

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)
DEPARTMENT OF HEALTH AND SOCIAL)
SERVICES, STOCKLEY CENTER)

Plaintiff in Error,)

v.)

PUBLIC EMPLOYMENT RELATIONS)
BOARD)

Defendant in Error,)

v.)

DELAWARE PUBLIC EMPLOYEES)
AFSCME COUNCIL 81, AFL-CIO)
LOCAL NO. 3514)

Defendant in Error.)

C.A. No. 96A-07-008-CG

Date Submitted: July 16, 1996
Date Decided: July 23, 1996

UPON DEFENDANT IN ERROR'S MOTION TO QUASH WRIT
OF CERTIORARI AND STAY OF ELECTION. GRANTED.

ORDER

This 23rd day of July, 1996, upon consideration of the papers filed by the parties and the record in this case, it appears:

(1) In June, 1995, the American Federation of State, County and Municipal Employees ("AFSCME") filed a representation petition with the Public Employment Relations Board ("Board") seeking to represent the Habilitation Supervisors of the Stockley Center by adding them to an already existing bargaining unit.

(2) The Department of Health and Social Services and Stockley Center ("Plaintiffs") opposed the petition because: 1) supervisory employees are excluded from coverage under the Public Employment Relations Act, and; 2) even if the Habilitation Supervisors are found not to be supervisors, they are inappropriate for inclusion in a bargaining unit comprised of Registered Nurses and Nurse Supervisors.

(3) On April 17, 1996, the Board denied AFSCME's petition to add the Habilitation Supervisors to the existing bargaining unit, but allowed them to become a stand-alone unit.

(4) On April 24, 1996, the State Labor Relations Office ("SLRO") filed a motion with the Board requesting reconsideration of their April 17th decision. The SLRO argued that the Board had failed to consider the effect of overfragmentation of bargaining units, as is required by 19 Del. C. § 1310(d), when determining that the Habilitation Supervisors could exist as a stand-alone unit.

(5) On May 28, 1996, the Board held a meeting to consider the SLRO's motion. The Board found that the issue raised by the SLRO in their motion had not been raised previously and, therefore, the motion to reconsider the Board's April 17th decision was denied. In June 1996, the Board set an election date of July 24, 1996 to determine if and by whom the Habilitation Supervisors wish to be represented for collective bargaining.

(6) On July 16, 1996, Plaintiffs filed a complaint for Writ of Certiorari and Stay of Election, accompanied by legal

memoranda. That same day, this Court granted the Writ of Certiorari and a stay of the July 24, 1996 election pending resolution of the Writ of Certiorari.

(7) On July 18, 1996, AFSCME filed a Motion to Quash the Writ of Certiorari and to Lift the Stay of the Election, accompanied by legal memoranda.

(8) On July 22, 1996, the parties appeared before the Court to argue their positions. After arguments were presented, it was agreed that both issues, the Writ of Certiorari and the Stay of Election, be submitted to the Court for decision.

(9) In reviewing a petition for a writ of certiorari, this Court is to make a limited review of the record to assess the regularity of the proceedings and to determine whether the Board exceeded its jurisdiction. *Shoemaker v. State*, Del. Supr., 375 A.2d 431, 437 (1977). Certiorari involves a review only of errors that appear on the face of the record being considered and will not be used to weigh and evaluate the evidence. *Castner v. State*, Del. Supr., 311 A.2d 858 (1973). When reviewing a petition for writ of certiorari, this Court is not to consider the merits of the case or to substitute its own judgment for that of the inferior tribunal. *Citizens Hose Co. No. 1 v. In the Matter of a Decision of the State of Fire Prevention Commission*, Del. Super., C.A. No. 84A-FE-2, Ridgely, J. (July 9, 1985).

(10) In the complaint for Writ of Certiorari, Plaintiff argues that the Hearing Officer of the Board failed to meet the statutory requirements of 19 Del. C. § 1319(d), and as such, an

irregularity in the proceedings occurred. More specifically, Plaintiffs argue that the Board failed to consider the effect of overfragmentation of bargaining units on the efficient administration of government when it decided that the Habilitation Supervisors could be represented in a stand-alone unit.

(11) In the Board's decision, however, overfragmentation is mentioned. Specifically, the Board states, "it should be noted that AFSCME and not the State. . . raises the issue of overfragmentation and its impact upon the efficient operation of government." The Board then discusses the problems with mixing professional and non-professional employees in the same bargaining unit, as would be the case with adding the Habilitation Supervisors to the Registered Nurse and Nurse Supervisors bargaining unit.

(12) In essence, the Board was faced with a group of employees who should be allowed union representation if they so choose, but no appropriate bargaining unit in which to place them; Therefore, in deciding that the Habilitation Supervisors could be represented in a stand-alone unit, the Board inherently considered the issue of overfragmentation. The Board met the statutory requirements of 19 Del. C. § 1310(d). No irregularity in the proceedings occurred.

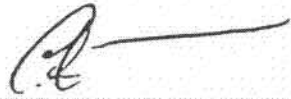
(13) Further, it should be noted that the Writ of Certiorari was not filed in a timely manner. "Although there is no statutorily-imposed time period in which to seek review under a writ of certiorari, [this Court] has ruled that the time for seeking such review should be analogous to the period governing

direct appeals." *In Re Downes*, Del. Supr., 571 A.2d 786 (1988) citing *Elconta, Inc. v. Summit Aviation, Inc.*, Del. Super., 528 A.2d 1199 (1987). 29 Del. C. § 10142 provides that an appeal to this Court from the decision of an agency must be filed within 30 days of the day the notice of the decision was mailed. In the present case, the Board's decision denying the Plaintiff's Motion for Reconsideration was mailed on June 12, 1996. Thus, Plaintiff should have filed the Complaint for Writ of Certiorari and Stay of Election by July 12. It was not filed until July 16, 1996.

Therefore, for the reasons stated above, Defendant in Error's Motion to Quash the Writ of Certiorari and to Lift the Stay of the Election is GRANTED.

IT IS SO ORDERED.

DATE: 7/23/96



Carl Goldstein, Judge

oc: Prothonotary
pc: Michael F. Foster, Esq.
Perry F. Goldlust, Esq.
Lawrence W. Lewis, Esq.