

STATE OF CONNECTICUT  
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF

CITY OF BRISTOL

-AND-

BRISTOL FIREFIGHTERS UNION,  
LOCAL 773, IAFF

Case No. MPP-28,852

DECISION NO. 4626

DECEMBER 18, 2012

A P P E A R A N C E S:

Attorney Kenneth S. Weinstock  
for the City

Attorney Henry F. Murray  
for the Union

**DECISION AND DISMISSAL OF COMPLAINT**

On October 25, 2010 the Bristol Firefighters Union, Local 773, IAFF (the Union) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the City of Bristol (the City) had committed practices prohibited by the Municipal Employee Relations Act (MERA or the Act) by retaliating against the Union president for engaging in activities protected by the Act.

After the requisite preliminary steps had been taken, the matter came before the Labor Board for a hearing on July 6, 2011, November 9, 2011, December 1, 2011 and December 12, 2011. Both parties were represented by counsel, allowed to present evidence, examine and cross-examine witnesses, and make argument. Both parties filed post-hearing briefs on January 20, 2012.

On the basis of the entire record before us, we make the following findings of fact and conclusions of law, and we dismiss the complaint.

## FINDINGS OF FACT

1. The City is a municipal employer with the meaning of the Act.
2. The Union is an employee organization within the meaning of the Act and at all relevant times was the exclusive bargaining representative of uniformed and investigatory positions in the Bristol Fire Department (BFD) except that of Chief.
3. At all times pertinent the City and the Union were parties to a collective bargaining agreement with effective dates of July 1, 2007 to June 30, 2011(Ex. 3) that contains the following relevant provision:

...

## ARTICLE II MANAGEMENT RIGHTS

2:1 The City shall have the right to determine all matters concerning the management or administration of the Fire Department except as specifically set forth in this Agreement. . .

4. The BFD operates five separate firehouse facilities, each containing an engine company which operates a fire engine or truck. In addition to Engine Company No. 1, BFD Headquarters also contains Tower Company which operates a large “hook and ladder” type vehicle (ladder truck or Tower 1) and a support services company which performs various administrative and operational functions.
5. Since on or about 1985 Firefighter Thomas Bentivengo (Bentivengo), Firefighter Peter Munn (Munn), and Lieutenant Douglas Plourde worked together on the same shift at Engine Company No. 3.
6. In 2000 Bentivengo was elected Union president.
7. On July 22, 2009 the Union and the City were parties to an interest arbitration case concerning the terms of the successor collective bargaining agreement and Bentivengo, the Union’s attorney, City Personnel Director Diane Ferguson (Ferguson) and Mayor Arthur Ward (Ward) met in Ward’s office in an attempt to negotiate a resolution. After the discussions became heated Union attorney James Ferguson gathered his belongings and angrily left the meeting. The meeting continued and during a discussion of firehouse Christmas decoration, Bentivengo stated that Ward is f----- insane.” The meeting lasted for less than one hour and ended on a cordial note.
8. In August of 2009 inappropriate writing was painted on a spare fire truck assigned to Engine Company No. 3 on a day that both Bentivengo and Munn were working. The incident was not investigated and no person was charged with the vandalism.

9. In February of 2010 Bentivengo, Deputy Fire Chief Mark Martin (Martin, Ferguson, and City Risk Manager Roger Spear (Spear) attended a regular Safety Committee<sup>1</sup> meeting at the main firehouse. Spear presented a cost benefit analysis report he had prepared regarding a proposal the Union had made at a previous meeting that the City purchase certain “rack and roll” devices designed to drain, roll-up, and store fire hose. After discussion of Spear’s conclusion that the device was not cost effective, Bentivengo told Spear to “shove it up your a--” and “shove it up . . . Ferguson’s a--”. As Bentivengo left the room Spear responded “Thank you, Boss Tweed.”

10. By memorandum dated March 1, 2010 Fire Chief Jon Pose (Pose) wrote Bentivengo stating, in relevant part:

To: Tom Bentivengo, President, Local 773

...

Subject: RECENT SAFETY COMMITTEE MEETING

Tom, your behavior at the recent Fire Department Safety Committee meeting was very disappointing. Your conduct was both inappropriate and unprofessional. . . .

