

September 29, 2009

By Interoffice Mail

Re: Case No. 09-1-0819-1

Dear *****:

On August 19, 2009, you filed an ethics complaint with our office against Seattle City Light's Human Resources Officer, DaVonna Johnson, and "likely other as-yet unnamed parties," alleging "falsification of documents and...abuse of process." Briefly, you alleged (i) that City Light increased the threshold for recognizing an employee association from five to 25 employees after you had submitted the names of six employees interested in forming an employee association, in an effort to preclude you from organizing such an employee association, and (ii) that City Light asked the SEEC to investigate your use of City time and resources for the purpose of harassing and intimidating you. (I declined to open a full investigation in an August 4 e-mail to City Light.)

Under SMC 4.16.090.C, my first task is to "review the complaint to determine whether a complaint, on its face, alleges facts that, if true, would constitute a violation of" the Ethics Code. It is my determination that even if the facts as you allege them to be are true, they do not constitute violations of the Ethics Code.

Falsification of documents

Generally speaking, the Ethics Code bars City employees from acting when they have a conflict of interest, and misusing their position or City resources for their personal benefit or the benefit of others. The Code does not deal with every action that a person might describe as "unethical." Even if it was true that a document had been falsified to the detriment of your ability to establish an affinity group, that would not violate the Ethics Code.

Abuse of process

The SEEC encourages departments to refer questions regarding the appropriate use of City resources to us. We are an independent agency established for the purpose of investigating issues such as the misuse of City property.

There is no provision of the Ethics Code that would make a referral to the SEEC actionable as an Ethics Code violation. Doing so could only chill the willingness of departments to refer questions to us, a perverse result in my estimation, since it would leave departments to

resolve these issues on their own without the benefit of the Commission's expertise. In your case, you had several Excel spreadsheets on your computer labeled "personal." While in the end I determined that those files – all of which were empty – were permissible under the *de minimis* exemption given your 30-year career with the City, City Light's referral to us was not without a basis.

Conclusion

If you would like to appeal this dismissal to the full SEEC, you may do so under Administrative Rule 4.¹

Thank you for your letter.

Very truly yours,

Wayne Barnett
Executive Director

cc: Seattle Ethics and Elections Commission (*name and address of complainant redacted*)
DaVonna Johnson, Seattle City Light (*name and address of complainant redacted*)

¹ Rule 4 APPEALS

A. Upon the written request of a party aggrieved by the Executive Director's decision to dismiss a complaint, or to impose late-filing penalties under SMC 2.04.330, the action may be reviewed by the Commission.

B. An appeal of a dismissal shall be served at the Commission's office no later than 21 days after the date of mailing the decision of which review is sought.

C. An appeal of late-filing penalties shall be served at the Commission's office no later than 14 days after the date of mailing the decision of which review is sought.

D. A request for review shall state the grounds therefor, and shall be no longer than twelve 8-1/2" x 11" double-spaced pages in length with margins of at least 1" on every side, and no more than 12 characters per inch.

E. When an appeal is filed, the Executive Director's decision shall not be final until the Commission has acted on the appeal.

F. The Commission shall act on the request at the next meeting at which it may be practicable by:

1. deciding whether to review the Executive Director's decision; and
2. if it decides to do so, either affirming, reversing, or amending the decision.

G. In reviewing the Executive Director's decision, the Commission shall base its review on whether the Executive Director had a rational basis for the decision, and shall only reverse or amend a decision to the extent that a rational basis is lacking.