

BEFORE THE PUBLIC SAFETY CIVIL SERVICE COMMISSION
OF THE CITY OF SEATTLE

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PUBLIC SAFETY CIVIL
SERVICE COMMISSION

IN RE THE APPEAL OF

LARRY D. LABREC,

Vs

MINORITY OPINION

CITY OF SEATTLE, SEATTLE FIRE
DEPARTMENT,

Respondent/Employer

PROCEDURAL BACKGROUND

On the appeal brought on by Lieutenant Larry LaBrec on August 18, 2000, challenging Seattle Fire Chief James Sewell's failure to abide by State, City and the Public Safety Civil Service Rules of Practice and Procedure and other Municipal law governing the appointments of Seattle Firefighters and Seattle Police Officers caused him great harm and much distress resulting in his lost opportunity to be promoted to the rank of Captain a position he held in an acting capacity throughout the life of this register.

He alleges such failure to promote him to Captain caused him to be passed over sixteen times in the life time of the Promotional Register. Because he was passed over in such an unprecedented fashion he further alleges his age and relationship with a superior officer who sat in on his new oral exam caused great harm to his ability to be promoted. He also alleges that Chief Sewell gave additional oral examinations that were not authorized or covered in the rules governing such promotions. Lieutenant LaBrec argues at length and with great conviction that such additional examinations usurps the authority of the Public Safety Civil Service Commission (PSCSC) and violates the vary rules used to make promotions based on merit and in accordance with all applicable state and local laws and rules which govern said promotions and guide the conduct of all City of Seattle Employees.

Appellant LaBrec in this appeal challenges each of Chief Sewell's decisions in not promoting him each and everytime a vacancy occurred during the life of the certified register dated March 20, 1998 through August 15, 2000. The PSCSC held hearings during 2002 and 2003. The parties were both represented by attorneys and filed post hearing briefs as requested by the Commission. The Commission met and deliberated on January 23, February 10, and February 28, 2003.

FINDINGS OF FACT

Lieutenant LaBrec filed his appeal in a timely manner before the PSCSC and the PSCSC has jurisdiction over the administration of testing for Police and Fire Departments of the City of Seattle as enumerated in its rules and ordinance during the time of this appeal was filed.

Appellant LaBrec served with honor and distinction as was testified to by the many witnesses brought before the commission on his behave. He entered the Department in 1970 and retired in March of 2001.

He was number six on the eligible register certified by the PSCSC. The register remained in effect from March 20, 1998 through August 15, 2000. Lt. LaBrec participated in two interviews and was never given any real meaningful reasons for not being promoted. Lt LaBrec was 52 years of age on this register and was one of the more senior officers serving in the Seattle Fire Departments operations division.

Chief Sewell began conducting his own form of an oral board test contrary to the PSCSC Rules of Practice and Procedure. In doing so caused great harm to the Departments promotion practices. Several high ranking Chiefs in the Seattle Department testified that Fire Chief Sewell violated these rules each and every time he gave these unauthorized exams and violated several PSCSC rules and laws of the State and the City of Seattle.

Although the City, provided information and sites and interpretations of the PSCSC Rules of Practice and Procedure and Municipal Law to support its arguments that the Chief had the right to conduct additional exams they did not produce conclusive evidence to support their assertions. To the contrary their sites were taken out of context and resulting in interpretations rather than a strict reading of the rules.

CONCLUSIONS OF LAW

The promotional Register dated March 20, 1998 Titled EXAMINATION RESULTS FOR FIRE CAPTAIN #7-97 PROMOTIONAL READS AS FOLLOWS: "THE FOLLOWING CANDIDATES ARE LISTED IN GRADE ORDER, REFLECTING THEIR RELATIVE STANDING AS OF THE EFFECTIVE DATE OF THE REGISTER. RELATIVE STANDING IS SUBJECT TO CHANGE DURING THE LIFE OF A REGISTER DUE TO CHANGES IN AVAILABILITY OF ELIGIBLE FOR VARIOUS POISITIONS AND SIMILAR CONSIDERATIONS. THEREFORE, THIS LIST DOES NOT REFLECT ORDER OF CERTIFICATION TO FILL VACANCIES, WHICH WILL BE MADE IN ACCORANCE WITH PROMOTIONS OF SMC 4.08 AND PSCS RULES 10 AND 11."

There were 37 Candidates on the register Lt. LeBrec was number 6 and the last person promoted was number 25. 21 were promoted to Captain.

PSCS Rules of Practice and Procedures Rules 3.25, Examination:, Rule 10 Registers and Eligibility:, Rule 11 Certification and Appointment: and SMC 4.08 in its entirety govern the lawful promotions authorized by these rules and powers granted to this Commission. Simply said Chief Sewell violated each and every rule as they relate to the non promotion of a well qualified candidate the Appellant Larry LeBrec.

There is evidence on the record that because of the unauthorized oral test Lt LaBrec may have been the subject of discrimination based on age and a situation with a senior staff member of Chief Sewell's Administration.