I expect that in the future, you will conduct yourself in a more respectful manner. Finally, I suggest that you seriously consider an apology to Roger Spear given your actions towards him. . . .

(Ex. 8).

11. On May 6, 2010 an interest arbitration award issued in SBMA Case No. 2008-MBA-38 establishing the terms of the collective bargaining agreement (Ex. 3) between the City and the Union effective July 1, 2007 through June 30, 2010 that contained the following relevant provision:

ARTICLE XXIX  
PENSION

...

29:1.6 All members of the Fire Department shall be retired on the day following attainment of age sixty-five (65).

...

12. In late August, 2010 while working an overtime shift at the main firehouse Plourde told other employees that the Union’s negotiating committee performed poorly in negotiations, that Bentivengo was leading the Union in the wrong direction, and that if Bentivengo did not like Plourde’s comments Plourde would have him transferred to Engine Co. No. 5. (Ex. 14).

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<sup>1</sup> Connecticut General Statutes §31-40v requires employers such as the City to establish safety and health committees composed of employer and employee representatives and Regs., Conn. State Agencies §31-40v-8 requires such committees to establish “procedures for sharing ideas with the employer concerning” workplace safety.

13. On the morning of September 8, 2010 Bentivengo and Munn were conversing while preparing to go to a motor vehicle accident scene. From the other side of the truck Plourde yelled “what did you say” to the two men and Bentivengo yelled back an unintelligible response. Plourde then yelled “I’m not going to f----- take this from you anymore” to which Bentivengo responded “what the f--- are you talking about?” Eventually, the two men stopped yelling at each other and responded to the accident scene with Munn.

14. While off duty the following day Plourde went to Martin’s residence and requested that Bentivengo be transferred to a different firehouse stating that he could no longer work with Bentivengo and was afraid of a physical altercation. Martin contacted Bentivengo by telephone who stated that he wanted to continue working with Plourde to the end of his career. Martin then informed Pose of Plourde’s request and Pose asked that it be reduced to writing. (Exs. 17, 20).

15. At Martin’s recommendation, Pose ordered Bentivengo temporarily transferred to the Engine Co. No. 5 firehouse pending investigation of the September 8 incident. When Bentivengo went to the Engine No. 3 firehouse on September 12, 2010 to retrieve his belongings, a City police officer was interviewing firefighters regarding a face that had been recently scratched into one of the doors to the large ladder truck at the main firehouse. Pose had provided the police officer with a written list of two dozen employees that had worked in the main firehouse during the weeks prior to the vandalism and Pose specifically identified Bentivengo and Munn on the list as possible suspects.

16. On September 13, 2010 Pose conducted an investigatory conference concerning the events of September 8 and initially met with Martin and the Union vice president Sean Lennon (Lennon).<sup>2</sup> Munn and Plourde entered the room and after hearing Munn’s claim that he did hear the substance of the September 8 dialog between Plourde and Bentivengo, Plourde became red-faced and visibly upset, stated that Munn was not being truthful, and asked to leave the room. Plourde then met privately with Martin and stated that he could no longer work with Munn and offered to transfer to the Engine No. 5 firehouse. After asking Munn and Plourde to reduce their respective accounts to writing, Pose dismissed them and Bentivengo entered the room. Pose informed Bentivengo at the outset that he had anger issues and that an employee assistance program was available. Bentivengo then relayed his account which Pose asked be reduced to writing. (Exs. 4, 12, 21).

17. On September 16, 2010 Bentivengo and Lennon met with Ferguson at Bentivengo’s request to discuss Bentivengo’s concern that Pose would not conduct a fair investigation of the September 8 incident and a claim that Pose identified Bentivengo as a vandalism suspect in retaliation for Bentivengo’s Union activity. (Ex. 9).

18. From September 17, 2010 through October 4, 2010 Bentivengo was absent from work on the basis of vacation, sickness, and scheduled days off. (Ex. 26).

19. At some point in mid September, 2010 Pose transferred Bentivengo to the main firehouse to drive the support services truck and Pose instructed Deputy Chief Kolakoski that Bentivengo was not to work in any position outside Support Services. (Ex. 10).

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<sup>2</sup> Lennon became Union president in January of 2011.

