficient evidence to conclude a causal connection exists between Reese's union activity and the employer's decision not to promote him. Therefore, the union has established a prima facie case of discrimination.
27. However, I find the employer's proffered reason for selecting Killeen—as a different type of leader—to be legitimate and non-discriminatory. I further find that the “servant/leader” criterion was not a pretext for union activity.
28. Russell testified that the employer was looking for a Battalion Chief with a different approach than the outgoing Chief. In his testimony, he described the incumbent and outgoing Battalion Chief and the desire to move away from the incumbent Chief's leadership approach. Specifically, Russell described the former Battalion Chief as being a “gruff,” “old-school,” “stay-in-your-office” kind of Chief who tended to be rough around the edges and bark out orders.
29. In contrast, Russell provided a clear and defined explanation of a “servant/leader.” Russell testified that Killeen relayed a situation where his crew had been at dinner but were called

away to an emergency before being able to eat. Killeen, for fear that his crew would not be able to eat while on an important call, wrapped the food in foil and brought it to his crew. Russell testified that Killeen's answer perfectly exemplified what the district was looking for and that Killeen "crushed" the question.

30. Based on the collective testimony of the Chiefs, I find that the Chiefs unanimously concluded, rather than Maurer alone, that Killeen outperformed Reese in the interview and that Killeen was the best candidate for the Battalion Chief position.
31. Regarding Reese, each of the Chiefs believed that the answers he provided in his interview performance lacked depth and preparation. Specifically, Russell testified that Reese was providing answers like a "mid-level captain" or "like a captain who's been on the job a couple years, not like a Battalion Chief who – he's very capable of being." Both Newberry and Schmitt believed that Reese was "shooting from the hip."
32. Conversely, the Chiefs all provided testimony of their opinions as to how well Killeen performed in his interview. Killeen's answers related to the challenges he had faced while serving as acting Battalion Chief for two months, an experience Reese did not possess. Russell testified that Killeen served in that capacity longer than was normal and that Killeen had been tasked with terminating a very well-liked member of the crew during that time.
33. The Chiefs also testified about Killeen's preparation for the interview itself. Killeen's preparation for the interview included meeting and interviewing nearly every member of the district, including secretaries, to gather input for the Battalion Chief position. Killeen even interviewed Fire Chiefs from neighboring fire districts.
34. Reese testified that he was instructed by Russell not to discuss his union activities or discuss the contentious relationship he had with management and with Maurer. Due to competing testimony, however, I do not find that Reese was specifically instructed to refrain from discussing his union activities during the interview.

35. Reese acknowledged that there were answers on which he could have improved and that he “didn’t even mention that [he] was mentoring Andrew as an officer, so [he] realized he could have done better.”
36. Therefore, I find that the decision to promote Killeen was not substantially motivated by union animus.
37. When Schmitt began working for the district, he brought with him the idea of using a 360 survey as a tool to assist in the evaluation of candidates. He testified that having such a tool was helpful to Chiefs, such as him and Russell, who did not have the level of tenure that other Chiefs or district members had with each other. Furthermore, he testified that it provided members with a mechanism for engagement and a method to provide input on candidates as well.
38. In this case, the survey was being used for the second time since its introduction in the district, with the first time being for the 2020 Captain promotion, and it was used an additional time after this case in a Training Captain promotion.
39. The survey itself is a collection of approximately ten questions that asks participants to rate how much they either agree or disagree with statements regarding promotional candidates and their possession of various traits or characteristics. Employees are forced to choose from options ranging from strongly agree to strongly disagree, with a midpoint of zero, which meant that the participant neither agreed nor disagreed or was (basically) abstaining from an answer.
40. In addition to the rating, participants were given an opportunity to type in additional answers or input, and those answers were then collected and compiled by Schmitt following the closure of the survey. Maurer and Schmitt testified that a participant can answer each question only once.
41. The survey questions were the same for each candidate, and the survey tool had been used previously. Therefore, I do not find that the 360 survey was utilized as pretext to promote Killeen over Reese.

CONCLUSIONS OF LAW

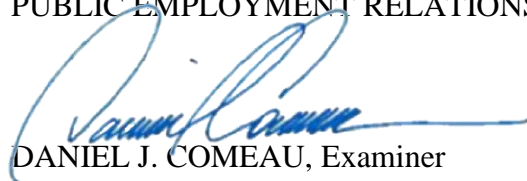
1. The Public Employment Relations Commission has jurisdiction over this matter under chapter 41.56 RCW and chapter 391-45 WAC.
2. In denying Ryan Reese a promotion in favor of Jeff Killeen, as explained in findings of fact 27 through 41, Clark County Fire District 6 did not discriminate against Reese in violation of RCW 41.56.140(1).

ORDER

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

ISSUED at Olympia, Washington, this 3rd day of April, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in blue ink, appearing to read "Daniel J. Comeau", is written over the printed name.

DANIEL J. COMEAU, 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.