

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

IN RE:

CAPITAL EDUCATIONAL SECRETARIES
ASSOCIATION, DSEA/NEA

Charging Party

v.

REP. PET. 90-10-056:

MOTION FOR STAY PENDING APPEAL

BOARD OF EDUCATION OF THE
CAPITAL SCHOOL DISTRICT

Respondent

BACKGROUND

On December 16, 1991, The Public Employment Relations Board issued a decision in the above captioned matter in which it determined that the District's senior secretaries assigned to building principals are "confidential employees" within the meaning of 14 Del. C. section 4002 (m) the Public School Employment Relations Act making them ineligible for coverage under the Act. The Board's decision reversed, in part, the finding of the Hearing Officer in a decision issued on October 10, 1991, from which the District had appealed.

On December 20, 1991, the Secretaries Association filed with the PERB a Motion requesting that it stay its order, pending appeal. The basis for the Association's request is set forth in paragraph 5 of its Motion, which provides:

5. The usual requirements for the granting of a stay pending appeal are showings of (a) likelihood that the appellant will succeed on the merits, (b) irreparable injury to the appellant should the stay not be granted, (c) no substantial harm to other interested parties if the stay is granted, and (d) no harm to the public interest if the stay is granted. Id. These requirements are met in the present case.

On December 31, 1991, the District filed a statement opposing the granting of the Association's motion. First, the District challenges the Board's authority to stay a final decision in the absence of either statutory or rule authorization; secondly, it argues that none of the conditions which the Association sets forth as requirements for granting a stay pending appeal have been met; thirdly, that the Association failed to exhaust its administrative remedies by not opposing the District's appeal that the classifications in question be excluded from the bargaining unit; and fourthly, at the time of the filing of its Motion, the Association had not yet filed an appeal from the Board's decision.

OPINION AND DECISION

1. Without the benefit of a lengthy discussion, the Board concludes that it possesses the jurisdiction and authority to consider motions for stay pending appeal of its decisions. In Re: Seaford Ed. Assn., Request For Mediation, Del. PERB A.D.S. 87-10-019.

2. On December 20, 1991, the Association filed a Motion For

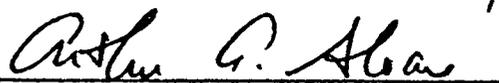
Stay Pending Appeal in the above captioned matter. On December 27, 1991, the Executive Director received a courtesy copy of the Complaint In Proceedings For Extraordinary writ filed in Superior Court, State of Delaware, on December 19, 1991, by James F, Maher, Esquire, attorney for the Association. For this reason, the District's defense that no appeal had been filed at the time the Association filed its motion with the Public Employment Relations Board is without merit.

3. The Board finds no basis for concluding, as does the Association, that there exists a likelihood that the Appellant will succeed on the merits, or that immediate, prejudicial and irreparable harm will occur to the appellant if the stay is not granted or that no substantial harm will result to other interested parties, namely the District, if the stay is granted.

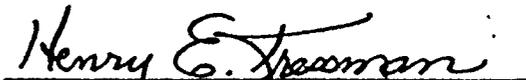
4. Because of the discussion in paragraph 3, it is not necessary to consider the District's contention that the Appellant failed to exhaust its administrative remedies.

For the reasons set forth in paragraph 3, the Association's Motion For Stay Pending Appeal is denied.

IT IS SO ORDERED.



ARTHUR A. SLOANE, Chair.



HENRY E. KRESSMAN, Member



R. ROBERT CURRIE, JR., Member

January 6, 1992

(DATE)