20. On September 28, 2010 Pose sent a memo (Ex. 5) to Plourde, Bentivengo, and Munn stating, in relevant part:

This is to notify you that the investigation into allegations of insubordination by Thomas Bentivengo toward his supervisor, Lieutenant Plourde is now closed. It is unfortunate, but I have been unable to draw a definitive conclusion due to inconsistent testimony of the parties interviewed. . . .

21. On October 5, 2010 Ferguson sent Bentivengo a memo (Ex. 9) stating, in relevant part:

SUBJECT: Complaint regarding Fire Chief

. . . [F]rom the information presented to me it does not appear that any action has been taken against you on account of your status as union president. Rather you have been reassigned, as acknowledged at our meeting, because you, Lieutenant Plourde and Peter Munn should not be assigned to the same firehouse any longer . . .

...

22. On October 6, 2010 Bentivengo sent Pose a memo (Ex. 6) stating, in relevant part:

RE: Personnel issue

...

During the last three weeks, I have been wrongly accused of insubordination, named by you as the number one suspect in an act of vandalism on Tower I, and reassigned to support at Headquarters on the fourth platoon.

...

With these charges now dismissed, it is my expectation that I will be moved back to E-3 immediately. Knowing that I am innocent of all the accusations recently leveled against me, being brought back to E-3 to finish my career will make me whole.

Failure to move me back to E-3 will lead me to believe that there is more to play with these recent turn of events than what meets the eye. Namely, one could interpret these actions, and statements made by you, as union harassment and retaliatory in nature because of my 10 years as union president, 7 of which coincided with your tenure as chief. For example:

- I am puzzled by the statement that you made to Deputy Chief Kolakoski that “Tom is going on support and will stay on support,” which is being interpreted to mean that if a vacancy occurs on the Tower, I would not be moved to that position, with the support services position being back-filled by overtime as is currently the practice on all platoons.
- I am also concerned about the convoluted manner in which the Plourde complaint was handled, especially the conflicting statements.
- Lastly, it seems strange to me that a patrolman would be ordered to investigate and interrogate all members of the fire department on the vandalism issue involving Tower 1, especially after you named me and Firefighter Munn as the top suspects, even though you had no evidence to substantiate such an outrageous claim.

Please know that if the situation is not rectified to my satisfaction and what appears to be a hostile work environment persists, I will be forced to move forward to have my legal rights upheld in a more formal manner.

23. On October 7, 2010 Lennon sent Pose a memo (Ex. 15) stating, in relevant part:

The Union is in the process of conducting it's own investigation into the personnel issue with Lieutenant Plourde and Union President Tom Bentivengo.

In the spirit of cooperation I am sharing this statement from Firefighter David Butkus.

Attached was a typed statement (Ex. 14) dated October 7, 2010 and signed by David Butkus which stated, in relevant part:

This letter is in reference to a conversation I had with Lt. Doug Plourde in the presence of Capt. Robert Poggio . . . and took place . . . at headquarters, at the end of August . . .

Lt. Plourde was explaining to Capt. Robert Poggio and I how angry he was with the negotiating committee. He argued with Capt. Poggio, who was on the negotiating committee, that their course of action had been wrong.

After Capt. Poggio walked away, Lt. Plourde told me that if Tom Bentivengo didn't appreciate what he had to say, he would have him transferred to Engine Five.

24. On October 7, 2010 Pose sent Kolakoski a memo (Ex. 11) stating, in relevant part:

. . . I just wanted to let you know that FF Bentivengo will be returning to work on Friday October 8<sup>th</sup>. As you know he has been assigned to your platoon on Support 1. I believe that FF Bentivengo can become a valuable utility operator/drive on all of our apparatus at Headquarters (Support 1, En. 1, Tower 1) and as such I would like him cross trained on those vehicles and equipment. Once he becomes familiar with the operation and equipment on Support 1 he can be utilized as a relief drive/operator on Eng. 1. Additionally he should be training and familiarizing himself with the operation and equipment on Tower 1 with the goal of driver operator in mind. Please let me know how he is progressing . . .

