



Committee on Professional Ethics

Opinion #448 - 12/13/76 (74-76)

Topic: Arbitration: Propriety of
disputant's lawyer serving
on public arbitration panel.

Digest: Lawyer for party to arbi-
tration under Civil Service
Law may serve as a non-
neutral arbitrator on
public arbitration panel.

Code: EC 5-20.

QUESTION

Is the lawyer for one of the parties to a dispute within the purview of Section 209 of the Civil Service Law eligible to serve as a non-neutral member of a public arbitration panel convened thereunder?

OPINION

The only provision of the Code of Professional Responsibility relevant to the subject inquiry is contained in EC 5-20 which states:

"A lawyer is often asked to serve as an impartial arbitrator or mediator in matters which involve present or former clients. He may serve in either capacity if he first discloses such present or former relationships. After a lawyer has undertaken to act as an impartial arbitrator or mediator, he should not thereafter represent in the dispute any of the parties involved." (Emphasis supplied.)

The use of the word "impartial" recognizes that there are various kinds of arbitrators known to the law. Thus, for example, the law of this State requires only "neutral" arbitrators to be impartial. See, e.g., CPLR 7511(b)(1)(ii).

Section 209 of the Civil Service Law provides that if a dispute between a public employer and an organization of police or fire department employees reaches an impasse, upon request of either party, the dispute shall be submitted to a "public arbitration panel", consisting of "one member appointed by the public employer, one member appointed by the employee organization and one public member appointed jointly by the public employer and employee organization." The statute further provides that if either party fails to designate "its" member to the "public arbitration panel" within the time prescribed, the Public Employment Relations Board (PERB) shall designate a member "associated in interest" with the public employer or employee organization "he is to represent." Civil Service Law §209(4)(c)(i) and (ii).

It is evident that Section 209 of the Civil Service Law requires only one member of the public arbitration panel to be neutral. Labor and management are thereby each accorded one representative who may within the context of the arbitration proceeding properly be expected to support the views and interests of the party for whom he was selected.

Since a lawyer who undertakes to serve on an arbitration panel for the purpose of representing the interests of one of the disputants cannot be considered "impartial" within the meaning of EC 5-20, and the Code is otherwise silent on such matters, we conclude that the proposed representation would not be unethical.
