**CONFIDENTIAL**

**ADMINISTRATIVE INVESTIGATION**

**REPORT OF FINDINGS**

**IN THE MATTER OF**

*The Dunsworth Firefighters’ Association’s Complaint regarding*

*City Manager, Bob Johnson*



**INVESTIGATED BY:**

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May 19, 2020

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SUBJECT: ADMINISTRATIVE INVESTIGATION – *Dunsworth Firefighters’ Association’s Complaint Against Bob Johnson*

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## **EXECUTIVE SUMMARY**

 This matter related to an administrative investigation undertaken on behalf of the City of Dunsworth (City). The issue of concern and the scope of the investigation related to on-duty firefighters attending a political Candidates’ Forum related to the local municipal election in the City of Dunsworth. This Candidates’ Forum occurred at the Old Timers Retirement Community and was a non-City sponsored event that occurred on Thursday, February 27, 2020, beginning at approximately 10:00 a.m. Captain George Thomas (Captain Thomas), the President of the Dunsworth Firefighters' Association (FFA), claimed that Bob Johnson (Mr. Johnson), the City Manager, had ordered Tony Willis (Chief Willis), the Dunsworth Interim Fire Chief, to order Engine Company 411 (EC 411) to leave the Candidates’ Forum at the Old Timers Retirement Community, which was inconsistent with an agreed upon policy concerning attending such political events while on duty and a violation of the City’s rules concerning discrimination and retaliation.[[1]](#footnote-1)

 Captain Thomas claims that the motivations behind Mr. Johnson’s alleged violations of City policy concerning this event relate to hostility against the FFA surrounding litigation brought against the City by the FFA that began in December 2017, which resulted in a settlement of over 5 million dollars in the FFA’s favor. Captain Thomas claimed that this settled litigation concerned similar issues, as in this case.

 This matter concerned fact finding relating to the below-detailed scope of investigation and determining whether Mr. Johnson violated the City’s rules related to unlawful discrimination and/or retaliation. This fact finder did not draw legal conclusions, but instead made conclusions regarding violation of City policies, procedures, or regulations. This fact finder reviewed various documents and conducted interviews of relevant witnesses. Due to the COVID-19 pandemic and social distancing requirements, all interviews were conducted by way of video conference and were recorded.

 The facts in this matter demonstrate that the City of Dunsworth, in February 2020, was in the midst of a political season where an upcoming local City Council/Mayoral election was to be held on March 3, 2020. A number of candidates hosted and/or participated in various community forums where each candidate would speak on various subjects ostensibly attempting to garner favor and political votes in the upcoming election. During this time, there had been internal City management discussions concerning the policies and procedures that would apply to the Dunsworth Fire Department personnel in relation to attending various political events and Candidates’ Forums.

 The facts in this matter demonstrate that it was generally agreed that participation in overt political activity while on duty was prohibited. However, attending community forums or "*town hall*" style meetings would be permitted with certain guidelines as to time, place, and manner. Chief Willis reasoned that members of the Fire Department, during the traditional evening hours after the normal 8:00 a.m. to 5:00 p.m. workday, engage in various personal activities such as attending online classes, reading nonwork related material, exercising, and/or merely watching television programs. Chief Willis indicated that because of this, it seemed reasonable for members of the Fire Department, if they so choose, to attend the Candidates’ Forums, which were envisioned to occur and typically did occur during evening hours after the traditional workday. At that time, Chief Willis had not considered whether any of these candidate forums would occur during the middle of the workday, which he would not have allowed.

 After some discussion, general guidelines were published by virtue of briefing his commanding officers in the Fire Department, indicating that attending Candidates’ Forums would be appropriate so long as members of the fire service did not participate in these forums in any way that would be seen as supportive of any particular candidate since the firefighters would be on duty and attired in their official Dunsworth Fire Department uniforms. At that time, the fact that Candidates’ Forums would occur at any time other than during the evenings, was not considered by Chief Willis.

 On Thursday, February 27, 2020, members of EC 411, supervised by Captain Rodgers, drove their fire truck and attended a "*Meet the Candidates*" forum event at the Old Timers Retirement Community, which is a private residential community of generally retired senior citizens. This privately sponsored event occurred from 10:00 a.m. - 11 a.m. due to the fact that it was focused toward retired elderly individuals who resided at the Old Timers Retirement Community. By all appearances, the firefighters passively attended the event situating themselves to the rear of the meeting room area and did not participate in the event other than merely observing and listening to the various candidates as they made their presentations. This was not a City sponsored event and was a private event hosted by the Old Timers Retirement Community in Dunsworth. The firefighters remained on duty and were monitoring their radios in case they were needed to respond to a fire or medical emergency.

 At approximately 10:45 a.m., Mr. Johnson received a text message from a community member inquiring as to why there were three on-duty firefighters attending the Old Timers Retirement Community Candidates’ Forum. The text message further inquired as to why on-duty firefighters would be attending such an event during the normal workday of 8:00 a.m. to 5:00 p.m. on a Thursday.[[2]](#footnote-2) Mr. Johnson indicated that he was unaware as to who or why the firefighters would be in attendance at this event and immediately contacted Chief Willis to further investigate.

 Mr. Johnson and Chief Willis spoke by phone whereupon Mr. Johnson advised Chief Willis of what he had learned by virtue of this text message. Chief Willis was rather surprised to hear that on-duty members of an engine company were in attendance at this event considering it was a Thursday and during the middle of the traditional 8:00 a.m. to 5:00 p.m. workday. Chief Willis immediately decided that he would contact the supervising battalion chief and have the members leave that location, as it was Chief Willis's desire and intended policy that on-duty attendance of firefighters at these political Candidates’ Forums be limited to the evening hours after the traditional workday.

 Thereafter, Chief Willis spoke with Battalion Chief Freedman (BC Freedman) and advised him of what he had learned from Mr. Johnson concerning on-duty firefighters being in attendance at the Old Timers Retirement Community and further of his (Chief Willis’s) decision to have the on-duty firefighters leave that candidates’ event. Chief Willis directed BC Freedman to contact the captain of EC 411 (Captain Rodgers) and direct the crew to immediately leave that location and return to their normal duties. Thereafter, BC Freedman sent a text message to Captain Rodgers directing him in accordance with Chief Willis's direction. Captain Rodgers immediately complied.

 The facts in this matter demonstrate that Chief Willis's expected policy concerning on-duty firefighters attending political community events during the political season did not envision nor address members of the Fire Department attending such Candidates’ Forums during the middle of what would be seen as the traditional workday. As indicated above, Chief Willis had felt that evening participation in these community events would seem appropriate considering firefighters are often free to attend to other personal activities during those times. Chief Willis indicated to this fact finder, that he would not have allowed nor encouraged on-duty members of the Fire Department to attend any such community forums during the traditional 8:00 a.m. to 5:00 p.m. workday. Chief Willis indicated that although firefighters' schedules are not centered strictly on a particular workday, the expectation is that during the daytime hours firefighters are to attend to their normal and customary duties while their evening hours allow greater flexibility and personal activities.

 The facts in this matter also demonstrate that Mr. Johnson did not order Chief Willis to have the members of EC 411 removed from the Candidates’ Forum. Mr. Johnson indicated that Chief Willis had made that decision, and this was, indeed, verified by Chief Willis. Mr. Johnson indicated that he had agreed with this direction and had told Chief Willis that he was relieved that the two both understood Chief Willis's intended policy of allowing on-duty attendance at Candidates’ Forum only in the evening hours, as opposed to the late morning hours mid-week, as was the case on February 27, 2020. Additionally, Mr. Johnson was unaware of which members (or which Engine Company) were in attendance at the Old Timers Retirement Community Candidates’ Forum on that particular date.

 The facts made clear that Captain Rodgers and his engine company (EC 411) had attended a Candidates’ Forum event at the Old Timers Retirement Community on February 27, 2020, at approximately 10:00 a.m. Additionally, the facts demonstrate that BC Freedman was aware that the engine company would be in attendance at that location and at that time. BC Freedman was seemingly unaware of Chief Willis's desire that any on-duty attendance to these public Candidates’ Forums or town hall meetings by members of the Fire Department be limited to the evening hours when members have greater personal latitude concerning their activities, as opposed to during the traditional 8:00 a.m. to 5:00 p.m. workday.

 This complaining community member also pointed out that their on-duty attendance there had caused some degree of concern, at that time. Mr. Johnson investigated this information and advised Chief Willis concerning the information in this text message, whereupon Chief Willis decided to have this engine company removed from the Candidates’ Forum and directed BC Freedman to do so. The purpose for Chief Willis's decision was an attempt to apply the policy and guidelines that he had intended concerning only allowing on-duty firefighters to attend such Candidates’ Forums during the evening hours when they had more latitude and free time, as opposed to during the traditional workday hours.

 In summary, there was no credible evidence to show that Mr. Johnson directed or caused Chief Willis to remove EC 411 from the Candidates’ Forum on February 27, 2020. The credible evidence pointed to the fact that Mr. Johnson was investigating a community member’s concerns and observations that seemed to be inconsistent with his understanding of Chief Willis’s policy concerning the on-duty attendance of Fire Department personnel at such Candidates’ Forums during the normal workday. Once apprised of this information, Chief Willis immediately decided to cause EC 411 to be removed from this function and to attend to their normal daytime duties. By all appearances, these actions were taken for legitimate business purposes without inappropriate influence and/or motivations. The allegation that Mr. Johnson violated the rules of the City relating to discrimination and/or retaliation is, therefore, **Not Sustained**.