25. On October 18, 2010 Pose sent Bentivengo a memo (Ex. 7) stating, in relevant part:

**Subject: *Response to your letter dated October 7, 2010***

I'd like to briefly respond to your letter to me . . . With regard to the police investigation of the fire truck vandalism . . . I did in fact suggest that it possibly could be you. That was my opinion . . .

. . . With regard to the work investigation resulting from Lieutenant Plourde's complaint, it became and remains clear to me that you and Lieutenant Plourde should not be scheduled to work together. While the matter was still pending, I temporarily assigned you to headquarters to relieve some of the apparent tension surrounding the complaint. In the end, I decided to reassign you to headquarters until further notice. It is within my discretion as Fire Chief to do so. I do not intend to reassign you to Engine 3 at this time because I believe your skills and experience as a firefighter can be well served at headquarters. With regard to my conversation with Deputy Chief Kolakoski, I can tell you that Deputy Chief Kolakoski has been instructed to cross-train you on all of the apparatus at headquarters with the goal of utilizing your driving experience to the fullest.

. . . If you have further concerns about what you perceive to be a hostile work environment, I encourage you to speak with the Personnel Director and/or the Mayor.

26. On October 25, 2010 the Union filed a prohibited practice complaint (Ex. 1) commencing the instant case.
27. From November 1, 2010 through November 27, 2010 Bentivengo was absent on the basis of sickness. (Ex. 26).
28. On November 29, 2010 Pose sent Kolakoski an e-mail (Ex. 23) stating, in relevant part:

. . . it is my understanding that FF Bentivengo is returning to work from sick leave on Wednesday night December 1<sup>st</sup>. If you feel that he is sufficiently familiar with the equipment on Support 1 you should move him to his permanent position as the driver of Engine 1.
29. On November 29, 2010 Kolakoski sent Pose an e-mail (Ex. 24) stating, in relevant part: I am sure that FF Bentivengo is not sufficiently trained on Support 1 as he has not been in work due to illness . . . As promised, I will keep you informed of his progress as I agree with your position that he would be an asset as an apparatus operator.
30. In December of 2010 Bentivengo ceased serving in his position as Union president.
31. The City has not imposed discipline on Bentivengo in the past.
32. Support Services was created in 2003 and the Support Services truck, unlike fire engines, does not carry water, hydraulics, or related firefighting apparatus. Although senior firefighters have been transferred to operate the Support Services truck, in recent years newer and/or junior firefighters have been assigned to operate the vehicle.
33. Bentivengo attained the age of sixty-five on or about August 2012.

### **CONCLUSION OF LAW**

1. The Union failed to show that Bentivengo was discriminated against because of his union activities.

## DISCUSSION

The issue raised in the complaint is whether the City engaged in practices prohibited by §7-470(a)(1)<sup>3</sup> of the Act. The Union contends that Fire Chief Pose discriminated against employee Thomas Bentivengo by changing his long-standing worksite, shift, and duties in retaliation for his activity as Union president. The City denies any discriminatory or retaliatory motivation but also argues that even if the Union has established a *prima facie* case the City has proven it would have taken the same actions regardless of Bentivengo's protected activity. Given the record before us we agree with this latter assertion.

A complainant alleging that an employee was discriminated against in his employment because of union activity has the initial burden of showing that the discriminatory action was taken because of these protected activities, or at least that the protected activities were a substantial factor in bringing about these adverse actions. *Town of Greenwich*, Decision No. 2257 (1983), *aff'd O'Brien v. State Board of Labor Relations*, 8 Conn. App. 57 (1986); *Connecticut Yankee Catering Co., Inc.* Decision No. 1601 (1977). We determine whether the complainant has met this burden to establish a *prima facie* case of discrimination using an analytical framework such as is found in *Wright Line*, 251 NLRB 1083, *enfd* 622 F.2d 899 (1<sup>st</sup> Cir. 1981), *cert denied*, 455 U.S. 989 (1982), "A *prima facie* case includes proof that: (1) the employee engaged in protected, concerted activities; (2) the employer had knowledge of those activities; and (3) the employer harbored anti-union animus." *New Britain Board of Education*, Decision No. 4290 p. 4 (2008). Once a *prima facie* case is established, we then address whether the employer has established an affirmative defense which may include proof that the employer would have pursued its course of conduct regardless of any anti-union motivation. *City of Hartford*, Decision No 3785 (2000); *New Fairfield Board of Education*, Decision No. 3327 (1995).

