

**Anne Arundel County Ethics Commission
Advisory Opinion AO-97-36**

Issues:

1. Whether the classified employee-member of the Personnel Board may participate in a grievance before the Board where the decision of the Board may have a financial impact on all members of collective bargaining units, including the employee-member of the Board?
2. Whether, and in what circumstances may the classified employee-member of the Personnel Board participate in matters before the Board in which he may have an interest?

Background

The Anne Arundel County Personnel Board was created by the county Charter, which provides at §520, that one member " . . . shall always be a member of the classified service" and shall be elected by other members of the classified service. All the members' terms are coterminous with that of the County Executive, and they may be removed for cause by the County Executive with the affirmative vote of the County Council.

The Board has the power and duty to:

1. to adopt rules of practice and procedure which shall have the force of law to the extent consistent with the terms of this Charter.
2. to hear and decide appeals from and actions pertaining to the allocation or reallocation of positions, appeals from any disciplinary action suspending, reducing in rank or pay, or removing any officer or employee in the classified service , and any other action designated by law or collective bargaining agreement to be subject to grievance procedures.
3. To hear and decide finally for the County appeals from any action pertaining to the methods of examination, certification, or preparation of eligibility lists for appointment or promotion.
4. To advise and consult, as appropriate, with County officials on matters concerning the administration of the County classified service and to report to the County Executive and County Council upon the operation of the merit system.
5. To review and comment on any proposed personnel rule or regulation pertaining to methods of holding competitive examinations, the general character of examinations for original appointment and promotion, transfers of employees with in the classified service, and the procedures for determining the eligibility of applicants to participate in examinations prior to adoption. Charter, § 521.

The current employee-member of the Personnel Board is employed with the fire department and is a member of the collective bargaining unit that represents employees in the fire department. He says that a grievance may soon be brought before the Personnel Board involving a dispute between the county and another bargaining unit, AFSCME local 582. He believes that a decision in favor of that union may result in a monetary award to some or all of the employees who are members of that union. He believes that other unions would eventually

be similarly affected by a decision in favor of AFSCME local 582, and that as a result, he may be awarded monetary damages at some time. He says that he does not know the particulars of the allegations involved in this matter, and that he believes that he could make an unbiased decision, based on the facts to be presented before the Board.

The employee-member of the Board also advised that other issues that come before the Personnel Board may affect him personally and asks what his ethical obligations are with respect to participating in those types of issues generally.

Discussion

It is apparent from the outset, that the Charter Board believed that an employee-member of the Personnel Board would bring a distinct and needed perspective to the matters brought before it. Those matters include several areas that have an impact on all classified employees, including the employee-member of the Board.

For example, the Board is empowered to advise and consult with County officials on "matters concerning the administration of the County classified service." The Board reports to the County Executive and Council on the "operation of the merit system." The Board reviews and comments on all rules, regulations and procedures concerning the examination process, appointments, promotions, and transfers of classified employees. The Board hears and decides appeals pertaining to the methods of appointment and decisions. In both its advisory and quasi-judicial roles, the employee-member of the Board is participating in matters that affect him in a general way, along with other county classified employees.

On the other hand, the Public Ethics Law at §3-101(a)(1) provides that an employee may not participate in any matter, (except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter), if the employee has an "interest" in the matter. Participation in a grievance brought before the Board would clearly be participation in a "matter". The deliberations of the Board and the decision rendered by it would be discretionary in nature and not merely administrative or ministerial in nature. Therefore, if the employee has an "interest" in the grievance, he would be prohibited from participating.

The issue then, turns on the meaning of "interest" in the matter. Interest is defined in the ethics law, §1-101(n)(1) as, ". . . any legal or equitable economic interest . . ." ¹

The possibility that a decision in a grievance before the Personnel Board could lead to a monetary award for the employee-member would create an "equitable economic interest" in the matter as far as the employee-member is concerned. This type of interest would be shared with other represented employees but not with classified employees as a whole group.

¹There are exceptions, not pertinent here, to the definition of "interest" in §1-101(n)(2).

The Maryland State Ethics Commission considered a similar issue in Opinion 90-8, Title 19A COMAR. In that opinion, the Commission considered the non-participation provision in the context of the Maryland Racing Commission. Some of the appointees to the Commission were required by law to be knowledgeable in racing matters, and were permitted to have monetary or pecuniary interests in the horse racing industry. The Commission found that the Racing Commissioners were bound by the non-participation provision of the state ethics law and concluded that,

The [Racing] Commission takes many actions, which, though they reflect general policy, are also very discrete determinations that tend to impact on a clearly definable class of individuals or entities. Where such an action deals with a particular subgroup in the racing industry and would have a *clear and particular fiscal impact on a group that involves a Commissioner*, then disqualification may be required, under §3-101. On the other hand, more broadly directed policy decisions or determinations not impacting directly on subgroups involving these particular commissioners might include policies such as helmet safety, program prices, and racing days, dates and transfers. These types of *general issues would usually not require disqualification unless the result had some clear and substantial impact on the Commissioners' subgroup*. 90-8, at 1475-76. (*Emphasis added*).

The reasoning in this conclusion is sound because it differentiates between an interest of a subgroup that includes the employee-member of the Personnel Board, and an interest that includes all classified employees. The latter type of interest would be the type of interest that the Charter Board intended to have represented by an employee-member of the Personnel Board. When the employee-member is considering an issue that will affect all classified employees, he is presumed to share and therefore represent the interest of all classified employees. When he is considering an issue that will affect only himself, or a subgroup of classified employees only, his own interests may conflict with the interests of the larger group of employees.

Conclusion

The Ethics Commission concludes that the employee-member of the Personnel Board may not participate in the hearing, deliberations, or decision of the specific grievance involving AFSCME, local 562, because the decision rendered by the Board may affect the interests of that member and the particular subgroup to which he belongs. He may participate in matters in which a decision rendered by the Board would affect his interests along with the interests of all county classified employees.

April 1, 1997

Anne Arundel County Ethics Commission
William J. Howard, Chairperson