## **SCOPE OF THE INVESTIGATION**

The scope of this investigation was to determine:

1. **Did City Manager, Bob Johnson, violate the City of Dunsworth’s rules concerning discrimination and/or retaliation with regard to cancelling Dunsworth Fire Department EC 411 from attending a “*Candidates’ Forum*” of local political candidates on February 27, 2020, at approximately 10:00 a.m.?**

## **METHODOLOGY**

This investigation involved the review of documents, as well as conducting interviews of relevant City employees. Once factual evidence was developed, the various statements of the witnesses were compared and contrasted with one another, as well as other evidence, and determinations of credibility were established. Once credibility was established along with a factual framework of the alleged events, conclusions were formed based on the greater weight of the credible evidence. For the purpose of findings, direct and circumstantial evidence may be given equal weight. The investigation also involved:

1. Reviewing applicable City rules and regulations;
2. Reviewing relevant documents, including any related investigation/litigation records;
3. Interviewing co-workers, supervisors, and witnesses;
4. Following-up on other evidentiary leads; and
5. Providing additional services as may be requested by the City.

## **INVESTIGATIVE STRATEGY**

The strategy of this investigation was to determine, based on the greater weight of the credible evidence, whether the allegations made against the accused were true. This fact finder determined that the best practice here would be to review the initial complaint, interview the complainant, then interview relevant witnesses, and review relevant documents. The fact finder did not reach any legal conclusions related to this matter

## **SOURCE OF THE COMPLAINT**

1. **George Thomas**

 Fire Captain

 President – Dunsworth Fire Fighter Association

 Dunsworth Fire Department

 City of Dunsworth

## **ACCUSED/FOCUS EMPLOYEE**

1. **Bob Johnson**

 City Manager

 City of Dunsworth

## **RULES**

This relevant City rules are attached and incorporated herein by reference.

## **WITNESSES**

1. **George Thomas**

 Fire Captain

 President – Dunsworth Fire Fighter Association

 Dunsworth Fire Department

 City of Dunsworth

1. **Tony Willis**

 Interim Fire chief

 Dunsworth Fire Department

 City of Dunsworth

1. **Frank Rodgers**

 Fire Captain

 Dunsworth Fire Department

 City of Dunsworth

1. **Robert Freedman**

 Battalion Chief

 Dunsworth Fire Department

 City of Dunsworth

1. **Chris Epstein**

 Fire Fighter/Paramedic

 Dunsworth Fire Department

 City of Dunsworth

1. **Bob Johnson**

 City Manager

 City of Dunsworth

## **CREDIBILITY OF THE WITNESSES**

The analysis of the credibility of the witnesses is an important aspect of a fact-finding investigation. As an accepted rule of evidence, a fact finder can disregard the statements of a witness who has been found to have provided false or unreliable information during their testimony in a matter. Those witnesses' statements can be disregarded in their entirety and not believed unless there is compelling evidence to conclude that individual statements otherwise are true.[[3]](#footnote-3) Concerning the witnesses’ statements, this fact finder considered:

(a) The witness’ demeanor while providing a statement and the manner in which he/she provided the statement.

(b) The character of the witness’ statement.

(c) The extent of the witness’ capacity to perceive, to recollect, or to communicate any matter about which he/she gave a statement.

(d) The extent of the witness’ opportunity to perceive any matter about which he/she gave a statement.

(e) The witness’ character for honesty or veracity or their opposites.

(f) The existence or nonexistence of a bias, interest, or other motive.

(g) A statement previously made by the witness that is consistent with his/her statement during the fact-finding investigation.

(h) A statement made by the witness that is inconsistent with any part of his/her statement during the fact-finding investigation.

(i) The existence or nonexistence of any fact given in statement by the witness.

(j) The witness’ attitude toward the fact-finding investigation in which he/she gave a statement or toward the giving of a statement.

*Discussion*

1. **George Thomas**

 Captain Thomas was not a percipient witness in this matter. Captain Thomas, though on duty on February 27, 2020, when the Old Timers Retirement Community Candidates’ Forum occurred, was not in attendance but had heard about the circumstances surrounding the recall of EC 411, whose crew members were in attendance that morning. Captain Thomas appeared to be credible concerning his observations and about what had been reported to him. This credibility was established by other witnesses corroborating the things and descriptions that they had provided to Captain Thomas.

 Captain Thomas, though, appeared to be somewhat clouded and biased in his beliefs that Mr. Johnson, the City Manager, had somehow directed or influenced Chief Willis to dismiss the members of EC 411, having them eventually leave the Candidates’ Forum at the Old Timers Retirement Community. This fact finder believed that Captain Thomas's beliefs in this regard were influenced by his negative perceptions about Mr. Johnson concerning prior litigation that Mr. Thomas had made reference to during his interview. Even though Captain Thomas was obviously predisposed to believe the worst of Mr. Johnson and offered opinions, which the facts discovered here failed to bear out, there was insufficient credible evidence to show that he (Captain Thomas) provided any directly untruthful information relevant to this fact finder's mission in investigating this matter.

1. **Tony Willis**

 Chief Willis was a credible witness in this matter. Chief Willis's statements to this fact finder were corroborated by other credible witnesses interviewed in this matter. Importantly, Chief Willis told this fact finder that it had been his unilateral decision to recall EC 411, whose members were attending the February 27, 2020 Candidates’ Forum at the Old Timers Retirement Community. Chief Willis said that after his superior, Mr. Johnson, brought to his attention that EC 411 was in attendance at this Candidates’ Forum in the late morning hours of February 27, 2020, he took it upon himself to give direction through BC Freedman and have the engine company removed from that event. This information was corroborated by Mr. Johnson, who had been prompted to contact Chief Willis after a citizen had alerted him (Mr. Johnson) to the fact that three firefighters from the Dunsworth Fire Department were in attendance at a Candidates’ Forum at the Old Timers Retirement Community.

 This text message specifically indicated that the fire fighters' attendance on-duty had caused some people some concern who were in attendance at that time, prompting Mr. Johnson to investigate further. Both Mr. Johnson and Chief Willis agree that Chief Willis made the decision to remove the engine company from attending that Candidates’ Forum during the late morning hours of that particular day. Both also agree that there were remarks during this phone conversation regarding both individuals understanding of the rules and guidelines that Chief Willis had requested of his staff concerning attending candidate forums during this political season but doing so in the evening hours after the traditional 8:00 a.m. to 5:00 p.m. workday.

1. **Frank Rodgers**

 Captain Rodgers was a credible witness in this matter. Captain Rodgers's statements to this fact finder were corroborated by other witnesses that were deemed credible. Captain Rodgers was the commanding officer of EC 411, and brought his crew to the February 27, 2020 Candidates’ Forum at the Old Timers Retirement Community at approximately 10:00 in the morning. There was no credible evidence to show that Captain Rodgers provided this fact finder with any untruthful, misleading, or unreliable information.

 It was noted that Captain Rodgers, like Captain Thomas, were both predisposed to conclude, albeit wrongfully, that Mr. Johnson had directed Chief Willis to have EC 411 removed from the candidates’ forum event. Also, like Captain Thomas, Captain Rodgers's belief seemed to have been influenced by his prior experiences in the litigation that Captain Thomas had alluded to from 2017. Even so, the facts concerning the events on February 27, 2020, as detailed by Captain Rodgers, were consistent with the statements of other credible witnesses.

1. **Robert Freedman**

 BC Freedman was a credible witness in this matter. BC Freedman's role in this event concerning the February 27, 2020 Candidates’ Forum was to convey a direction by Chief Willis to Captain Rodgers, who was the commanding officer of EC 411at the Candidates’ Forum at the Old Timers Retirement Community. Statements by BC Freedman were consistent with those of the other credible witnesses.

1. **Chris Epstein**

 Firefighter/Paramedic Epstein (FF/PM Epstein) was a credible witness in this matter. FF/PM Epstein was a member of EC 411 who, along with Captain Rodgers and Engineer Kilman,[[4]](#footnote-4) went to the Old Timers Retirement Community location in the morning hours of February 27, 2020, to attend a Candidates’ Forum. FF/PM Epstein's statements to this fact finder were consistent and tended to be corroborated by other witnesses deemed credible concerning the events of that morning.

1. **Bob Johnson**

 Mr. Johnson was a credible witness in this matter. Mr. Johnson's credibility was established from a text message that he indicated he had received on the morning of February 27, 2020, at 10:45 a.m. The text message was from a community member who had voiced some concern about three firefighters being in attendance at the Old Timers Retirement Community where a Candidates’ Forum was being hosted. The Candidates’ Forum was comprised of local politicians addressing the members of the Old Timers Retirement Community concerning the upcoming election. The text message questioned why the firefighters were in attendance if the firefighters' normal workday is from 8:00 a.m. to 5:00 p.m. considering the event began at 10:00 a.m. at the Old Timers facility. Mr. Johnson was also credible concerning his discussions with Chief Willis.