The City argues that its actions were precipitated by the events of September 8 and since Bentivengo did not engage in protected activity that day the Union cannot establish the first element of its *prima facie* case. The Union contends that the City's articulated reason for its actions, Pose's determination that Bentivengo and Plourde "should not be scheduled to work together", was mere pretext and that the City was actually responding to Bentivengo's past conduct in his role as Union president. Viewed in isolation the relevant events<sup>4</sup> of September 8 do not establish a reasonable basis for granting Plourde's demand for a permanent separation from Bentivengo. Personal relationships between employees, however, can deteriorate over time for a variety of reasons<sup>5</sup> and the mere fact that a supervisor and subordinate "are no longer friendly with each other, without more, does not establish a pattern of anti union animus by the

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<sup>3</sup> Section 7-470(a)(1) states:

(a) Municipal employers or their representatives or agents are prohibited from: (1) Interfering, restraining or coercing employees in the exercise of the rights guaranteed in section 7-468 . . .

Section 7-468(a) states, in relevant part:

(a) Employees shall have . . . the right . . . to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from actual interference, restraint or coercion.

<sup>4</sup> In attempting to communicate from opposite sides of a fire truck with a running engine, Plourde and Bentivengo engaged in yelling interspersed with profanities.

<sup>5</sup> Plourde testified that both he and Bentivengo are strong personalities and that disagreements between the two frequently resulted in loud arguments characterized by profane language.

employer.” *State of Connecticut, University of Connecticut Health Center*, Decision No. 3592 p. 20 (1978). We find that the level and extent of Bentivengo’s Union activities is more than sufficient to establish the first prong of the Union’s prima facie case even though we also conclude that the record does not support a finding that Pose’s stated motives were mere pretext<sup>6</sup> and “contrived to disguise illegal motive.” *State of Connecticut, Department of Corrections*, Decision No. 2866-A p. 9 (1992).

The City also contends that to the extent its actions were in response to the negotiations session of July 22 or the Safety Committee meeting in February 2009, the Union has not made its *prima facie* case because Bentivengo’s language was such as to deprive him “of protection when he is engaged in otherwise protected union activity”. *City of Hartford*, Decision No. 2606 p. 12 (1987). We note, however, that “a significant degree of vituperative speech in the heat of labor relations” is tolerated, *Trailmobile Trailer, LLC* 343 NLRB 95, 96 (2004) and that “[b]oth labor and management often speak bluntly and recklessly, embellishing their respective positions with imprecatory language.” *Linn v. United Plant Guard Workers*, 383 U.S. 53, 58 (1966). We need not assess whether these profanities were protected under the Act since Bentivengo’s other overt Union activity during his lengthy and polemic tenure as president more than suffices to establish the first two elements of a *prima facie* case.

As we frequently find, the Union’s burden to establish a *prima facie* case of discrimination/retaliation turns on the existence of improper animus. “In this day and age, discrimination is almost invariably conducted surreptitiously; employers who engage in this form of misconduct do not do so overtly.” *Town of Watertown*, Decision No. 3719 (1999). Because direct evidence of discriminatory motive so frequently is unavailable, the Union is entitled to the benefit of reasonable inferences under the circumstances. *Town of Hamden (Police)*, Decision No. 2394 (1985). In this regard, the Labor Board considers indirect evidence of anti-union bias such as the timing of an employer’s decision in relation to the protected activity. *City of Waterbury*, Decision No. 3884 (2002); *Town of East Haven*, Decision No. 2830 (1990).