Reading from the PSCS Commissions Rules of Practice and Procedure under Section 16 page 62 "PROHIBITED EMPLOYEE CONDUCT: IT IS UNLAWFUL FOR ANYONE TO WILLFULLY OR CORRUPTLY, BY HIMSELF OR IN COLLUSION WITH ONE OR MORE PERSONS, TO DECEIVE OR OBSTRUCT ANY PERSON IN RESPECT TO HIS OR HER RIGHT OF EXAMINATION, OR CORRUPTLY OR FALSELY MARK, GRADE, ESTIMATE OR REPORT UPON THE EXAMINATION OR PROPER STANDING OF ANY PERSON EXAMINED HEREUNDER, OR AID IN DOING SO, OR WILLFULLY OR CORRUPTLY MAKE ANY FALSE REPRESENTATION CONCERNING THE SAME OR CONCERNING THE PERSON EXAMINED, OR WILLFULLY OR CORRUPTLY FURNISH TO ANY PERSON ANY SPECIAL OR SECRET INFORMATION FOR THE PURPOSE OF

EITHER IMPROVING OR INJURING THE PROSPECT OR CHANCES OF ANY PERSON SO EXAMINED, OR TO BE EXAMINED, TO BE APPOINTED, EMPLOYED OR PROMOTED.”

Simply said this section applies to all employees. Further the city asserts that rule 9.39 applies in this case. I disagree and find that it does not apply to this case. What does apply is under I. GENERAL PROVISIONS: PAGE I, 1.1 AUTHORITY AND APPLICATION. THESE RULES ARE PROMULGATED PURSUANT TO THE AUTHORITY GRANTED BY THE CHARTER OF THE CITY OF SEATTLE, THE 1978 CITY OF SEATTLE PUBLIC SAFETY CIVIL SERVICE ORDINANCE (ORDINANCE 107791AS AMENDED) AND THE ADMINISTRATIVE CODE OF THE CITY OF SEATTLE (ORDINANCE 102228, AS AMENDED). These rules are applicable to proceedings before the PSCSC and should be read in conjunction with specific provisions of the City Charter and the Public Safety Civil Service Ordinance.

In Rules of Practice and Procedure, Page 54, Appendix A Ordinance 107791 establishes Civil Service System for Police and Fire of the City of Seattle, under Section 2. PURPOSE. The City puts forth great effort regarding SMC 4.08.110 (A) in the last paragraph “appointing authority may require such persons to come before him/her and shall be entitled to inspect such persons’ application and examination papers” This does not constitute another oral exam. Again simply said the appointing authority can examine the applications and exam papers. This does not mean that the Chief can create another exam and call it an interview. Clearly, Fire Chief James E. Sewell exceeded his authority by engaging in an unauthorized oral examination. His total and deliberate violations of the Laws and rules of the City of Seattle and the PSCSC has caused great harm to the Appellant Larry LaBrec.

Nowhere in the rules and in the ordinance that govern the practices of this Commission does it give or grant to the appointing authority powers to administer another oral graded examination. This violates the very essence of why Civil Service was created.

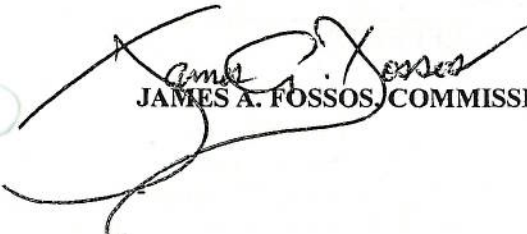
ORDER

I for all the aforementioned facts and conclusions rule in favor of the Appellant Larry Labrec and so order that he be promoted to Captain with all back wages and benefits and adjustments made to his retirement benefits and be made whole from any and all other damages that have resulted from this false test imposed on him by the City of Seattle and the Seattle Fire Department.

DATED this 31st day of March 2003.

THE PUBLIC SAFETY CIVIL SERVICE COMMISSION:

DISSENTING,


JAMES A. FOSSOS, COMMISSIONER

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BEFORE THE PUBLIC SAFETY CIVIL SERVICE COMMISSION
OF THE CITY OF SEATTLE

Larry D. LaBrec,
Appellant,

vs.

Seattle Fire Department

CITY OF SEATTLE
Respondent

DECLARATION OF SERVICE

1. I, Mary E. Effertz, under penalty of perjury under the laws of the State of Washington, declare as follows:

2. I am over the age of 18 years and am not a party to the above-entitled action. I am employed by the City of Seattle Civil Service Commission and make this declaration based on my personal knowledge and belief.

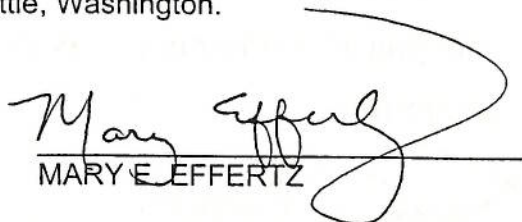
3. On April 1, 2003 and in the manner indicated below, I caused a copy of the **Minority Opinion** and this **DECLARATION OF SERVICE** to be served on the attorney for Appellant at the following address:

Kathleen Dassel [X] By U.S. Mail, first class
Wilson Smith Cohran Dickerson [] By Facsimile
1700 Financial Center
1215 Fourth Avenue
Seattle, WA 98161-1007

AND copies of same hand delivered to:

- Jean Boler, Assistant City Attorney, Attorney for Respondent
600 4th Ave., 10th Floor
Seattle, WA 98104

DATED this 1st day of April, 2003, at Seattle, Washington.


MARY E. EFFERTZ