STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE PROSECUTING ATTORNEYS' ASSOCIATION, Complainant,	)	CASE 13184-U-97-3206
	)	DECISION 6030-A - PECB
	)	CASE 13185-U-97-3207
vs.	)	DECISION 6031-A - PECB
CITY OF SEATTLE, Respondent.	)	DECISION ON MOTION CONCERNING CONFLICT OF INTEREST

Cline & Emmal, by James M. Cline, appeared on behalf of the union.

Mark H. Sidran, City Attorney, by Leigh Ann Collings Tift, Assistant City Attorney, appeared on behalf of the employer.

On May 28, 1997, the Seattle Prosecuting Attorneys' Association (union) filed two unfair labor practice complaints against the City of Seattle (employer).[1] The cases were considered together, for the purpose of administrative efficiency, in a deficiency notice issued under WAC 391-45-110 on June 24, 1997.[2] The complaint in Case 13184-U-97-304 was found to state a cause of action with respect to an allegation of direct communication by the employer with bargaining unit members during the pendency of collective

[1] Case 13184-U-97-3206 and Case 13185-U-97-3207.

[2] At that stage of the proceedings, all of the facts alleged in the complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

bargaining negotiations. The allegations in Case 13185-U-97-3207 were divided into two groups:

1. A cause of action was found to exist with respect to an allegation that the employer had insisted to impasse on waivers of the union's bargaining rights on a variety of mandatory subjects of bargaining, and on allegations that the totality of the employer's conduct in bargaining demonstrated a lack of good faith; and

2. An allegation that the employer refused to bargain by rejecting a just cause proposal on "an erroneous discredited legal theory" was found insufficient to state a cause of action.

The union was given a period of 14 days in which to file and serve an amended complaint.

The union did not amend its complaint, and the charge concerning the "erroneous discredited legal theory" was dismissed on August 29, 1997.[3] All of the other allegations in the above-captioned case were forwarded to the undersigned Examiner for further proceedings under Chapter 391.45 WAC.

A hearing was opened on October 20, 1997. The union rested its case-in-chief on the second day of hearing, October 22, 1997, and the employer called City Attorney Mark Sidran as its second witness. The union objected to the use of Sidran as a witness, on grounds that an attorney calling an attorney from the same law firm as a witness constitutes a conflict of interest and a violation of the Rules of Professional Conduct of the Washington State Bar Association. The Examiner took the motion under advisement, set a time for the parties to file briefs, and adjourned the hearing.

---

[3] City of Seattle, Decision 6031 (PECB, 1997).

POSITIONS OF THE PARTIES

The union argues that the city attorney (and, by extension, any assistant city attorney) has a dual conflict of interest when calling attorneys from the same office to the witness stand. In the first instance, the union alleges there is a conflict between the role of the city attorney as legal advisor to the mayor and city council. In the second instance, the union asserts that the city attorney's office is defending misconduct alleged to have been committed by another member of the same "firm". The union contends that, except for some narrow exceptions, the Section 3.7 of the Rules of Professional Conduct prevent an attorney from acting as an advocate at a trial in which another attorney of the same firm will be called to testify.

The employer argues that there is no conflict of interest between the city attorney and the employer's other elected officials. It supplied declarations from employer's deputy mayor and from the president of the Seattle City Council, each expressly denying any conflict of interest. The employer further asserts that neither the Washington courts nor the Washington State Bar Association have interpreted RPC 3.7 in a manner which would prevent Assistant City Attorney Tift from calling City Attorney Sidran or any other attorney employed by that office as a witness.

DISCUSSION

Conflict between City Attorney and Elected Officials

In arguing that a conflict of interest exists, the union is assuming that the city attorney has what it terms his "own

interests" in this matter, because he is personally accused of misconduct. There is, however, nothing truly "personal" about the union's accusations in this case. The conduct called into question was clearly done in Sidran's role as city attorney, and as the supervisor of the employees in his office. The union has provided no evidence of a personal vendetta or inappropriate personal involvement on the part of Sidran outside of the employment relationship. Although Sidran may disagree with the union on an issue that may be of great importance to union members (i.e., a just cause standard for employment security), to label that as a "personal" or "political" stance is conjecture not supported by any evidence.

The mere fact that Sidran has dual responsibilities, as supervisor of assistant city attorneys and as legal advisor to the mayor and city council, does not automatically raise a conflict of interest. If an actual conflict should arise, it would be the responsibility of the principals involved (i.e., the mayor, the city council, and the city attorney himself) to raise and resolve the matter, not for action by the union or the Public Employment Relations Commission. From the perspective of the Examiner, the multiple roles of the city attorney are clear, and would necessarily be considered when evaluating his testimony.

Rules of Professional Conduct

The starting point for analysis of this union argument is the section of the Rules of Professional Conduct cited by the union:

> RPC 3.7 LAWYER AS WITNESS A lawyer shall not act as advocate at a trial in which the lawyer or **another lawyer in the same law firm** is likely to be a necessary witness except where:

> (a) The testimony relates to an issue that is either uncontested or a formality;
>
> (b) The testimony relates to the nature and value of legal services rendered in the case; or
>
> (c) The lawyer has been called by the opposing party and the court rules that the lawyer may continue to act as an advocate; or
>
> (d) The trial judge finds that disqualification of the lawyer would work a substantial hardship on the client and that the likelihood of the lawyer being a necessary witness was not reason.

[Emphasis by **bold** supplied.]

In their briefs and arguments however, neither party stepped back even one step from RPC 3.7 to examine the "Terminology" section which precedes RPC 3.7. It includes:

> "Firm" or "law firm" denotes a lawyer or lawyers in a private firm, lawyers employed in the legal department of a corporation or other organization and lawyers employed in a legal services organization.

Thus, the definition of "firm" does not expressly include attorneys employed by a public agency, such as assistant attorneys general employed by the Attorney General of Washington, deputy prosecuting attorneys employed by the Prosecuting Attorney of a county, or assistant city attorneys employed by a city.

This case and the union's motion deal entirely with attorneys employed by the office of the Seattle City Attorney. Read in conjunction with the definition in the "Terminology" section of the Code, RPC 3.7 does not apply in the instant situation. The union's motion must be denied.

NOW, THEREFORE, it is

ORDERED

The motion of the Seattle Prosecuting Attorneys' Association to exclude Mark Sidran as a witness and/or to exclude Leigh Ann Collings Tift from serving as counsel for the employer in this case is DENIED.

Issued at Olympia, Washington, this 22nd day of December, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Walter M. Stuteville

WALTER M. STUTEVILLE, Examiner