



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

February 22, 2006

Mary L. Johnson
Designated Agency Ethics Official
National Mediation Board
Suite 250 East
1301 K Street, NW.
Washington, DC 20572

Dear Ms. Johnson:

The Office of Government Ethics (OGE) has completed its review of the National Mediation Board's (Board) ethics program. The review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objective was to determine the program's compliance with applicable statutes and regulations. We also evaluated the Board's systems and procedures for ensuring that ethics violations do not occur. The review was conducted in October 2005.

HIGHLIGHTS

The Board's ethics program generally complies with the applicable statutes and regulations. During the course of the review the DAEO was helpful in providing information as well as prompt in correcting small matters in the areas of financial disclosure and education and training. The Board also has effective practices, including the Board's processes that ensure that members are properly recused and that thorough written documentation supports travel payments accepted under the authority of 31 U.S.C. § 1353. These practices promote both individual and institutional transparency and accountability and we urge the Board to continue them.

BACKGROUND AND PROGRAM STRUCTURE

The Board is a small, independent agency with approximately 50 employees; it is led by three Presidentially-appointed, Senate confirmed members (PAS). The Board's mission is to facilitate harmonious labor-management relations in the railroad and airline industries through dispute resolution. The Board achieves this through mediation, representation, arbitration, and alternative dispute resolution and dispute prevention activities.

The Board's ethics program is located within the Office of Legal Affairs. In your role as the General Counsel, you serve as the Designated Agency Ethics Official (DAEO). A Counsel serves as the Alternate DAEO. Both you and the Alternate DAEO are assisted, particularly with ethics education and training, by the Office of Legal Affairs's Freedom of Information Officer.

SPECIAL GOVERNMENT EMPLOYEES

Pursuant to the Railway Labor Act, as amended, the Board has the authority to request the President to create Presidential Emergency Boards (PEB) to investigate and report on a specific labor disputes. The members of a PEB are designated as special Government employees (SGE), and the Board has several mechanisms to track the number of days worked and to provide the members with appropriate ethics advice and counseling. First, statutory requirements ensure that members do not work over the 130-day threshold. Second, the Board tracks these requirements. Further, a staff attorney is assigned to the PEB and is available to ensure that members are in compliance with the terms of their ethics agreements, as applicable, and that conflicts of interest are prevented.

In 2004, two PEBs were created – Emergency Board No. 237 and Emergency Board No. 238. Both PEBs were composed of three SGEs each. The White House Counsel was responsible for reviewing and maintaining the financial disclosure reports of PEB No. 237 and providing the members with initial ethics orientation. Later, the DAEO was delegated the duties as agency ethics official for these members. However, the DAEO was responsible for all ethics duties regarding PEB No. 238 since its creation.

All SGE members of the PEBs filed confidential financial disclosure reports. We examined the three reports required to be filed by the members of PEB No. 238 in 2004. All reports were filed, reviewed, and certified timely.

FINANCIAL DISCLOSURE SYSTEMS

Both the public and confidential financial disclosure systems meet relevant requirements. During the course of our review, you instituted new procedures for both systems in accordance with section 402 (d)(1) of the Ethics in Government Act. These procedures memorialized in writing your current practices. Due to the small number of employees and your role as General Counsel, you stated that you have an intimate knowledge of all matters before the Board that present potential conflicts of interest. You also have tools to assist you in reviewing the financial disclosure reports, namely, several routine reports listing all cases and assignments at the Board.

Public System

We examined the four public financial disclosure reports required to be filed in 2005. Three of the reports were filed by Presidentially-appointed, Senate-confirmed (PAS) Board

members; the fourth report was filed by the DAEO. One of the three PAS reports was a nominee report, as the Board member was undergoing re-nomination to his position. At the close of the review, this report had been pre-cleared by our Office. All other reports were annual reports and were filed, reviewed, and certified timely¹.

Confidential System

We examined the 22 confidential financial disclosure reports required to be filed in 2004. All reports were filed and certified timely. While we are confident a thorough review was conducted, we discussed with you several consistent technical errors we found during our observation relating to the reporting of pension plans. First, it was unclear from our examination of the financial disclosure forms alone whether the pension plans reported were defined benefit or defined contribution plans. Second, in many cases, though the pension plans were fully disclosed in Part IV of the OGE Form 450, a corresponding entry was often omitted from Part I of the OGE Form 450. Those pension plans that were fully disclosed in Part I often neglected to fully report the underlying assets, as applicable.

