

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

FRATERNAL ORDER OF POLICE )  
LODGE NO. 15 )

Petitioner-Appellant, )

v. )

CITY OF DOVER )

Respondent-Appellee, )

C. A. No. 16654

**MEMORANDUM OPINION**

Date Submitted: September 20, 1999

Date Decided: December 10, 1999

William W. Pepper, Sr., Esquire, of SCHMITTINGER AND RODRIGUEZ, P.A.,  
Dover, Delaware, Attorney for Petitioner-Appellee

Perry F. Goldlust, Esquire, of HEIMAN, ABER, GOLDLUST & BAKER,  
Wilmington, Delaware, Attorney for Respondent-Appellant

**JACOBS, VICE CHANCELLOR**

On February 19, 1998, the petitioner, Fraternal Order of Police Lodge No. 15 (the "FOP"), filed an unfair labor charge with the State of Delaware Public Employment Relations Board (the "Board"), claiming that the Respondent, City of Dover (the "City"), had committed an unfair labor practice in violation of 19 Del. C. §§1607(a)(1), (3), and (5). The Board's Executive Director dismissed the charge on the ground of untimeliness under the Board Rule 5.2, which requires that a claim be filed within 180 days of the alleged violation. The FOP appealed that decision to the full Board, contending that 10 Del. C. § 8106, Delaware's three year statute of limitations, superseded and supplanted Rule 5.2.<sup>1</sup> The full Board sustained the Executive Director's decision. The FOP then appealed to this Court which, by statute, has appellate jurisdiction over this dispute.

The sole issue presented is whether §8106 applies and thereby displaces

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<sup>1</sup>Section 8106 provides a three year limitations period for all claims based on a statute. That statute provides:

"No action to recover damages for trespass, no action to regain possession of personal chattels, no action to recover damages for the detention of personal chattels, no action to recover a debt not evidenced by a record or by an instrument under seal, no action based on a detailed statement of the mutual demands in the nature of debit and credit between parties arising out of contractual or fiduciary relations, no action based on a promise, no action based on a statute, and no action to recover damages caused by an injury unaccompanied with force or resulting indirectly from the act of the defendant shall be brought after the expiration of 3 years from the accruing of the cause of such actions; subject, however, to the provisions of sections 8107-8109 and 8118 of this title."

Rule 5.2 as the governing statute of limitations. I conclude that §8106 does not apply, and that therefore the Board had the power to promulgate and enforce Rule 5.2. Accordingly, judgment will be entered in the City's favor.

### **I. BACKGROUND**

The FOP is the exclusive collective bargaining representative for police officers who are employed by the City. On April 24, 1997, the parties began a process of negotiating a new collective bargaining agreement. Three months later, while the parties were close to a resolution of the negotiations, the Dover Chief of Police issued General Order 22-A, which established a residency requirement that required all Dover police officers to live within 10 miles of the city limits. The FOP claims that the residency requirement was never raised in negotiations, nor was the FOP told in advance that this requirement would be imposed.

The City attempted to enforce General Order 22-A for the first time on February 13, 1998, when it delivered to Patrolman Tyler Almeida, a notice threatening to terminate Patrolman Almeida's employment unless he came into compliance with its residency requirement. In response, the FOP brought an unfair labor practice claim against the City, alleging that the City had violated 19

Del. C. § 1607 (a)(5)<sup>2</sup> when it adopted the residency requirement for police officers in the FOP's bargaining unit; as well as 19 Del. C. §§1607 (a)(1), (3), and (5)<sup>3</sup> by requiring officers to sign a pre-employment agreement containing terms and conditions of employment not found in the collective bargaining agreement.

## II. THE CONTENTIONS

The FOP's sole claim on appeal is that the Board erroneously dismissed their unfair labor practice claim under Rule 5.2 on the basis of untimeliness. The FOP contends that the Board lacked the authority to promulgate Rule 5.2, because that Rule directly conflicts with the three year statute of limitations for statutory

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<sup>2</sup>Section 1607 pertinently provides:

(A) It is an unfair labor practice for a public employer or its designated representative to do any of the following:

\* \* \*

(5) Refuse to bargain collectively in good faith with an employee representative who is the exclusive representative of employees in an appropriate unit, except with respect to discretionary subject.