 Mr. Johnson had indicated that he brought to Chief Willis's attention the information he had received in the aforementioned text message from a community member and that Chief Willis had immediately decided to order the members of EC 411 to leave the candidates' meeting at the Old Timers Retirement Community. Mr. Johnson indicated that the crew’s attendance there was inconsistent with Chief Willis's desired policy of restricting on-duty firefighters from attending such events during the traditional 8:00 a.m. to 5:00 p.m. workday. Upon understanding that Chief Willis's policy was that firefighters would not be attending such political events during the traditional 8:00 a.m. to 5:00 p.m. workday and that they would be told to leave the event, Mr. Johnson acknowledged that he was relieved that both he and Chief Willis had the same understanding of Chief Willis’s intended policy. Mr. Johnson's statements to this fact finder were corroborated by Chief Willis, who was deemed a credible witness in this matter.

## **INVESTIGATION/FINDINGS**

***Background***

 This matter relates to a complaint filed by Captain Thomas, the President of the Dunsworthr Firefighter’s Association on behalf of the association claiming that the City Manager, Mr. Johnson had caused Chief Willis to remove EC 411 who was on-duty and attending a local political Candidates’ Forum at the Old Timers Retirement Community on February 27, 2020. Captain Thomas believe Mr. Johnson’s actions were a violation of the City’s rules against discrimination and/or retaliation and this alleged retaliation and/or discrimination related to a 2017 lawsuit filed by the Firefighter’s Association against the City that was later settled.

***Allegations/Scope of the Investigation***

The scope of this investigation was to determine:

1. **Did City Manager, Bob Johnson, violate the City of Dunsworth’s rules concerning discrimination and/or retaliation with regard to cancelling Dunsworth Fire Department EC 411 from attending a “*Candidates’ Forum*” of local political candidates on February 27, 2020, at approximately 10:00 a.m.?**

Short Answer: ***No. The greater weight of the credible evidence shows that Mr. Johnson did not cancel EC 782 from attending the Candidates’ Forum. Instead, Fire Chief Willis cancelled EC 782’s attendance. The greater weight of the credible evidence failed to show that Mr. Johnson or Chief Willis violated the rules of the City relating to discrimination and/or retaliation.***

* 1. **On or about February 27, 2020, on-duty members of EC 411 attended a “*Candidates’ Forum*,” community event at the Old Timers Retirement Community.**

 The facts in this matter demonstrate that on February 27, 2020, members of EC 411 attended a Candidates’ Forum community event that was hosted by the Old Timers Retirement Community. The Old Timers Retirement Community is an upscale retirement community in the City of Dunsworth. The facts demonstrate that this event was aimed at allowing political candidates vying for political office in the upcoming March 3, 2020 election for City Council in the City of Dunsworth an opportunity to address community members. Even though these candidates’ forum community events are typically held in the evening, this particular event was scheduled to occur from 10:00 a.m. to 11:00 a.m. at the Old Timers facility due to the fact that the audience was comprised of retired senior citizens.

 The facts showed that EC 411 was staffed by Captain Rodgers, Engineer Kilman, and FF/PM Epstein. The evidence points to the fact that the members of EC 411 drove to the location in their fire truck and were on duty and attired in their Dunsworth Fire Department uniforms. The information developed indicates that these Fire Department personnel attended the event by standing in the rear portion of the meeting room where they passively listened to the candidates speak on various topics to the Old Timers Retirement Community members who were assembled there.

 The facts further demonstrate that EC 411’s attendance at this location was authorized by BC Freedman and that they arrived at the location shortly after 10:00 a.m. Not long after their arrival, Mr. Johnson received a text message from a community member questioning why on-duty members of the Dunsworth Fire Department were in attendance in uniform at this candidates’ forum during the middle of a workday. Specifically, the text message, which was received by Mr. Johnson at 10:45 a.m. stated, "*Why are there three firemen here at Old Timers forum in uniform if the workday for them is 8:00 to 5:00*." The text message went on to say, "*It's rubbing a few people in a bad way. When they walked in. Because of all that has been out there on social media.*"[[5]](#footnote-5)

 Mr. Johnson told this factfinder that he was rather surprised by this text message and was unaware that any on-duty fire officials would be attending a Candidates’ Forum in the middle of the workday, and in the middle of the week. It was noted that the event was occurring at approximately 10:00 a.m. and that the day in question was a Thursday. Mr. Johnson indicated he was not aware which personnel were in attendance and decided to merely contact Chief Willis to investigate further.

* 1. **On-duty members of EC 411 were advised by text message to leave the “*Candidates’ Forum*” event.**

 The investigation showed that Mr. Johnson contacted Chief Willis and inquired as to whether he knew that on-duty members of the Fire Department were in attendance at this candidates’ forum event during the middle of the workday. Mr. Johnson indicated that he remarked to Captain Willis as to whether there was some sort of official business that they should be attending to, as opposed to attending this non-Fire Department-related activity in the middle of the workday.

 The facts in the matter revealed that there had been an understanding, based on discussions between Chief Willis and Mr. Johnson, that the attendance at various Candidates’ Forums by on-duty fire officials would be limited to the evening hours where Chief Willis had indicated that the firefighters had greater latitude and personal freedoms to attend to various types of personal business.

Initially, there had been a general directive that no such attendance would occur while any firefighters were on duty. It was Chief Willis who realized the latitude that firefighters had during the evening hours after the traditional 8:00 to 5:00 p.m. workday, such that they would have the ability to attend to other sorts of non-work-related activities such as reading, watching television, taking online coursework, or other non-Fire Department-related business. Chief Willis indicated that he felt that a degree of latitude could be afforded to the firefighters to attend such candidate fora during these hours after the traditional 9:00 to 5:00 workday. This information was conveyed to his command staff; however, Chief Willis did not envision any candidates’ forum occurring during the middle of the day, and did not address that issue with his staff.

 It appeared, that there was a general understanding by BC Freedman that attendance at the Candidates’ Fora was broadly acceptable, irrespective of time of day. This information was discussed in an email sent by Chief Willis on January 16, 2020.[[6]](#footnote-6) This email stated, in relevant part:

*“…In addition, attendance at the “Candidates Forum” will not be prohibited for on-duty personnel…”*

 This email detail led to BC Freedman allowing EC 411 to attend the February 27, 2020 event. BC Freedman was unaware of Chief Willis’s desire that such attendance at “*Candidates’ Forum*” would be limited to the evening hours after the traditional workday. It was clear that there had been a lack of specific direction conveyed to staff members concerning Chief Willis’s actual desires that the Candidates’ Forum attendance applied only to evening hours after the workday.

 Upon hearing this information from Mr. Johnson about the Old Timers Retirement Community meeting, Chief Willis made the decision to have the Fire Department personnel removed from the candidates' meeting and to have them return back to their traditional Fire Department activities during the day. Chief Willis indicated that the decision was his alone and that he was not directed to act in this fashion by Mr. Johnson. Chief Willis said the decision he made was based on his understanding that firefighters, while on duty, would only attend Candidates’ Fora and other townhall-type political meetings in the evening hours as discussed above.

 The facts indicate that, thereafter, Chief Willis met with BC Freedman and learned that BC Freedman was aware that members of EC 411 were going to be attending a Candidates’ Forum meeting at the Old Timers Retirement Community. Chief Willis told BC Freedman that he did not approve of this type of activity during the workday for on-duty personnel and directed BC Freedman to contact Captain Rodgers, the captain of EC 411, and have them immediately leave the location and proceed with their other official Fire Department activities.

 Thereafter, BC Freedman sent a text message to Captain Rodgers and advised him that he and his engine company who were attending the Old Timers Retirement Community meeting needed to leave the event immediately. The facts demonstrate that Captain Rodgers did so and that EC 411 left the location promptly.

 The facts developed in this investigation demonstrate that the event at the Old Timers Retirement Community was not a City-sponsored event. This event was sponsored and coordinated by the retirement community itself as a way of acquainting its retired and elderly residents with issues and information provided by the candidates who attended the forum that morning. It was also shown that the other candidate fora that were held ahead of the March 3, 2020 election were all held in the evening hours after the traditional 8:00 to 5:00 p.m. workday, as Chief Willis had envisioned.

 The exception to the general time rule was a Dunsworth Firefighters' Association meeting held on January 5, 2020, where both on-duty and off-duty firefighters were allowed to attend a nonpublic meeting for the purposes on interviewing mayoral and City Council candidates that were running for election in March 2020. This meeting was held at Fire Station No. 1 during the morning hours of Sunday, January 5, 2020. This particular meeting was an accommodation authorized by the City in order to allow the firefighters to meet with various political candidates preceding the March 2020 election.

 Captain Thomas told this fact finder that he began planning the Candidate’s Forum in the beginning of December 2019, specifically for the Firefighters' Association meeting in order for association members to meet the candidates and hear their vision for the Fire Department and the City. Captain Thomas indicated that this activity had been done during previous elections. Per their past operating procedures, he obtained permission from the on-duty battalion chief, Battalion Chief Daniel Garcia (BC Garcia). The facts demonstrate that BC Garcia had approved this request. Thereafter, Captain Thomas proceeded to attempt to schedule all eight of the political candidates, however, only six confirmed their attendance.

 On December 30, 2019, Chief Willis spoke with Captain Thomas about the Candidates’ Forum, because Mr. Johnson had brought up some concerns regarding this event. Ultimately, Chief Willis provided his approval for the Candidates’ Forum to occur at Station 1 on Sunday, January 5, between 8:00 a.m. and 1:00 p.m. It was noted that half of the firefighters attended on duty, and the other half attended while off duty.

