

March 21, 2011

Re: 11-WBI-0118-1

Dear *****:

Thank you for contacting the Seattle Ethics and Elections Commission (SEEC) with your concerns relating to Seattle Department of Parks and Recreation (Parks) employees Fred Schauer and Rodney Nealer. Based on the SEEC staff investigation, it is my conclusion that there is reasonable cause to believe that both Mr. Schauer and Mr. Nealer violated SMC 4.16.070(1)(a) when they participated in a Parks hiring process that included members of their immediate families.

Although I believe there is reasonable cause to believe that both employees violated the Ethics Code, I will be asking the SEEC to administratively dismiss this matter, believing that no public interest would be served in this particular case by pursuing charges against either Mr. Nealer or Mr. Schauer.

FACTS

1. Background

In October 2010, Parks advertised eight Maintenance Laborer positions. The goal was to begin interviews immediately following the City Council's adoption of the 2011 budget so that offers to successful applicants could be made by the start of December, 2010. The 2011 budget eliminated 112 positions in Parks at the end of 2010, and managers wanted to expedite the hiring process so that Parks employees receiving layoff notices would know if they would be able to continue employment with Parks in a new position.

The Maintenance Laborer selection process was designed to combine a skills demonstration with an interview. The skills demonstration took place at five different stations, which tested applicants on: (1) tool identification, (2) plant identification, (3) wheelbarrow usage, (4) proper use of a riding mower, and (5) use of hand-held power equipment with the ability to instruct others on its safe use. Each station had two interviewers/raters and each applicant was required to complete each station. The skills demonstration counted for 70 percent of an applicant's final score, and interview responses counted for the remaining 30 percent.

Approximately 70 Parks employees submitted applications for the eight positions. The skills demonstrations and interviews were conducted between Tuesday, November 16, and Friday, November 19. As required, each station had the same team of interviewers throughout the four-day process.

2. *Rodney Nealer*

Rodney Nealer is a Senior Lead in Ground Maintenance in Parks. He agreed to assist Parks by interviewing applicants for the Maintenance Laborer position. Mr. Nealer told SEEC staff that upon learning that his wife would be interviewed – a fact that he learned the week before interviews were to begin – he raised the issue with Belinda Gigliotti, the staff analyst who was coordinating the hiring process. He told SEEC staff that he told Ms. Gigliotti that he believed he should be removed from the process to avoid a conflict of interest.

Ms. Gigliotti confirmed that Mr. Nealer told her that his wife was slated to be interviewed. Ms. Gigliotti informed Mike Linn of Parks's human resources division that the spouse of one of the scheduled interviewers was an applicant.

Mr. Linn told us that he learned of the relationship on the Friday before the interviews were to start. He made the decision to keep Mr. Nealer involved in the hiring process, but to move him from the interview station to the wheelbarrow station. He told SEEC staff that the wheelbarrow station involved evaluating candidate's performance of loading and moving a wheelbarrow load of sand. He thought that station would present few opportunities for a rater to act in a manner that would create the appearance of a conflict of interest.

Mr. Nealer rated his wife's performance at the wheelbarrow station. His wife did not receive an offer.

3. *Fred Schauer*

Fred Schauer, a senior lead and supervisor in Parks Grounds Maintenance, also participated as an interviewer in the hiring process. Mr. Schauer interviewed candidates with another employee at the hand-held equipment station. Mr. Schauer's step-son, William (Billy) Harman, was rated by his stepfather, and was ultimately offered one of the eight maintenance laborer openings.

Mr. Schauer told SEEC staff that he had checked in the past, and had been informed that the Ethics Code did not bar him from participating in matters involving his stepson, because he did not live with him. Schauer believed that Gigliotti knew Harman was his stepson before the interviews, and management did not advise him to remove himself. Gigliotti confirmed to SEEC staff that she was aware of the relationship between Harman and Schauer.

When Parks received complaints about Harman's receipt of an offer, Mary Beth Josef of Parks human resources division reviewed the interview process and determined that there was no evidence that Schauer had inflated Harman's score.

DISCUSSION

There is reasonable cause to believe that both Mr. Nealer and Mr. Schauer violated the Ethics Code when they participated in the hiring process in which their immediate family members had a financial interest. Nealer's disclosure to Gigliotti, and Gigliotti's knowledge that Harman was Schauer's stepson, does not excuse either of the alleged violations.

For interrelated though slightly different reasons, however, I will recommend to the Commission that they direct me to administratively dismiss this case as provided for in Administrative Rule 3.G.1.

1. Rodney Nealer

Mr. Nealer disclosed the relationship to Gigliotti, who took appropriate action when she elevated this issue to Mr. Linn. It was Mr. Linn who made the decision to keep Mr. Nealer involved in the hiring process, and it is that judgment with which I find the most fault.

In light of the time pressures with which Mr. Linn was dealing, and my confidence that in the future he will not make the same decision if this situation presents itself, I do not think it serves the public interest to pursue this matter further.

2. Fred Schauer

The definition of immediate family was amended approximately 15 months before Mr. Schauer participated in the hiring process. While ignorance of the law is never an excuse, Mr. Schauer familiarized himself with the law in the past, and had no reason to believe that what he'd learned prior to the changes was now unreliable. I do not see any public interest in penalizing Mr. Schauer for his lack of familiarity with the new Code.

3. Other mitigating factors

Parks human resources division is working with SEEC staff on revisions to a disclosure form that every Parks employee who participates in a hiring process is required to sign. The form will inform Parks employees of their obligations under the Ethics Code, specifically not participating in matters involving "immediate family."

SEEC staff is also planning to distribute the brochure describing the new Ethics Code to all City employees this spring.

CONCLUSION

You are entitled to attend the Commission hearing at which I will ask the Commission to approve this request for an administrative dismissal. If you wish to address the Commission, you may request that the Chair permit you to do so. I plan to make the request on March 2, 2011, during the Commission's regular monthly meeting. This meeting will be held in Room 4080 of the Seattle Municipal Tower, beginning at 4:00 p.m.

Very truly yours,

Wayne Barnett
Executive Director

cc. Superintendent Christopher Williams
Rodney Nealer
Fred Schauer