<sup>3</sup>Section 1607 pertinently provides:

(A) It is an unfair labor practice for a public employer or its designated representative to do any of the following:

(1) Interfere with, restrain or coerce any employee in or because of exercise of any right guaranteed under this chapter.

\* \* \*

(3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.

\* \* \*

(5) Refuse to bargain collectively in good faith with an employee representative who is the exclusive representative of employees in an appropriate unit, except with respect to discretionary subject.

claims found in §8106. The FOP contends that §8106 supersedes and supplants Rule 5.2.

In only one case, *Butler v. Butler*,<sup>4</sup> has the Delaware Supreme Court construed the “action based on a statute” language of §8106. In *Butler*, the Court held an “action based on a statute” under § 8106 must be an action asserting a claim to recover money or property. The petitioners urge that *Butler*, which involved a divorce proceeding, should be limited to its facts. Alternatively, the FOP contends that even if *Butler*’s interpretation of the “action based on a statute” language is not so narrowed, §8106 still applies, because an employee’s right to file an unfair labor practice and to negotiate the terms and conditions of employment constitutes a property right.

In response, the City contends that the Board properly dismissed the unfair labor charge, because the Board had the authority to promulgate Rule 5.2, which prescribes a shorter period of repose. The City argues that § 8106 does not apply to FOP’s unfair labor practice claim, because (i) the Supreme Court in *Butler* interpreted the “action based on a statute,” language of § 8106 as “relating to

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<sup>4</sup>Del. Supr., 222 A.2d 269, 272, at n.1 (1966) (holding “that the phrase ‘action based on a statute’ relates to a common law action for the recovery of money or property since all the other items of 10 Del.C. § 8106, relate to common law actions for the recovery of money or property.”)

actions in the nature of common law actions for the *recovery* of money or property,”<sup>5</sup> and (ii) although the subject matter of the litigation may involve a “property right,” the FOP’s claim is not for the *recovery* of property. Rather, its claim is to enjoin the City from enforcing its residency requirement. Moreover, the City argues, Rule 5.2 furthers the policy underlying the statute that created the Board, in that a short limitations period facilitates the prompt resolution of employment disputes which, in turn, promotes harmonious relations within the police department.

As earlier stated, the sole issue is whether § 8106 governs a proceeding before the Board wherein a petitioner seeks to vacate a municipal residency requirement and enjoin the municipality from enforcing that requirement. Under *Butler*, the applicability of §8106 turns on whether the statutory claim constitutes an “action to recover money or property.” Because the FOP’s claim is not one to recover money, the issue becomes whether that claim is one to recover property. If it is, then §8106 applies and the case must be remanded to the Board to decide the petition on its merits. If it is not, then the Board’s authority to promulgate the 180-day limitations period in Rule 5.2 will be upheld and the Board’s dismissal of

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<sup>5</sup>*Id.* at 272 (emphasis added).

the case will be affirmed.

### III. ANALYSIS

Because the issue presented is purely legal this Court, in exercising its appellate powers, will review and determine that question de novo.<sup>6</sup> In performing that function, the Court is “not unmindful that the agency whose decision is being reviewed is an expert one functioning in an area that requires or at least is greatly aided by such expertise.”<sup>7</sup>

The FOP argues that its claim is governed by the three year statute of limitations found in § 8106, which applies to any “action based on a statute.” At first blush, it would appear that the claim at bar is clearly statutory in nature and that §8106 would apply. In *Butler*, however, the Delaware Supreme Court determined that “the meaning of the category ‘action based on a statute’ is not on its face free from doubt and ambiguity as to what is its actual meaning.” Applying accepted principles of statutory construction, the Court held that “... ‘action based on a statute’ relates to a common law action for the recovery of money or property

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<sup>6</sup>*American Fed'n of State v. State, Dep't of Services for Children*, Del. Ch., C.A. No. 14869, Jacobs, V.C., Mem. Op. at 2 (July 29, 1996); see also *Red Clay Consol. Sch. Dist*, Del. Ch., C.A. No. 11958, Chandler, V.C., Mem. Op. at 6 (Jan. 16, 1992).