 Thereafter, there were several Dunsworth City Council Candidates’ Fora held throughout the City. Fora were held on January 27, 2020, at 7:00 p.m., February 10, 2020, from 6:00 p.m. to 9:00 p.m., February 13, 2020, at 6:30 p.m., with the last Candidates’ Forum being held on February 27, 2020, at 10:00 a.m., at the Old Timers Retirement Community. Firefighters were allowed to attend the evening events, however, the February 27, 2020 event occurring at 10:00 a.m. was halted by Chief Willis.

* 1. **Rules of the City of Dunsworth**

The rules of the City of Dunsworth forbid acts of discrimination and/or retaliation. The City of Dunsworth Personnel Rules and Regulations, Section 5200 A. 10. states, in relevant part, that a “*Basis for Disciplinary Action*” is a “*Violation of rules, regulations or orders established by a supervisor.*”[[7]](#footnote-7)

 These rules related to discrimination and/or retaliation are enumerated in the City of Dunsworth Administrative Regulation, Section 301, which states, in relevant part:[[8]](#footnote-8)

***III. DEFINITIONS****: Harassment can consist of virtually any form or combination of verbal, physical, visual or environmental conduct.*

***IV. GENERAL POLICY****: The City of Dunsworth declares that discriminatory harassment violates this policy and will not be tolerated. Discriminatory harassment, as described in Section III, of an applicant, employee or persons providing services pursuant to a contract is considered harassment and is prohibited. Any employee, regardless of his or her position, who engages in such discrimination or harassment as previously defined, will be subject to disciplinary action up to and including dismissal. Further, retaliation against anyone filing a complaint also constitutes a violation of this policy.*

 The rules enumerated in the City of Dunsworth Administrative Regulation, Section 301 define the issues related to retaliation, as:

***Anti-Retaliation Clause****. No person, division or department may discharge, or in any manner discriminate or retaliate against any person, or deny to any person a benefit to which that person is entitled because such person has filed a complaint, instituted or caused to be instituted any proceeding under or related to this policy, has testified or is about to testify in any such proceedings or investigation, or has provided information or assisted in an investigation. Individuals found to have filed a malicious, unfounded complaint may be subject to disciplinary action.*

* 1. **Summary of Findings**

 In this case, Captain Thomas, on behalf of the Firefighters' Association, claims that Mr. Johnson engaged in discrimination and/or retaliation in violation of the City's rules. In order to establish a violation of the aforementioned rules and regulations, the greater weight of the credible evidence would have to demonstrate that Mr. Johnson canceled or caused to be canceled EC 411's participating in the Candidates’ Forum on February 27, 2020, and be motivated or inspired to have done so by some form of discriminatory and/or retaliatory purposes, as established by the City's aforementioned rules.

 Here, the greater weight of the credible evidence fails to demonstrate that Mr. Johnson had in fact canceled EC 411's participation in the Candidates’ Forum in February 27, 2020. Indeed, Mr. Johnson was merely responding to a text message received from the community member that piqued his curiosity. He and Chief Willis had generally agreed that any attendance at Candidates’ Fora by on-duty Fire Department personnel would be limited to the evening hours where Fire Department personnel had greater latitude and freedom after the traditional 8:00 a.m. to 5:00 p.m. workday. All the credible evidence tends to show that Chief Willis unilaterally made the decision to remove EC 411 from the Candidates’ Forum at the Old Timers Community Center on February 27, 2020.

 During Chief Willis’s discussions with Captain Thomas, and others, he acknowledged that after he had decided to remove EC 411 from the Candidates’ Forum at the Old Timers Community Center, Mr. Johnson made a closing remark over the phone stating words to the effect, "*I'm glad that we're on the same page*." Captain Thomas indicated that Mr. Johnson's call to Chief Willis, his subordinate employee, inquiring about the on-duty members of the Fire Department at the Old Timers Community Center event and whether the members had other official duties they could attend to at the time, was merely Mr. Johnson's imprimatur and subtle direction to Chief Willis to remove the on-duty firefighters and EC 411 from their participation in this Candidates’ Forum.

 However, there is insufficient credible evidence to show that Chief Willis was swayed or somehow pressured by Mr. Johnson to decide to remove the members from the Candidates’ Forum that morning. Indeed, Chief Willis told this factfinder that he never envisioned that on-duty members of the Fire Department would be attending any Candidates’ Forum during the middle of the workday. Chief Willis said that he believed that all of the community events would be held during the evening hours where firefighters had greater latitude to engage in personal activities.

 Additionally, both Mr. Johnson and Chief Willis agree that it was Chief Willis's decision entirely to remove the candidates, and Mr. Johnson's comment about being on the "*same page*" was made after Chief Willis made his decision to remove EC 411 from the Candidates’ Forum at the Old Timers Community Center. Additionally, Mr. Johnson indicated that his remark about their concurrence regarding this discussion related to the idea that on-duty Fire Department employees would be constrained to attending these Candidates’ Forums only during the evening hours as opposed to during the workday.

 Captain Thomas also seemed to conclude that Mr. Johnson was aware that Captain Rodgers was in attendance at the Old Timers Community Center during the Candidates’ Forum on February 27, 2020, and was somehow inspired and/or motivated to cancel their participation based on Captain Rodgers's attendance there. However, there was no credible evidence to show that this was true. Indeed, Mr. Johnson did not know who was in attendance and was merely reacting to a citizen's concern relating to the public perception of on-duty Fire Department personnel being present in their official uniforms during a privately sponsored Candidates’ Forum at a non-City facility. It appeared to this fact finder that Captain Thomas's claim that somehow Mr. Johnson was aware that Captain Rodgers was in attendance during this community event was a false presumption that served Captain Thomas's narrative that there was some sort of repeated issues related to prior litigation. BC Freedman only allowed EC 411 to attend this event, because there had been a miscommunication concerning Chief Willis’s desire that the on-duty attendance of Fire Department personnel be constrained only to the evening hours after the workday.

 Captain Thomas remarked that previously, former Fire Chief Peter Jones had given some sort of on-duty direction to Captain Rodgers to leave a public event at a public park dedication that somehow related to the litigation that had been filed in 2017 and settled thereafter. Although Mr. Johnson was a City Manager at the time, the facts at issue concerning the Old Timers Retirement Community Candidates’ Forum on February 27, 2020 do not appear to bear any resemblance to anything that may have occurred in the previous litigation, as alleged by Captain Thomas.

 Captain Thomas further seemed to be somewhat motivated to put Mr. Johnson in a false light by virtue of his presumptions. He assumed Mr. Johnson had pushed or somehow directed Chief Willis to cancel EC 411 from attending the Candidates’ Forum at the Old Timers Community Center and further assumed Mr. Johnson knew that Captain Rodgers was there and, somehow, was motivated by that knowledge in removing EC 411. This fact finder saw these presumptions as a thinly veiled attempt to draw some sort of parallel with the previous litigation of which Chief Willis was not a part. There also appeared to be some form of potential political motivation to make such charges against Mr. Johnson, considering that the newly elected Mayor (Tim Lawrence), who was supported by Captain Thomas and the Firefighters’ Association, had apparently proclaimed a degree of animus towards Mr. Johnson and a desire to fire him as City Manager. It seemed as though Captain Thomas may have been attempting to orchestrate a circumstance to effect such a change.

 Captain Thomas also remarked that the event on February 27, 2020 was similar to a Candidates’ Forum event that had occurred at Fire Station 1 on Sunday, January 5, 2020, between 8:00 a.m. and 1:00 p.m. Captain Thomas was attempting to claim that somehow Mr. Johnson and/or Chief Willis were being capricious or inconsistent relating to the idea that firefighters should not be attending Candidates’ Forum during traditional working hours of 8:00 a.m. to 5:00 p.m. However, Captain Thomas's assertions here are without merit.

 The Sunday, January 5, 2020 Candidates’ Forum hosted at Fire Station No. 1 between 8:00 a.m. and 1:00 p.m. was not a public event. The event was attended by the candidates and on-duty and off-duty firefighters. The event on February 27, 2020, was held in public at private property (Old Timers Community Center) and was held on a Thursday in the middle of the traditional 8:00 a.m. to 5:00 p.m. workday, as opposed to the January 5, 2020 meeting that was held on a Sunday at Fire Station #1 and attended by fire personnel, as opposed to the general public.

 It appeared to this fact finder that neither Mr. Johnson nor Chief Willis acted capriciously. Both acted with the legitimate purpose of being certain that the public perception of firefighters working during midweek traditional business hours was that they were attending to their official Fire Department activities, as opposed to attending a private political Candidates’ Forum, as was the case on the morning of Thursday, February 27, 2020. There was insufficient credible evidence to show that Mr. Johnson and/or Chief Willis were inspired and/or motivated by any nefarious purposes or reasons other than to maintain a proper public perception and to be certain that on-duty Fire Department personnel were engaged in official Fire Department activities and business during the traditional 8:00 a.m. to 5:00 p.m. workday.

