

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

IN RE: DEPARTMENT OF HEALTH AND : Request for Review
SOCIAL SERVICES, STOCKLEY CENTER : Rep. No. 95-06-145A
HABILITATION SUPERVISORS :

At a public meeting on May 28, 1996, the Public Employment Relations Board ("Board") considered the Motion made by the State Office of Labor Relations, on behalf of the Department of Health and Social Services ("State") to reconsider or review the Hearing Officer's decision and bargaining unit determination in this matter. Present at this meeting were Jerry M. Cutler (Manager of the State Office of Labor Relations), representing the State and Perry F. Goldlust, Esquire (Heiman, Aber & Goldlust), representing the American Federation of State, County and Municipal Employees, AFL-CIO ("AFSCME"). Sitting for the Board were Acting Chairman Henry E. Kressman and Member John D. Daniello.

In summation, the Hearing Officer ruled: 1) Habilitation Supervisors were not supervisors within the meaning of §1302 of the Act, 1302(m) of the Public Employment Relations Act (19 Del.C. Ch. 13); and 2) based upon their responsibilities, duties and skills, the Habilitation Supervisors are inappropriate for inclusion in the same bargaining unit as the nurses. The Hearing Officer certified as appropriate a single classification bargaining unit of Habilitation Supervisors.

The State raised three basic issues in its Motion for Review. It asserted: 1) the Hearing Officer failed to consider the effect of overfragmentation; 2) the Habilitation Supervisor classification is appropriate for inclusion in the existing bargaining unit of other non-professional employees represented by the Laborer's Union; and 3) precedential decisions by the Governor's Council preclude the certification of a single classification unit. The State requested permission to submit written argument supporting the issues raised in the appeal.

AFSCME submitted the following response to the State's Motion: 1) overfragmentation was addressed in the decision; 2) no representation petition was filed on behalf of the Laborer's Union; and 3) that prior decisions by the Governor's Council are not binding upon the Board.

In the absence of extreme circumstances, standard procedure and practice dictate that once a record closes, it is complete. Appeals raise issues alleging that the Hearing Officer incorrectly ruled on an argument raised by a party. In this particular case, the State did not raise either the issue of overfragmentation or the precedential decisions of the Governor's Council prior to the appeal. To permit a party to introduce a new argument for the first time on appeal only encourages the unsuccessful party to attempt to reverse or modify an award by introducing a new argument, after studying the reasons for a decision. To permit these arguments to be heard initially on appeal is not only unfair to the prevailing party but also leads to unnecessary relitigation of cases and delays the settlement of issues.

Therefore, by a 2-0 vote, the Board denies the State's Motion for Reconsideration and Request for Review of the Hearing Officer's decision in this matter. The bargaining unit determination stands and the Executive

Director shall proceed to schedule and conduct the election to determine if and by whom Habilitation Supervisors employed at the Stockley Center desire to be represented for purposes of collective bargaining.

IT IS SO ORDERED.

/s/Henry E. Kressman

Henry E. Kressman
Acting Chairman

/s/John D. Daniello

John D. Daniello
Member