<sup>7</sup>*Seaford Bd. of Educ. and Seaford Sch. Dist. v. Seaford Educ. Assoc*, Del. Ch., C.A. No. 9491, Allen, C., Mem. Op. at 2 (Feb. 5, 1988).

since all the other items of 10 Del. C. § 8106, relate to common law actions for the recovery of money or property.”<sup>8</sup> Thus, because this action is not one to recover money, the three year statute of limitation will apply *only* if the petitioners can successfully show that the action is for the *recovery* of property.

The FOP argues that *Butler*, which involved a divorce proceeding, should be limited to its facts. This result is claimed to flow from a rule announced in *Patterson v. Vincent*, that a court interpreting the Delaware limitations scheme must focus on the particular injury suffered, rather than on the nature of the cause of action.<sup>9</sup> Seeking to apply that principle here, the FOP contends that *Butler* is inapposite because the “injury suffered” there was a divorce, whereas the “injury suffered” here is an unfair labor practice.

I cannot agree with the FOP’s proffered application of *Patterson*. That case was decided by the Delaware Superior Court almost two decades before the Supreme Court’s definitive interpretation of §8106 in *Butler*. Moreover, in *Patterson*, the issue was which statute of limitations governed a personal injury claim, and the critical factor in the analysis was whether the action was one for

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<sup>8</sup>*Butler, supra* note 1 at 272 (footnote added).

<sup>9</sup>Del. Super., 61 A.2d 416, 418 (1948).

damages arising from physical injuries.<sup>10</sup> The presence of physical injuries was significant because it was relevant to the plaintiffs' ability to recover money damages. As thus viewed, *Patterson* can be harmonized with *Butler*. But even if it could not be, *Patterson* must give way to *Butler*, which is the paramount authority.

The FOP next maintains that its claim is analogous to other cases found to be based on a statute or a promise, such as a claim of employment discrimination<sup>11</sup> or an action for nonphysical injuries.<sup>12</sup> Because the FOP's claim is statutory in nature, the FOP concludes that the Court must find that its claim also comes within the scope of § 8106. The argument fails because the cited cases are not analogous to the claim at bar. Those cases involved claims for money damages; the FOP's claim does not. Moreover, because the claims in those actions were for the recovery of money, they fell within the scope of § 8106 as interpreted by *Butler*.

The FOP's final argument is that even if *Butler* is interpreted narrowly to limit an "action based on a statute" to claims to recover money or property, §8106

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<sup>10</sup>*Id.*

<sup>11</sup>*Marshall, et al, v. Elec. Hose and Rubber Co*, D. Del., 68 F.R.D. 287, 292 (1978).

<sup>12</sup>*Heritage, supra* note 7.

still applies because, the FOP contends, its claim concerns “property.”

Specifically, the FOP argues that the right of employees to file unfair labor claims, and to negotiate the terms and conditions of their employment, are property rights belonging to employees.<sup>13</sup>

Whether or not an employee’s right to bring an unfair labor claim and negotiate the terms and conditions of employment constitutes a property right is an issue that need not be decided. Under *Butler* the reach of § 8106 is limited to claims for the *recovery* of money or property. Because this action is not of that character, §8106 does not govern the FOP’s claim, nor did that statute displace the Board’s authority to adopt Rule 5.2. It follows that the Board correctly found that Rule 5.2 governs the FOP’s claim, and that the applicable period of limitations was 180 days. Because the petition was filed more than 180 days after the alleged violation, the Board properly upheld its dismissal.

#### IV. CONCLUSION

For the foregoing reasons, the Board’s decision to dismiss the petition for untimeliness is affirmed. IT IS SO ORDERED.

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<sup>13</sup>The FOP relies upon *Perry v. Sindermann*, 408 U.S. 593, 601 (1972) to support its argument that property interests “are not limited by a few, rigid, technical forms.”