

Memo

To: Commissioners

From: Wayne Barnett

Date: January 7, 2009

Re: Union contracts

History

In November 1995, an Examiner with the Public Employment Relations Commission issues a decision holding that “[b]y unilaterally establishing and implementing a process through the Seattle Ethics and Elections Commission that imposes, or has the potential to impose, discipline on bargaining unit members outside of the disciplinary and grievance procedures negotiated by the parties, the City of Seattle has interfered with, restrained, and coerced public employees in the exercise of their rights guaranteed by the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, and has committed, and is committing, unfair labor practices....”

The City appealed the decision, and in March 1997 the City and Local 17 entered into a settlement resolving the dispute. Under the settlement, the following clause was included in the City's collective bargaining agreement with Local 17:

Nothing contained within this Agreement shall prohibit the Seattle Ethics and Elections Commission from administering the Code of Ethics including but not limited to the authority to impose monetary fines for violations of the Code of Ethics. Such fines are not discipline under this Agreement and as such are not subject to the Grievance procedure contained within this Agreement.

Records of any fines imposed or any settlements shall not be included in the employee's personnel file. Fines imposed by the Commission shall be subject to appeal on the record to the Seattle Municipal Court. In the event the employer acts on a recommendation by the Commission to discipline an employee, the employee's contractual rights to contest such discipline shall apply. No record of the disciplinary recommendations by the Commission shall be placed in the employee's personnel file unless such discipline is upheld or unchallenged. Commission hearings are to be closed if requested by the employee who is the subject of such hearing.

Paragraph 7 of the settlement provided that “[f]or consistent and uniform application of the Code of Ethics, Local 17 will strongly recommend to those unions participating in the Coalition of City Unions that they approve similar changes to reflect the terms of this Settlement Agreement in an interim memorandum of understanding.” Councilmember Burgess, who was the Commission's chair

in 1997, recalls that the plan was for the City to bargain for the inclusion of this clause in future collective bargaining agreements negotiated by the City.

Issue

It is my understanding that at least three of the City's larger unions – the police officers' guild; Local 27, which represents most firefighters; and Local 77, which represents many City Light employees – do not have collective bargaining agreements that include the clause providing that Commission fines are not discipline. (I do not know whether the City was unsuccessful in negotiating for the inclusion of this clause, or whether the issue was not raised by the City in negotiations.) Accordingly, an effort to impose a fine on a member of these unions, and possibly others, would run the risk of triggering an unfair labor practice complaint. Some commissioners may recall discussing this issue in the summer of 2007, when approximately a dozen employees failed to file Financial Interest Statements.

Recommendation

I recommend that the Commission urge the Mayor to put this issue on the table when contracts come up for renegotiation that do not include the clause providing that Commission fines are not discipline. While the Code by its terms applies to all City officers and employees, the reality is that many employees may be beyond the reach of the Commission. The lack of a level playing field is troubling, and the fact is that we cannot truly say that violations of the Code are subject to penalties of up to \$5,000. For some employees, that may simply not be the case.

The public is disserved by a Code that provides harsh penalties that are, to some extent, illusory for Ethics Code violations.