 In summary, there was insufficient credible evidence to demonstrate that Mr. Johnson (and/or Chief Willis) engaged in any activities that would tend to violate the harassment/discrimination rules of the City or the City's anti-retaliation rules. The greater weight of the credible evidence tends to show that Mr. Johnson and Chief Willis engaged in the legitimate business interests of the City and the Fire Department when Mr. Johnson apprised Chief Willis of EC 411's attendance at a Candidates’ Forum on February 27, 2020, and when Chief Willis unilaterally decided to remove EC 411 from that event and have them return to their normal Fire Department duties. The allegations are, therefore, **Not Sustained.**

## **SUMMARY OF INTERVIEWS**

1. **Summary of Interview with George Thomas**

 On April 21, 2020, this fact finder conducted an audio/video recorded interview of George Thomas (Captain Thomas) via Zoom video conferencing software due to the COVID-19 social distancing and non-essential work-related restrictions. This investigation is a result of a complaint Captain Thomas made against Dunsworth City Manager, Bob Johnson (Mr. Johnson). Also present for the interview was Captain Thomas’s representative, Frank Hernandez, who is the Vice President of the Firefighters’ Union.

 Captain Thomas explained he is a Fire Captain for the Dunsworth Fire Department and is also the President of the Firefighters’ Union. On March 2, 2020, he sent an e-mail to JR Ranells in Human Resources, making a formal complaint about Mr. Johnson. The complaint was a result of an incident surrounding on-duty members of the Department attending a political town hall meeting at the Old Timers Retirement Community on February 27, 2020, for the upcoming election in March 2020.

 Captain Thomas explained that in December 2019, he began planning a political Candidates’ Forum to be held at the Firefighters’ Association meeting in order for the association members to meet the candidates and hear their vision for the Fire Department. This was an activity the union had done during past elections. Per their standard operating procedures, they have to obtain permission from the on-duty Battalion Chief to organize an event such as this on City property during work hours. On December 23, 2019, Captain Thomas sent an e-mail to Battalion Chief Daniel Garcia (BC Garcia) requesting to have a Candidates’ Forum on Sunday, January 5, 2020, at 8:30 A.M. BC Garcia verbally approved his request. Captain Thomas then attempted to schedule all eight of the political candidates, however only six confirmed their attendance.

 On December 30, 2019, at approximately 1:30 P.M., Fire Chief Tony Willis (Chief Willis) requested to speak to Captain Thomas about the Candidates’ Forum because Mr. Johnson had brought up some concerns. Ultimately, Chief Willis gave him the approval to host the Candidates’ Forum at Fire Station 1, on Sunday, January 5, 2020, between 8:00 A.M and 1:00 P.M. Half of the firefighters attended on-duty and half attended while off-duty.

During the week of January 13-17, 2020, Captain Thomas spoke to Chief Willis over the phone, during which time Chief Willis approved the firefighters having candidate signs on their personal vehicles while they were parked on City property, as well as going to the future candidates’ forums while on-duty. Chief Willis told him that if they attended the forums on-duty, they could only observe, not participate. At the time, they did not discuss when the particular candidates’ forums were going to occur, but Captain Thomas indicated all of them were highly publicized on the internet with hundreds of people in attendance.

The first forum was the Dunsworth City Council Candidates’ Forum held on January 27, 2020, at 7:00 P.M, at a church across the street from Fire Station 2. Captain Thomas indicated the entire on-duty C shift attended, as well as a couple of off-duty firefighters. They were instructed not to engage, clap, or participate in any manner at the forum. While they were there, the firefighters helped with slight overcrowding, clearing the aisles, and keeping the exits open. Captain Thomas also had the organizer give a quick safety briefing at the beginning of the forum in case there was an emergency.

 The next Candidates’ Forum was the Dunsworth Mayoral Forum on February 10, 2020, from 6:00 P.M. to 9:00 P.M., at Benita High School gymnasium. Again, on-duty and off-duty fire crews attended. On February 13, 2020, at 6:30 P.M., there was a Meet the Candidates Forum at Dunsworth Community Center. Both on-duty and off-duty crews attended, but one of the crews had to leave to respond to a call.

The last Candidates’ Forum was on February 27, 2020, at 10:00 A.M., at the Old Timers Retirement Community. Captain Thomas explained that on that particular day his crew could not attend because he had previously scheduled training for a probationary firefighter on his crew during that time. Because of the training, he had worked out an arrangement with the Fire Station 2 crew captain, Frank Rodgers (Captain Rodgers), that Captain Rodgers’s crew would handle all the medical aid calls in the City while Captain Thomas’s crew was training. Captain Thomas indicated the Old Timers Retirement Community is centrally located within the City, which worked out well for his arrangement with Captain Rodgers about responding to calls.

Captain Thomas and Captain Rodgers discussed their arrangement with Battalion Chief Robert Freedman (BC Freedman) that day, who gave his approval. Captain Thomas indicated there was no feedback from BC Freedman about Captain Rodgers’s crew attending the Candidates’ Forum, as this was the fourth one to date that members had attended on-duty. Captain Thomas said he had had multiple previous conversations about the event with BC Freedman because the Old Timers Retirement Community is the main voting bloc in the City. Captain Thomas was not under any impression that the firefighters were doing anything improper by attending the forum.

 Captain Thomas said both his crew and Captain Rodgers’s crew responded to radio calls that morning. Captain Thomas’s crew happened to be on their call for a while. When they finished the call, Captain Thomas checked his phone and noticed he had several messages regarding the Candidates’ Forum. He spoke to Captain Rodgers, who filled him in as to what happened. Mr. Johnson was not at the Old Timers forum, and Captain Thomas assumed someone must have called him and told him that the fire crew was present. Captain Thomas told Captain Rodgers he was going to speak to Chief Willis to get his perspective.

 He then had a meeting with Chief Willis. Also present for the meeting was Frank Hernandez, the Vice President of the union, and Dave Garcia, the Secretary/Treasurer of the union. The entire association board was present for the meeting because they all happened to work on the same crew with Captain Thomas. Chief Willis explained to them that he received a phone call from Mr. Johnson, who asked him if he knew that an engine company was at the Old Timers Retirement Community Candidates’ Forum. Chief Willis replied that he did not know they were there or that there was even an event occurring. Mr. Johnson asked Chief Willis if there was a better use of the crew’s time during the day, and Chief Willis said he replied in the affirmative. Chief Willis then said he would tell the crew to leave the forum, and Mr. Johnson replied, “*I’m glad we are both on the same page*.”

 Captain Thomas explained to this fact finder that Chief Willis’s concern was the timing of the event, and Chief Willis felt he could not justify the crew being at the forum during normal work hours. The rhetorical nature of Mr. Johnson’s question seemed more like an order than a question however, given the superior/subordinate roles of the City Manager to the Fire Chief, when the conversation was recounted to Captain Thomas.

 A side issue having to do with this matter involved a scheduled station tour. Captain Thomas said that he was contacted by Engineer Don Young (Engineer Young) that morning while he was in the gym, who asked if he knew there was a station tour. Captain Thomas said he was not aware of the tour and asked if Engineer Young could handle it, given he was on light-duty at the station. Engineer Young handled the tour at 8:30 A.M. or 9:00 A.M., which was before the Candidates’ Forum.

 Captain Thomas remarked that the reason he filed the complaint was due to the similarities between the Old Timers Candidates’ Forum incident and a previous lawsuit that involved former Fire Chief Jones and Mr. Johnson’s involvement in the Firefighters’ Union’s political participation. Captain Thomas explained the fire chief position and the city manager position are supposed to be apolitical. One of the incidents that prompted the previous lawsuit was the renaming of a baseball field after a well-known person in the community who passed away, and who happened to be a friend of Captain Rodgers. The event was a non-political event, despite all of the political candidates showing up. Captain Rodgers and his crew went to the event to show support for Captain Rodgers’s deceased friend. Mr. Johnson had the former fire chief tell Captain Rodgers’s crew to leave the event because he felt it was a political event, which resulted in the Firefighters’ Union filing a lawsuit, and later being awarded a settlement of $5.5 million dollars.

 Additionally, Captain Thomas said he was told by Fire Chief Ken Simmons, who was the fire chief prior to Chief Willis, and additionally by Chief Willis, that Mr. Johnson was afraid that if Tim Lawrence (Mr. Lawrence) was elected as the mayor, he would lose his job. Mr. Lawrence was one of the mayoral candidates that was running at the time of the Old Timers incident. Captain Thomas said he believes that Mr. Johnson was involving himself in politics as a means to influence the election in order to save his job. Furthermore, Captain Thomas said that Mr. Johnson was personal friends with the incumbent candidate that was running against Mr. Lawrence, Don Levin, which Captain Thomas felt provided even more of a reason for Mr. Johnson to involve himself in the political event.

 Captain Thomas said there were no restrictions at the time of the Old Timers incident about members of the Department attending political events on-duty, other than they were not allowed to actively participate while in attendance. He indicated there were no restrictions on the times they could attend events. He explained the forum the Firefighters’ Union sponsored was held on City property on a Sunday from 9:00 A.M. to 1:00 P.M., which was the same time frame as the Old Timers event. He said the firefighters’ working hours are from 8:00 A.M. to 5:00 P.M., which applies to both weekdays and weekends. The date of the Old Timers forum happened to be the second day of their rotation.

1. **Summary of Interview with Tony Willis**

 On April 20, 2020, this fact finder conducted an audio/video recorded interview of Tony Willis (Chief Willis) via Zoom video conference software due to the COVID-19 social distancing and non-essential work-related restrictions. Chief Willis was a possible witness to a complaint that Fire Captain/Firefighters’ Union President George Thomas (Captain Thomas) filed against Dunsworth City Manager, Bob Johnson (Mr. Johnson).