We suggested annotating the forms after following up with the filer in order to have a written record of your determination of whether a pension plan may be a potential conflict, which you agreed to do. As discussed, the Board may also wish to consider revising the instructions given to filers on completing the financial disclosure form to include additional guidance on reporting pension plans. We highlighted DAEOGram 99-015 as a useful reference in dealing with the reporting requirements associated with both defined benefit and defined contribution pension plans.

ETHICS AGREEMENTS

We were provided with documentation for six ethics agreements made since 1997. Two were recusals undertaken by incumbent PAS employees and four were recusals undertaken by non-PAS employees. In addition to the screening arrangements in the agreements, you have several means of monitoring and ensuring compliance with the terms of the agreements. These include your intimate knowledge of all cases and matters before the Board in your role as the General Counsel. Moreover, Board members conduct their business via notation voting² which further ensures that matters from which they are recused will not appear or be discussed before them, especially since you, as the General Counsel, are responsible for coordinating the distribution of these forms.

¹ PAS filers had been granted a 45-day extension in accordance with 5 C.F.R. § 2634.201(f).

² Notation voting is a means of voting by which recommended decisions are circulated to each Board member individually with voting forms attached. This method allows Board members to vote without physically convening and provides a written record of all transactions.

ENFORCEMENT

We could not assess whether the Board's system of enforcement results in consequences for employees who engage in ethics violations as the Board has had no violations of the Standards of Conduct or of the criminal conflict of interest statutes since 2002. The DAEO was confident that she would become aware of any potential ethics-related violations directly from Board employees if a violation were to occur. Further, if a violation of the criminal conflict of interest statutes were alleged, the DAEO is aware of the responsibility to make a referral to the Department of Justice and concurrently notify OGE of the referral and of the final disposition of the case.

EDUCATION AND TRAINING

The Board's education and training program meets OGE's requirements. During the course of our review, the Board appropriately revised its outdated training plan according to 5 C.F.R. § 2638.706.

Initial ethics orientation is provided as necessary to new employees. The only new employee in 2004 was a transfer from the National Labor Relations Board (NLRB) who received training at the Board from the DAEO. Also, the initial ethics orientation materials provided during the review did not include written contact information for the DAEO in accordance with 5 C.F.R. 2638.703(b); however, the DAEO stated that this information is provided to employees verbally. We asked you to provide written contact information to the new employees which you agreed to do.

Verbal annual ethics training was provided to all covered employees in 2004. Public filers received live, in-person training from a qualified instructor. Confidential filers primarily received computer-based training, while some employees received in-person training from a qualified instructor. The contents of the training in 2004 met requirements, and the DAEO stated that verbal annual ethics training would be provided to all covered employees in 2005.

ADVICE AND COUNSELING

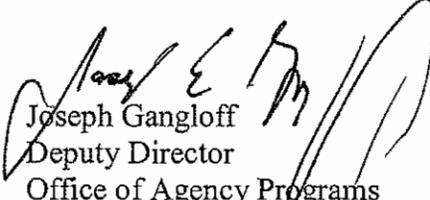
Ethics advice and counseling meets the requirements of 5 C.F.R. § 2638.203(b)(7) and (8). The DAEO provided us with 12 written determinations issued during 2004. These determinations dealt primarily with outside activities, widely-attended gatherings, gifts, and criminal conflicts of interest. While the DAEO primarily dispenses the advice and counseling, she is occasionally assisted by the ADAEO as necessary. Advice and counseling is typically written and the DAEO estimates issuing one to two pieces each month. Overall, the advice and counseling was accurate and consistent with applicable laws and regulations. Also, we commend the DAEO for providing one-on-one post-employment counseling to all outgoing PAS employees, which OGE considers a best practice.

TRAVEL

The Board accepts payments under 31 U.S.C. § 1353, and procedures are in place to ensure a conflict of interest analysis is conducted prior to the acceptance of the payments and authorization of travel. The DAEO is responsible for approving all requests and submitting the semiannual reports of payments of more than \$250 per event to OGE. We examined the two reports submitted for the reporting periods from April 1, 2004 through March 30, 2005. Both reports were submitted to OGE timely. We also examined a sample of payments and the written supporting documentation used in determining the appropriateness of accepting them. The samples show that, not only was a conflict of interest analysis conducted, but you kept thorough records documenting the analysis. We also note that OGE considers keeping such written documentation an effective practice as it serves as an excellent record in the event the agency's decision should be questioned.

In closing, I wish to thank you and your staff for your efforts on behalf of the ethics program. A brief follow-up review is typically scheduled within six months from the date of this report. However, as this report contains no formal recommendations, no such follow-up will be necessary. Please contact Ed Pratt at 202-482-9270, if we can be of further assistance.

Sincerely,



Joseph Gangloff
Deputy Director
Office of Agency Programs