There is sufficient evidence in the record to support a conclusion that Bentivengo’s protected activity as Union president served as a substantial factor in the City’s transfer decisions at issue. The 2007-2010 collective bargaining agreement was the result of lengthy and presumably costly interest arbitration proceedings. Although Plourde’s displeasure with Bentivengo’s performance in negotiations stems from his self-interest as a member of the bargaining unit, Plourde’s threat to have Bentivengo transferred alludes<sup>7</sup> to his capacity as a supervisor and as such is attributable to the City. Lastly, Pose did single out Bentivengo,<sup>8</sup> without reasonable justification, as a likely suspect in the ladder truck vandalism matter. In short there is sufficient evidence to support the Union’s claim that the City was motivated, at least in part, by Bentivengo’s protected activity. In so finding we give due consideration to the strength

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<sup>6</sup> A finding of pretext would be dispositive of the City’s affirmative defense in this case. Where an employer’s asserted nondiscriminatory reasons for its actions are found to be pretextual, the employer necessarily fails to establish that it would have taken the same actions in the absence of protected activity. *Massey Energy Co.* 358 NLRB No. 159 (2012). Such a finding does not, however, obviate the requirement of a *prima facie* case to support a discrimination/retaliation violation. *Austal USA, LLC*, 356 NLRB No. 65 (2010).

<sup>7</sup> Although the Fire Chief ultimately makes transfer decisions, we recognize that such decisions ordinarily involve supervisor input.

<sup>8</sup> It is difficult to reconcile Pose’s October 7 admission that he “did in fact suggest [to City Police] that it could possibly be Bentivengo with Pose’s testimony that he merely identified two dozen firefighters as possible suspects.

of Bentivengo's Union affiliation given his position as president and we disregard Bentivengo's personal beliefs as to the reasons for his transfer. See *City of New Haven*, Decision No. 2230 p. 4 (1983).

Turning to the City's affirmative defense we find on the basis of the record before us that the City would have acted as it did even in the absence of Bentivengo's protected activity. In so finding we address the primary issues Pose faced at the conclusion of his investigation: whether Plourde and Bentivengo should be permanently<sup>9</sup> separated and if so, which employee should be transferred to a new work site. There is nothing in the record that suggests that Pose knew, prior to deciding to permanently transfer Bentivengo, of Plourde's antipathy with respect to Bentivengo's leadership in recent Union negotiations. We do, however, find it reasonable to infer that Pose, given his own experience with Bentivengo's department, credited Plourde's claim of a growing animosity which Plourde feared would lead to violence between the two men. Even if we were to disregard Pose's claim that he was "unable to draw a definitive conclusion due to inconsistent testimony of the parties involved" it is undisputed that but for Munn's claim to have not heard the dialog between Plourde and Bentivengo, the accounts of the events of September 8 were substantially identical. Given that the facts were largely undisputed and that Pose had some personal knowledge of Bentivengo's mannerisms, Pose's task more involved assessment of Plourde's opinion of the potential for workplace violence than it did fact finding.

In assessing Pose's response to Plourde's request to be separated from Bentivengo we are mindful that the challenged actions at issue in this case involve transfer of personnel which is not a mandatory subject of collective bargaining.

"We believe that the power to reassign employees to other duties which are concededly within the job description of those employees is fundamental to the operation of any public agency and therefore involves the exercise of managerial discretion."

*City of Hartford*, Decision No. 2462 p. 8 (1986)(citations omitted).<sup>10</sup> As previously noted, even if Plourde's expressed fear of a violent incident was unreasonable, the lengthy tenure of the relationship, the undisputed facts concerning the incident of September 8, and Pose's personal knowledge of Bentivengo's mannerisms could give rise to a colorable concern of workplace violence. Nor do we find that the record supports the Union's claim that Plourde's concern over future disputes was contrived. For personal reasons which may very well have included disillusionment with Union negotiations strategy, Plourde admitted his inability to continue to supervise Munn and Bentivengo, even in the absence of misconduct<sup>11</sup> by either. Pose had confirmation of this when he observed Plourde's demeanor and inability to retain composure at

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<sup>9</sup> Lennon and Martin jointly advised Pose that Plourde and Bentivengo be separated during the pendency of Pose's investigation.

<sup>10</sup> In short we will not lightly disturb an exercise of such discretion, particularly where, as here, the union does not claim that the actions at issue contravened any rights enjoyed under the collective bargaining agreement. Nevertheless, a punitive assignment that would not have occurred but for a discriminatory or retaliatory motive is in violation of the Act and grounds for remedial action by the Labor Board. See *City of Waterbury, supra*; *City of New Haven*, Decision No. 2159 (1982).