 Chief Willis started his employment as the Fire Chief at Dunsworth Fire Department on December 16, 2019. He had retired from Orange County Fire Authority as a Division Chief after 32 years of service. He came out of retirement after four years to help the Dunsworth Fire Department through a transitional period. Chief Willis explained there was history with the City and Firefighter’s Local 3624 prior to his employment as the Fire Chief, which involved a lawsuit the union filed having to do with engaging in political activity while on-duty. The lawsuit created tension between many City employees and the rank and file at the Fire Department.

 In late January or early February 2020, Chief Willis was at a City staff meeting. Mr. Johnson handed out an agency directive that he wanted to ensure all of the department heads received regarding political campaigning while on duty, which was prohibited by the directive. At the time, Chief Willis had only been employed as the Interim Fire Chief for approximately four to six weeks. The date on the directive was approximately a decade ago. Given the previous lawsuit, Chief Willis felt it was odd the directive had not been amended to meet whatever parameters were settled in the lawsuit. Chief Willis said he questioned City staff on the matter, specifically Mr. Johnson, and asked, “*Are you sure that we wanna go forward with this? This seems like it was probably part of your previous lawsuit*.” The City Manager had a discussion with the City Attorney, and they decided that this specific directive was never called into question in the lawsuit, was therefore a valid document, and should be implemented at every department within the City.

 Chief Willis then held a command staff meeting with his three battalion chiefs regarding the directive. Chief Willis said the battalion chiefs shook their heads in disbelief and told him that he was “*going to step on a landmine*” if he attempted to implement the directive. They explained that the last fire chief attempted to do the same thing by telling the firefighters they could not engage in political activity while on-duty. The firefighters’ union filed a lawsuit on the basis of the activity being protected under their First Amendment Rights. Because of the concerns from the battalion chiefs, Chief Willis told them not to implement the directive until he provided further guidance after he reconvened with City staff about the matter.

 The next day, in another meeting with the City department heads, Mr. Johnson, and the City Attorney, Chief Willis explained that he attempted to implement the directive but had concerns from his staff. Mr. Johnson and the City Attorney discussed the matter. The City Attorney could not decide whether the directive was part of the previous lawsuit or not. The conversation evolved into whether they were going to let any employees participate in political activity while on-duty, regardless of their department. Chief Willis took the position that he was not looking for a fight with his employees, however in his previous Department, they would have never allowed such activities while on-duty. As a concession, Chief Willis received approval to implement the directive at the Fire Department allowing the members to engage in political activity after hours or on the weekend, so as long as it did not affect their response time to calls.

 Chief Willis in turn shared the directive, as it was to be implemented, with the battalion chiefs. In addition, members were allowed to go to political candidates’ forums where most or all of the candidates would be speaking, however they could not go to a political function for individual candidates, so it did not seem like the members were campaigning while on-duty. He did not recall saying that they could only go to these activities at night or on the weekends, or tell them that they could not go during normal working hours.

A few weeks later, within a week of the election, Chief Willis arrived at work. He noted that the engine company assigned to Station 1 that happened to be the “*union*” crew, was doing their morning physical training session, as well as was Battalion Chief Robert Freedman (BC Freedman). Chief Willis’s assistant told him there was going to be a station tour of twenty mentally challenged children arriving in approximately 20 minutes, but nobody was in the station to conduct the tour. In response, Chief Willis sent a text message to Captain Thomas and BC Freedman confirming they knew about the tour, and asking who was going to handle it.

After approximately five minutes of not getting a response, Chief Willis sent an engineer that was on modified-duty doing administrative work to the gym to tell Captain Thomas and BC Freedman to read his text message and give him an answer. At this point, the tour was going to arrive in ten minutes, and Chief Willis was now on a conference call with all of the Los Angeles area fire chiefs regarding the Coronavirus. He indicated he was getting frustrated because he was having to do two things at once, one of which should have already been handled.

A few minutes later, Chief Willis received a text message from Captain Thomas stating the modified-duty engineer was going to handle the tour. Chief Willis found this discouraging because he felt there needed to be more employees for the tour given its size and the nature of those attending. He said his conference call lasted for approximately one hour, at which time he opened his office door and asked BC Freedman about the status of the tour. BC Freedman indicated the engineer was handling it. Chief Willis asked him why the engineer was handling the tour by himself rather than an entire engine company, and why the tour was not addressed in the morning briefing, as opposed to him having to make phone calls to ensure there was someone available to give the tour. BC Freedman acknowledged his mistake and apologized, stating he forgot to look at the calendar. BC Freedman indicated that the engine company could not do the tour because they had several other tasks that they were busy completing.

Chief Willis went back into his office, at which time he received a phone call from Mr. Johnson, asking if he knew there was an engine company at the Candidates’ Forum that was being held between 10 A.M. and 11 A.M. at the Old Timers Retirement Community. Chief Willis said he was not aware of that, and reflexively said that he would have them leave. Mr. Johnson replied, “*Okay, I appreciate that. I just wanted to make sure we were on the same page*.” Chief Willis said Mr. Johnson never specifically asked him to have the engine company leave the forum.

Chief Willis met BC Freedman as he came out of his room. Chief Willis asked, “*So tell me again how busy your guys are that they can't do a station tour, but, yet, we've got an engine company at a Candidates’ Forum right now? That's completely inappropriate, Bob. You need to go unplug them*.” BC Freedman said, “*Okay. I’ll do it right now*.” Chief Willis went back to his desk, and approximately ten minutes later, heard EC 411 arrive back at the station from the Candidates’ Forum. The crew was comprised of Captain Frank Rodgers (Captain Rodgers), Engineer Willis Kilman, and Firefighter Chris Epstein. Chief Willis described the crew as being obviously upset. Captain Rodgers, with whom Chief Willis has always had a good open relationship was so upset that “*he couldn’t see straight*.” Chief Willis described him as being flushed in the face, and said Captain Rodgers openly admitted that he was so mad he did not know if he could talk to Chief Willis.

Captain Rodgers asked Chief Willis why they had been told to leave the meeting and remarked that this was the same thing that resulted in a lawsuit. Chief Willis told Captain Rodgers that he did not mind if the members went to the candidates’ forums on the weekends or afterhours, but to do so on-duty during normal business hours was inappropriate. He shared with Captain Rodgers what was discussed at the staff meeting. Captain Rodgers commented that they do not have a scheduled workday because they work 24-hour shifts, and remarked that if Chief Willis was telling him that they have a set workday, then the members would not do anything after 5:00 P.M. Chief Willis said he was knowledgeable about the members’ previous political issues they had with City management, and indicated that was not his intent in this case. Chief Willis remarked that he knew the fire service did not have a traditional workday, but commented that in the public’s eyes, 10:00 A.M. on a Tuesday is the workday. Ultimately, Chief Willis and Captain Rodgers agreed to disagree on this matter, and the conversation ended after approximately 20-minutes. Captain Rodgers never indicated what his crew was specifically doing at the Candidates’ Forum, and he never claimed they were there on official Department business, such as engaging in any fire prevention type activities.

Approximately one hour later, Chief Willis heard Captain Thomas’s crew return to the station. He went out to meet them, and spoke to Frank Hernandez (FF/PM Hernandez). Chief Willis asked where Captain Thomas was. FF/PM Hernandez said the crew was cleaning up, and they would come to speak to him after they were done. Approximately twenty minutes later, the crew from Engine Company 761, which was comprised of Captain Thomas, Engineer Garcia, and FF/PM Hernandez, arrived at his office. Captain Thomas was obviously upset. He indicated he knew why Chief Willis wanted to speak to him, but said that he was refusing to speak to him, indicating he would provide a response in writing. Chief Willis told Captain Thomas he understood why he felt he needed to put something in writing, but said that it was not his style to be contentious, and that he would rather handle matters before they became a larger issue than was necessary.

Chief Willis proceeded to explain what led to the circumstances that morning, which was the same scenario he explained to Captain Rodgers. Captain Thomas responded by stating this was exactly the same thing that led to the previous lawsuit. Chief Willis and Captain Thomas agreed to disagree on the matter, but Chief Willis let the crew know what his expectations were, at which time the meeting ended and they left his office.

 A few days later, the firefighters’ union sent a letter to all City Council members, the Human Resources Manager, and Chief Willis, requesting that Mr. Johnson be placed on administrative leave pending a third-party investigation into the continued retaliation against the firefighters for engaging in political activity. The letter stated that Mr. Johnson contacted Chief Willis and told him the members were not allowed to be at the Candidates’ Forum at Old Timers Retirement Community and told Chief Willis to have them leave. Chief Willis contacted Captain Thomas and told him that he had seen the letter, and remarked the statements in the letter were not actually what happened. Chief Willis explained that he had made the decision to tell the members to leave the forum, not Mr. Johnson. Captain Thomas’s response was that it was just semantics, that Chief Willis knew what Mr. Johnson wanted, and Chief Willis was just following orders.

Chief Willis said he had one other subsequent meeting about the matter with Mr. Johnson, Mr. Johnson’s assistant, Dan Keesey (Mr. Keesey), and the two attorneys. They wanted to know firsthand what had happened. First Mr. Keesey asked to speak with Chief Willis without Mr. Johnson present, however Chief Willis requested that Mr. Johnson be present in order for him to clarify if he misunderstood any directions that were given to him. Chief Willis then recounted the aforementioned history of events, and Mr. Johnson confirmed the account was true and correct.

