

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PER 5

IN AND FOR NEW CASTLE COUNTY

DEPARTMENT OF CORRECTIONS, )  
STATE OF DELAWARE )

Respondent Below- )  
Appellant, )

v. )

C.A. No. 19115

DELAWARE CORRECTIONAL )  
OFFICERS' ASSOCIATION, )

Charging Party Below- )  
Appellee. )

MASTER'S REPORT  
(On Merits)

Date Submitted: August 19, 2002

Draft Report: August 29, 2002

Final Report: December 23, 2002

Sherry V. Hoffman, Esquire, Department of Justice, Wilmington, Delaware; Attorney  
for Appellant State.

David A. Boswell, Esquire, Schmittinger & Rodriguez, Rehoboth Beach, Delaware;  
Attorney for Appellee.

GLASSCOCK, Master

The Delaware Correctional Officers' Association ("DCOA") is the union formerly representing prison guards in Delaware. The DCOA and the Department of Corrections, the employer of the union's members, entered a "memorandum of understanding" (the "agreement") on February 1, 1996, whereby the Department would periodically release to the DCOA a list of employees together with their home addresses, so that the DCOA could contact its members. The DCOA was the exclusive bargaining agent for its membership. The Department of Corrections unilaterally abrogated this agreement, and has refused to provide names and addresses of employees to the DCOA since February 2000.

As a result, in July, 2000, the union filed an unfair labor practices charge with the Public Employment Relations Board (the "PERB"). First a hearing officer and then the full PERB found that the Department of Corrections had engaged in an unfair labor practice, both by abrogating the agreement and by breaching what the PERB considered an independent duty to provide names and addresses to the union. On appeal, the Department argued what I found to be a new ground for withholding names and address of employees: the common law of privacy of the State of Delaware. The Department argued that that body of law prohibited them from releasing employees' names and addresses. I remanded the matter to the PERB for its consideration of this issue, and the PERB found that the common law did not

prevent the Department of Corrections from complying with the agreement. The issues addressed by both decisions of the PERB have been appealed to this Court, and referred to me.

Meanwhile, through a vote of the union members, the DCOA has been decertified as the sole representative for the state's prison guards. Those officers are now represented by the Correctional Officers' Association of Delaware (the "COAD"). At a telephone conference with counsel, I directed counsel for the DCOA to contact the COAD to see if that body wished to intervene in this matter. It does not. The issue before me, whether the Department of Corrections must provide to the DCOA names and addresses of employees, is clearly moot. Nevertheless, both the Department of Corrections and the DCOA ask me to resolve the merits of the case as "a question of public importance." The parties cite McDermott Inc. v. Lewis, Del. Supr., 531 A.2d 206 (1987) and Texaco Refining & Marketing Inc. v. Wilson, Del. Supr., 570 A.2d 1146 (1990) for the proposition that the matter before me is one of such public importance that an advisory decision should be rendered.

The courts of this state do not render advisory opinions, and when circumstances make a formerly-justiciable issue moot before a decision has been rendered, our courts typically will decline to address the issue. McDermott, 531 A.2d at 211, citing, Sannini v. Casscells Del. Supr., 401 A.2d 927, 930 (1979). "However,

where the question is of public importance, and its impact on the law is real, [the Delaware Supreme Court] has recognized an exception to the above rule.” *Id* (citations omitted). The parties urge me to undertake an analysis of the merits under the exception to the general rule of mootness.

I find such an exercise of discretion (to the extent available at this stage of the proceedings<sup>1</sup>) inappropriate here. First, the question before me can be completely (and most logically) addressed as a breach of the agreement between the DCOA and the Department. Among the issues raised are whether that agreement was extinguished by the subsequent entry of a contract between the parties, or otherwise by operation of law, and whether the agreement is currently enforceable under the common law. Since the DCOA is no longer a union representing correctional officers it has no right to or interest in the names of those employees and the question of the validity of the agreement is moot and will not recur. Any decision involving the validity of the agreement, then, is not of public importance.

Assuming an advisory opinion reached the more general question of the statutory duty of the Department as an employer to release names and addresses of

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<sup>1</sup>I note the vast gulf, in terms of litigants’ and judicial economy, separating the rendering of an opinion on a newly-mooted issue that has been submitted to the Supreme Court from a final judgement of a trial court (*see, e.g., McDermott*), from the consideration of the same issue in the report of a master subject to *de novo* review at the trial-court level.