<sup>11</sup> We agree with the Union's argument that Pose's reference to Bentivengo's alleged "insubordination" was inappropriate. Neither Plourde nor Martin claimed that Bentivengo engaged in misconduct on September 8.

the investigatory conference. In short, Pose had a valid basis upon which to conclude that irreconcilable differences existed among the personnel at Engine Company No. 3 and that transfers were warranted. By separating the men Pose erred on the side of caution and consistent with the clearly defined and dominant public policy against workplace violence. *See State v. Connecticut State Employees Ass'n*, 287 Conn 258, 276 (2008).

Nor do we find basis for aggrievement in the manner by which the separation was implemented. Separation necessitated reassignment of at least one employee and by moving Bentivengo rather than Plourde, Pose minimized the impact on other employees. Unlike the position of firefighter there were no vacancies<sup>12</sup> for fire lieutenant at the time and Pose testified that reassignment of Plourde would have occasioned a domino effect resulting in reassignment of multiple supervisors. The record does not support the Union's claim that but for Bentivengo's protected activity he would not have been initially reassigned to a Support Services position ordinarily filled by a new employee. Not only did the assignment last less than three months,<sup>13</sup> Pose was attempting to fill one of three existing vacancies and senior firefighters have been assigned to Support Services in the past. Similarly, we find that Pose's training directives would have issued regardless of Union association. Bentivengo was a highly experienced driver subject to mandatory retirement in August of 2011. Notwithstanding the Union's claim that other firefighters should have been assigned to the federally funded training on the City's expensive new ladder truck, Pose's selection of Bentivengo for such training was reasonable given Bentivengo's extensive experience with large trucks and the opportunity to communicate that knowledge to other employees during training.

In sum, we conclude on the basis of the record before us that the Union has established a *prima facie* case of discrimination under Section 7-470(a)(1) of the Act. Bentivengo's decade of activity as Union president is clearly protected and Pose's contempt for Bentivengo's excesses<sup>14</sup> in that role reflect animus. The grounds for attributing animus to the City on the basis of Plourde's conduct are less clear. Plourde opposed Bentivengo's Union activity as a disgruntled member of the bargaining unit, not as a supervisor or agent of the City. More important, Plourde's request for reassignment, viewed in the context of the events of September 8, 2010, genuinely appears to be motivated more by his increasing alienation with his co-worker's mannerisms over the years than by recent dissatisfaction with Plourde's collective bargaining representative. We need not, however, resolve the issue of Plourde's animus because we also find that Pose would have reassigned Bentivengo even in the absence of improper motive by Plourde or Pose. "In analyzing a charge of discrimination the Board looks to see whether or not the stated reasons for the action taken are pretextual. If they are, then it is reasonable to infer the existence of a different motive." *City of New Haven*, Decision No. 2159 p. 7 (1982). We find reasonable Pose's determination that Bentivengo and Plourde should no longer work together and as such we dismiss the Union's complaint.

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<sup>12</sup> As is usually the case, supervisors are outnumbered by subordinates and supervisor vacancies occur less frequently than subordinate position vacancies.

<sup>13</sup> Pose reassigned Bentivengo effective December 7, 2010 to Engine 1 as a regular driver.

<sup>14</sup> Pose's use of the term "angry man" at Bentivengo's investigatory interview is likely a reference to Bentivengo's outburst at the February Safety Committee meeting. Similarly, Pose's reference to Bentivengo's "insubordination" as the subject of his investigation appears to refer to Bentivengo's past polemic in collective bargaining contexts.

**ORDER**

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by the Municipal Employee Relations Act, it is hereby

**ORDERED** that the complaint filed herein be, and the same hereby is, **DISMISSED**.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Wendella Ault Battey  
Wendella Ault Battey  
Chairman

Patricia V. Low  
Patricia V. Low  
Board Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing was mailed postage prepaid this 18<sup>th</sup> day of December, 2012 to the following:

Attorney Henry F. Murray  
Livingston, Adler, Pulda,  
Meiklejohn & Kelly  
557 Prospect Avenue  
Hartford, CT 06105

RRR

Attorney Kenneth S. Weinstock  
Kainen, Escalera & McHale  
21 Oak Street  
Suite 501  
Hartford, CT 06106

RRR

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Harry B. Elliott, Jr., General Counsel  
CONNECTICUT STATE BOARD OF LABOR RELATIONS