 In regard to the station tour, Chief Willis said that if he knew Captain Rodgers’s crew was at the Candidates’ Forum, he would have told them to handle the tour, given Captain Thomas’s crew was busy handling other legitimate responsibilities. He reiterated that he told Captain Rodgers’s crew to leave the Candidates’ Forum because he did not think it was appropriate that they were there during work hours, not because he needed them at the station for the tour, however. He said the issue he had with the station tour more had to do with BC Freedman failing to schedule another engine company to handle the tour. Chief Willis said he was not aware that BC Freedman even knew Captain Rodgers’s crew was at the Candidates’ Forum. To this day he does not know if Mr. Johnson knows about the station tour because that was never part of their conversation. Chief Willis explained that at the time, there were the only two engine companies and a rescue ambulance in operation in the City. The rescue ambulance was training with Captain Thomas’s crew at the time.

 Chief Willis explained that during the day at the fire station, the engine crews have several daily tasks they need to complete. At night there is a bit more latitude about how they use their time. The members work two days on duty then have four days off. The second day on duty is usually less task intensive since they have already been at work for 24 hours and have completed many of their tasks. He said there is nothing that states what specific working hours are for the members, such as getting two fifteen-minute breaks and an hour lunch, but it is generally understood that after 5 p.m., the members have personal time in which they are not responsible for the daily station tasks. He explained that the schedule has to be somewhat fluid because there is the possibility that a crew could be up all-night handling calls, necessitating them to sleep the next day during normal work hours.

 Chief Willis explained the previous lawsuit had to do with the firefighters’ union backing an existing City Council member, Tim Lawrence (Mr. Lawrence) for the mayoral position. The election was very contentious, and Mr. Lawrence lost by only seven votes, which caused the incumbent mayor to remain in his position. At the time, the firefighters’ union was told by the former fire chief that they should not be involved in politics. The firefighters’ union disagreed and engaged heavily in the political process. When Mr. Lawrence lost, they felt like the fire chief retaliated against them for their political involvement. They filed a lawsuit, which was ultimately settled out of court, and the firefighters’ union received $5.5 million. In 2020, again, the firefighters’ union supported Mr. Lawrence for mayor, and engaged in the political process. This time Mr. Lawrence won the election.

 Chief Willis remarked that he personally feels the firefighters’ union is emboldened because they won a large settlement in the previous lawsuit and because of the fact Mr. Lawrence won the election. Mr. Lawrence has said in public forums that if he was elected, he would fire Mr. Johnson. Chief Willis indicated the firefighters’ union has similar sentiments about Mr. Johnson. Chief Willis’s feeling is that this incident provided the firefighters’ union a reason to request that Mr. Johnson be investigated, which would in turn give newly elected Mayor Lawrence a reason to terminate his employment.

1. **Summary of Interview with Frank Rodgers**

 On April 21, 2020, this fact finder conducted an audio and video recorded video conference interview with Frank Rodgers (Captain Rodgers), a fire captain with the City of Dunsworth Fire Department. Captain Rodgers, though not the subject of this investigation, was provided his rights pursuant to the Firefighters Procedural Bill of Rights and was represented during this video conference by his attorney, Big Loser (Mr. Loser). Prior to the interview, Captain Rodgers was advised of the nature of the investigation, and afterwards was provided a copy of the recorded interview, which was later provided to his attorney, Mr. Loser.

 Captain Rodgers said that he recalled going to the "*Meet the Candidates*" community event at the Old Timers Senior Living Center in the City of Dunsworth. Captain Rodgers said that on that day, he was assigned as a captain to EC 411, and it was the second day of his rotation, meaning the second 24-hour shift in a 2-day working cycle. Captain Rodgers said that there had been postings concerning this community event where candidates for an upcoming election at the time were meeting with senior citizens at the Old Timers facility.

 Captain Rodgers said that in the morning during their briefing, he advised his Battalion Chief, Robert Freedman (BC Freedman), that he and his engine company would be attending the candidates’ forum at the Old Timers location later that morning. Captain Rodgers said that BC Freedman did not say anything in particular to his advisement of going to this event, which Captain Rodgers saw as BC Freedman's agreement with attending.

 Captain Rodgers said that after he and his crew had performed their normal duties that day, they drove in their fire truck to the Old Timers location and attended the meeting. Captain Rodgers said that the meeting began at 10:00 in the morning on February 27, and that he and his crew had arrived at approximately 10:30 a.m. Captain Rodgers said that after they arrived, they merely sat in the back of the room and listened to the various presentations by the various candidates. Captain Rodgers said that neither he nor his crew engaged in any sort of political activity or commentary, nor did they offer or advertise their support for any particular candidate. Captain Rodgers said that he saw this as merely a community event that they attended while monitoring their radio ready to respond to any calls for service. Captain Rodgers said that their attendance there did not affect their ability to respond to any sort of emergency calls. Captain Rodgers said that additionally, as they were there, they monitored the exit lanes, fire escapes, and crowd capacity relating to fire prevention activities.

 Captain Rodgers said that at approximately 11:00 a.m., he received a text message from BC Freedman indicating that the City Manager had spoken to Chief Willis, the fire chief, and that "*he*" wanted EC 411 to remove themselves from the location and go back to quarters. Captain Rodgers said that he was not certain who the "*he*" was that was referred to in this text message, whether it was Chief Willis or the City Manager, Mr. Bob Johnson.

 Captain Rodgers said that when he returned to the station, he had a brief conversation with Chief Willis concerning their attendance at the Meet the Candidates forum at Old Timers. Captain Rodgers said that Chief Willis was asking as to whether they had other official duties that they needed to attend to as opposed to attending this particular community event.

 Captain Rodgers said that a few days after the event and his initial conversation with Chief Willis, Chief Willis had come to the station to check on the crew, and a side conversation had occurred where Chief Willis was said to have remarked that the City Manager had called Chief Willis alerting him to the fact that the EC 411 was in attendance at the February 27, 2020 event and that after Chief Willis had directed BC Freedman to have EC 411 leave the event that the City Manager was said to have remarked to Chief Willis words to the effect of, "*Finally we're on the same page*." Captain Rodgers indicated that this conversation occurred at Station 2 and that Firefighter Chris Epstein was present during this discussion, which occurred in the captain's office.

 Captain Rodgers said that it's not unusual for firefighters such as himself to attend community events at any time during the workday. Captain Rodgers indicated that once their official duties are completed, at times they will attend various community functions such as park dedications, school visits, and other various community functions with an aim at showcasing the firefighters’ service in the City. Captain Rodgers pointed out that the event that they attended, albeit political in nature, was not a specific endorsement or fundraiser for a particular candidate, but more of a town hall-style meeting where candidates were answering questions. Captain Rodgers reiterated that neither he nor his crew engaged in any sort of discussions, comments, or other political activities while they attended this event for approximately 30 minutes prior to being directed to leave.

 Captain Rodgers said that there had been some history in the past of the current City Manager, Mr. Johnson, allegedly giving unlawful direction and/or restricting certain Fire Department personnel's ability to engage in their First Amendment rights. Captain Rodgers talked about an event where a park was dedicated to a real estate agent community activist by the name of Bob Thomas that he and his crew had wanted to attend. Captain Rodgers said that he was personal friends with Mr. Johnson who was not running for any political office but wanted to attend the park dedication as a community function, and to show support for this individual who had done quite a degree of work for the City. Captain Rodgers said that once they attended, he received a text message from his battalion chief at the time who apparently was acting at the direction of the City Manager, directing Captain Rodgers and his crew to leave that specific event. Captain Rodgers said that for some reason, the City and/or the fire chief at the time, felt that the event was somehow political, and it was inappropriate for the Fire Department members to participate in the event while on duty and in uniform.

1. **Summary of Interview with Robert Freedman**

 On April 22, 2020, this fact finder conducted an audio/video recorded interview of Robert Freedman (BC Freedman) via Zoom video conferencing software due to the COVID-19 social distancing and non-essential work-related restrictions. BC Freedman was a possible witness to a complaint that Fire Captain/Firefighters’ Union President George Thomas (Captain Thomas) filed against Dunsworth City Manager, Bob Johnson (Mr. Johnson). Also present for the interview was BC Freedman’s representative, Daniel Garcia, who is one of his coworkers at Dunsworth Fire Department.

 BC Freedman explained he has worked for the Dunsworth Fire Department for twenty-five years, and is currently a battalion chief. During the morning hours of February 27, 2020, he received a text message from Frank Rodgers (Captain Rodgers), who is the fire captain on EC 411, that stated, “*Hey, we’re going to go to Old Timers at 10 for the Candidates’ Forum*,” referring to a political town hall meeting at the Old Timers Retirement Center in the City of Dunsworth. BC Freedman did not immediately respond to the text message because he was at the gym, and did not have an issue with the crew going to the forum. He explained the crew had their radios and were in an area in the center of town where they could easily respond to calls.