its employees to the union, it is also inappropriate that I consider that question. First, the current exclusive representative, the COAD, has declined to intervene. To the extent that union felt that the question before me is one of enduring public importance, obviously that entity would be the one most interested in its resolution. Therefore, I find that the fact that it has declined to enter an appearance to be significant.<sup>2</sup> In addition, and more fundamentally, in arguing the now-mooted question, both the union and the Department claimed to be representing the interests of the employees. The Department claimed to be respecting the general privacy interests of its employees and also the specific interests of prison guards in not having their names and addresses made available in a manner which could potentially involve their release to former prisoners or others who might bear a grudge against the guards. It was the union's position that, as exclusive representative of the prison guards, it required names and addresses of all the Department's employees in order to adequately represent them, that the value of this representation outweighed any privacy interests which might be involved, and that the threat of any inappropriate release of this information was illusory. The fact that competing interests of the

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<sup>2</sup>In its exceptions to the draft version of this report, the DCOA speculates about reasons why the COAD might have declined to intervene. Because the COAD's failure to intervene (while significant) is not dispositive of my decision that the "public interest" doctrine is inapplicable, I need not address DCOA's speculations further.

employees (right to privacy versus right to adequate representation) are at issue here makes this case particularly inappropriate for resolution on an advisory basis without one of the real parties-in-interest (the COAD) present. It is entirely possible that the successor union could find that the balance of its members' interests might auger for a different result than that advocated by the current parties. For that reason, it is appropriate that the question before me be addressed in the context of currently-adversarial parties — including a union which is representing the interests of its members — and not in the abstract sense remaining here.

#### EXCEPTIONS TO THE DRAFT VERSION OF THIS REPORT

The DCOA contends for the first time in its exceptions that, if the “public importance” doctrine discussed above does not apply here, the matter is still judiciable because, in fact, it has not been rendered moot by the DCOA’s decertification. After consideration of the DCOA’s exceptions (and to the extent they were not waived by the DCOA’s failure to raise them prior to the draft report), I find them unpersuasive.

First, the DCOA argues that this case is analogous to a contract action, and that the courts, including this Court, hear contract actions routinely after the termination of the contracts. The difference, of course, is that the remedy (money damages) in

those cases is available for a breached, defunct contract, but the ultimate remedy here (an order directing the State to provide the DCOA, as a union, with the addresses of its employees), is no longer available to ex-union the DCOA. *See, e.g., General Motors Corp. v. New Castle County*, Del. Supr., 701 A.2d 819, 823 (1997)(finding that matter is moot where issue is no longer amenable to judicial resolution or if a party has been divested of standing).

Next, the DCOA argues that dismissal would fail to discourage “union busting activities” by employers. It is unclear to me, however, how the rendering of a decision on the State’s appeal of a decision in the DCOA’s favor by the PERB would serve to discourage such activity in any case.<sup>3</sup>

Lastly, the DCOA suggests that I failed to give sufficient weight to the decision of the PERB, which declined to dismiss this matter on remand based upon the fact that the decertification of the DCOA rendered the action moot. The PERB suggested that some of the issues raised are important and likely to recur. I do not disagree with that conclusion. For the reasons I have stated above, those factors suggest to me, given the specific facts of this case, that the issues of public importance should be

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<sup>3</sup>In denying this appeal as moot, of course, I have left standing the PERB’s decision affording the “vindication remedy” which DCOA asks for here. Nothing precludes DCOA from raising the arguments rejected here on the issue of mootness with respect to the State’s request for vacatur of the PERB’s decisions below, a request I have deferred, *infra*.

litigated by parties with a live interest in the dispute. It is true, as the DCOA points out, that this Court benefits greatly from the competence and experience of the PERB in matters of labor relations; less so, however, in the area of civil procedure.

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Therefore, the DCOA's exceptions are denied.<sup>4</sup>

The State has asked me, in light of the fact that this appeal is moot, to vacate the decisions below of the PERB. Even if there were grounds to consider vacatur, they would be here asserted prematurely: the issue of attorneys' fees should be addressed before any consideration of vacatur. Therefore, the parties should address DCOA's attorney's fees claim. I defer the issue of vacatur until that time. In the interest of judicial and litigants economy, and notwithstanding any procedural rules of this Court, the time for taking final exceptions to this report shall not begin to run until the filing of a final report on the issues of fees and vacatur.

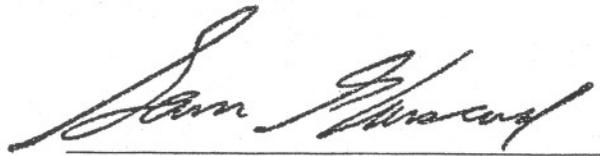
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<sup>4</sup>The remainder of the arguments on exception were adequately addressed in the draft version of this report, and are therefore denied.

## CONCLUSION

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For the foregoing reasons, decertification of the DCOA makes the issues before me moot, and it would be improper for me to render an advisory decision on the merits. Therefore, the parties' request for consideration of the merits on appeal must be denied.

A handwritten signature in black ink, appearing to read "Sam Howard", written over a horizontal line.

Master in Chancery

cc: Register in Chancery (NCC)

