



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NO. 88-22

Acceptance of Arbitration Cases by a Member
of the Employees' Review Board

Mr. Howard R. Sacks, a member of the Employees' Review Board (ERB), has asked the Ethics Commission for advice regarding the following situation.

Established by Section 5-201, General Statutes, the ERB is a seven member citizen board appointed by the Governor. As a member of the ERB, Mr. Sacks hears and decides appeals of high-level managerial State employees (ineligible for collective bargaining) from adverse personnel actions, such as suspensions or dismissals. Id. In cases before panels of the ERB the appellant is usually represented by an attorney with whom Mr. Sacks has no economic relationships. However, Mr. Sacks does have such relationships with the Office of Labor Relations, which represents the State in ERB cases.

Specifically, the Office of Labor Relations frequently selects Mr. Sacks as the arbitrator in labor disputes in which the State is the employer-party and a State employee union is the union-party. While the union-party must consent to the selection of an arbitrator, the Office of Labor Relations is, without doubt, in a position to influence the granting or denial of arbitration appointments, and the fees which result from such cases, to Mr. Sacks.

Mr. Sacks believes that if he decides an ERB case in favor of the State, a losing party might claim favoritism arising from a desire to cultivate and maintain good relations with the Office of Labor Relations. He has asked for the Commission's guidance in this matter. In the interim, Mr. Sacks and his colleagues on the ERB have agreed that when Mr. Sacks is designated to hear a case he will disclose to the appellant State employee the facts regarding his relationship with the Office of Labor Relations. The ERB then will afford the employee an opportunity to request that the Board substitute another member to serve in Mr. Sacks' place.

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By virtue of the manner of their appointment and the powers that they exercise, members of the ERB are public officials as that term is defined in subsection 1-72(a), General Statutes. As a result, they are subject to the requirements of the Code of Ethics for Public Officials, Chapter 10, Part I, id.

Under the Code one may not accept other employment which will impair independence of judgment as to official duties. Subsection 1-84(b), id. Given the circumstances under review, it would only be natural for unsuccessful employee-appellants to claim that Mr. Sacks had accepted other employment, as a State designated labor arbitrator, which impaired his independence of judgment as to his official duties as an ERB member. Mr. Sacks and the other members of the ERB have shown admirable sensitivity to this potential conflict by establishing disclosure and recusal requirements. Adherence to these procedures should insure compliance with the provisions of the Code. If, however, Mr. Sacks finds that he is so frequently disqualified from service on the Board as to render him unable to properly execute the duties of his office, he should resign.

By Order of the Commission,



William A. Elrick
Chairperson

Dated DEC. 13, 1988