 BC Freedman said, at the time, there was no written directive or policy from Fire Chief Tony Willis (Chief Willis) regarding Department members attending candidates’ forums or other political activity. Historically, the Dunsworth Fire Department has allowed its members to attend various political forums in a non-participant manner for as long as BC Freedman has been employed at the Department. There was no prohibition against going to any of these types of events, and this was common knowledge and practice among the members. He explained however that Chief Willis came from Orange County Fire Authority, where the members are typically required to limit their political activity to off-duty hours. He could not recall if Chief Willis had made any mention about members attending political activities while on-duty during a previous captains’ meeting, however BC Freedman indicated that this incident that is under investigation prompted a clear policy directive to be formed surrounding attendance at political events.

 After BC Freedman left the gym and showered, he found Chief Willis waiting for him outside of his dorm. Chief Willis asked where EC 411 was, and BC Freedman replied that they were at the Old Timers Retirement Center. Chief Willis said he did not want the engine company participating in political activities during work hours, meaning 9 A.M. to 5 P.M. BC Freedman did not know if Chief Willis made the decision to have EC 411 leave the meeting, or if it was the decision of City Manager Johnson, and Chief Willis did not disclose any of the content of his preceding conversation with Mr. Johnson.

As a result, BC Freedman sent Captain Rodgers a text message that stated, “*Fire Chief received a call from the CM about the forum. His concern is that this event is during work hours versus after hours. Let's limit our activities to afterhours events and try to limit our involvement in political activities during the workday*.” Captain Rodgers replied, “*Copy. We will leave in a minute*,” and in another text message, stated, “*We left. Give me a call*.”[[9]](#footnote-9) BC Freedman and Captain Rodgers had a subsequent conversation, at which time, BC Freedman summarized the conversation he had with Chief Willis, telling him to have Department members limit their political activity during the normal workday, until after 5 P.M.

 BC Freedman explained the firefighters work a 24-hour shift, however historically after hours is considered the members’ own time, and they are free to engage in personal activities, such as taking online courses, as long as it does not affect response time to calls. He said there has been a significant amount of variability having to do with what activities are allowed after hours. He usually leaves the decision up to the company officer, who he explained has been entrusted with a position of leadership to do what is appropriate and to be a good steward of the City’s time. He remarked that typically most of his leaders follow through with what he expects, and he has never had an instance of someone going out of their way to do something inappropriate during afterhours time.

 BC Freedman remarked that EC 411 did not have any tasks or things that needed to be attended to during the time they were at the candidates’ forum. He explained however, the caveat to that statement was that he personally had made the assumption that George Thomas’s (Captain Thomas) engine company at Station 1 would be able to facilitate a station tour, however they became involved in a collateral duty, responded to a couple of calls, and were not actually able to facilitate the tour. The fact that an engine company was not available for the tour made Chief Willis unhappy. BC Freedman said it was ultimately his responsibility as the shift commander to ensure that the tour was facilitated. He was able to have an employee who was on light-duty conduct the tour, which he felt was an appropriate use of resources.

1. **Summary of Interview with Chris Epstein**

 On April 27, 2020, this fact finder conducted a video conference, recorded interview of Chris Epstein (FF/PM Epstein) of the Dunsworth Fire Department. FF/PM Epstein was called as a potential witness in this matter. FF/PM Epstein has worked for the City of Dunsworth Fire Department for approximately 3 years. FF/PM Epstein was represented by Phil Smith (Mr. Smith) during this interview.

 FF/PM Epstein recalled that on March 3, 2020, Captain Willis came to Station 2, where a conversation ensued in the captain's office. FF/PM Epstein said that Captain Rodgers was present, along with Fire Chief Tony Willis (Chief Willis). One of the topics of discussion was an issue that had occurred on February 27, 2020, where EC 411 had been directed by Chief Willis to leave an event which was a candidates’ forum at a local retirement community. During the conversation, FF/PM Epstein recalled that Chief Willis reported that he had been called by the City Manager, Mr. Bob Johnson, who inquired as to whether Chief Willis was aware that firefighters were at the aforementioned community event on February 27, 2020. FF/PM Epstein recalled that Chief Willis claimed that he told Mr. Johnson at that time, during that call, that he felt that the presence of EC 411 at this candidates’ forum in the middle of the day was "*bullshit*" and that he would "*unplug them*".

 FF/PM Epstein recalled Chief Willis additionally remarking that Mr. Johnson responded, stating words to the effect, "*Good, I’m glad we're on the same page*." FF/PM Epstein said that he concluded, based on the conversation, that Mr. Johnson was glad that Chief Willis had decided to order EC 411 to leave the candidates’ forum and that the reference to being on the "*same page*" related to the concurrence of Chief Willis and Mr. Johnson concerning removing the firefighters from the event that day.

1. **Summary of Interview with Bob Johnson**

 On April 21, 2020, this fact finder conducted an audio and video recorded video conference interview with Bob Johnson (Mr. Johnson), the current City Manager at the City of Dunsworth. Mr. Johnson was the subject of this investigation. Prior to the interview, this fact finder explained the nature of the investigation to Mr. Johnson.

 Mr. Johnson said that there had been a general agreement going into the 2020 election cycle at the City of Dunsworth concerning allowing members of the Dunsworth Fire Department to attend Candidates’ Forums that are generally held in the City. Mr. Johnson indicated that his understanding in discussing this matter with Fire Chief Tony Willis (Chief Willis) was that members of the Fire Department would be allowed to attend these candidate meetings in the evening hours after their normal workday.

 Mr. Johnson said that Chief Willis had noted that after the normal day's activities are resolved, firefighters typically spend their evening hours after dinner engaged in various personal activities such as watching television, taking an online educational course, or similar non-fire related activities. Mr. Johnson said that Chief Willis indicated that it would seem acceptable for fire employees to attend community forum meetings during those times. Mr. Johnson said that he believed that that was the operational directive that had been given by Chief Willis to his staff.

 Mr. Johnson said that at approximately 10:45 in the morning on February 27, 2020, he received a text message from a community member inquiring as to why members of the Fire Department were in attendance at a candidates’ forum at the Old Timers Retirement Community.[[10]](#footnote-10) Mr. Johnson said the community member did not identify any of the particular individuals who were in attendance, but noted further in a second text message that individuals in attendance at the event seemed somewhat uncomfortable with the fact that Fire Department employees were in attendance at this community forum and were in uniform and on duty.

 Mr. Johnson thought that the information from the text message was rather odd and was uncertain as to whether there was some particular reason or purpose for the firefighters being at the location, although he suspected that they were attending this candidates’ forum as they had attended other candidates’ forums, albeit during the evening hours. Mr. Johnson said that he telephoned Chief Willis who was stationed at that time at Station 1 and asked him if he was aware that there were on-duty members of the Fire Department in attendance at a candidates’ forum being held at the Old Timers Senior Center.

 Mr. Johnson also inquired as to whether there was some operational reason for them being there. Mr. Johnson said that Chief Willis responded to him that he was unaware that on-duty members of the Fire Department were present at that Candidates’ Forum and that he did indeed have other things for them to attend to, and was going to have them leave that location. Mr. Johnson responded back to Chief Willis indicating that he was pleased that the two were in agreement concerning the parameters by which the firefighters were allowed to attend on-duty candidates’ forums, being during evening hours only. Mr. Johnson said that he was not referring to Chief Willis's decision to remove the firefighters from that particular candidates’ forum that morning. Mr. Johnson said that he did not direct Chief Willis to do so and that Chief Willis did so on his own volition.

## **EXHIBITS**

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| **Exhibit** | **Number** |
| Report of Findings | 1 |
| Transcript of Interview with George Thomas | 2 |
| Transcript of Interview with Tony Willis | 3 |
| Transcript of Interview with Frank Rodgers | 4 |
| Transcript of Interview with Robert Freedman | 5 |
| Transcript of Interview with Chris Epstein | 6 |
| Transcript of Interview with Bob Johnson | 7 |
| E-mail Complaint from Captain Thomas – March 22, 2020 | 8 |
| Documents provided by Captain Thomas | 9 |
| Test Message sent to Mr. Johnson on February 27, 2020, at 10:45 a.m. | 10 |
| E-mail from BC Freedman with e-mail from Chief Willis | 11 |
| E-mail from Chief Willis regarding Campaign Policy – January 16, 2020 | 12 |
| Rules | 13 |
| Notices | 14 |
| Audio and Video Files of Interviews | 15 |

1. See Captain Thomas’s email complaint dated March 2, 2020, as attached. [↑](#footnote-ref-1)
2. See the attached text message, as provided by Mr. Johnson. [↑](#footnote-ref-2)
3. See *California Civil Jury Instruction* Section 5003. [↑](#footnote-ref-3)
4. Engineer Kilman, at the time of this investigation was off duty on extended sick leave. [↑](#footnote-ref-4)
5. See the attached screen capture of this text message, as provided by Mr. Johnson. [↑](#footnote-ref-5)
6. See the attached email from Chief Willis regarding the “*Campaign Policy*” dated January 16, 2020. [↑](#footnote-ref-6)
7. See the attached copy of The City of Dunsworth Personnel Rules and Regulations. [↑](#footnote-ref-7)
8. See the attached copy of the City of Dunsworth Administrative Regulation, Section 301. [↑](#footnote-ref-8)
9. BC Freedman read the text messages to this fact finder, verbatim. [↑](#footnote-ref-9)
10. See the attached copy of the text message received by Mr. Johnson on February 27, 2020, at 10:45 a.m. [↑](#footnote-ref-10)