

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

DONALD F. PARSONS, JR.
VICE CHANCELLOR

New Castle County Courthouse
500 N. King Street, Suite 11400
Wilmington, Delaware 19801-3734

Date Submitted: September 15, 2011
Date Decided: December 29, 2011

Elio Battista, Jr., Esq.
Deputy Attorney General
State of Delaware
Department of Justice
Carvel State Office Building
820 N. French Street, 6th Floor
Wilmington, DE 19801

Perry F. Goldlust, Esq.
Perry F. Goldlust, P.A.
702 King Street, Suite 600
P.O. Box 1765
Wilmington, DE 19899-1675

Re: *AFSCME Council 81, Local 879, et al. v. State of Delaware
(OMB and DelDOT)*, Civil Action No. 6159-VCP
-and-
*AFSCME Council 81, Local 247, et al. v. State of Delaware
(DOC, DHSS, DOT)*, Civil Action No. 6327-VCP

Dear Counsel:

I have reviewed the Motion to Consolidate Civil Action Nos. 6327-VCP and 6159-VCP (the "Motion") filed by the Appellants in each of the subject actions, the Appellees' combined response in opposition to the Motion, and the Appellants' reply. I also have thought about Mr. Goldlust's request for a date for argument on that Motion, but have determined that no argument is necessary. Furthermore, having considered the

parties' respective arguments regarding the Motion in light of Court of Chancery Rule 42 and the underlying questions of fact and law in each of the pending cases, I have decided to grant Appellants' Motion to Consolidate for the reasons stated below.

Rule 42(a) allows for consolidation “[w]hen actions involving a common question of law or fact are pending before the Court.”¹ “In determining whether to consolidate actions the Court must employ its discretion to weigh the possible saving of time and effort that consolidation would bring against any inconvenience, delay, or expense which it could occasion.”²

Actions need not be identical to be proper subjects for consolidation. Consolidation may be ordered, for example, where different damage claims are filed if the commonality requirement is satisfied.³ Also, if the common and related issues that exist are such that “it would needlessly waste both time and manpower to require separate trials,” there is no necessity that the parties in the actions to be consolidated be the same.⁴

However:

¹ Ct. Ch. R. 42(a).

² *Joseph v. Shell Oil Co.*, 498 A.2d 1117, 1123 (Del. Ch. 1985).

³ *In re Cendant Corp. Litig.*, 182 F.R.D. 476, 478 (D.N.J. 1998).

⁴ *Waldman v. Electrospace Corp.*, 68 F.R.D. 281, 284 (S.D.N.Y. 1975).

Even where considerations of convenience or savings predominate, a motion to consolidate should not be granted if it would result in undue prejudice or would be fundamentally unfair to one or more of the parties involved, or confuse the jury.⁵

Here, the two cases at issue involve different questions of law, but they are at least loosely related. In addition, the parties in both cases are essentially the same,⁶ and the issues to be decided by this Court appear to pertain primarily to questions of law that are likely to be answered at the summary judgment stage. Moreover, Appellees, as the nonmoving parties, have not argued that they materially would be prejudiced if these cases were consolidated, and I have no reason to believe that would be so.

⁵ *Ison v. E.I. duPont de Nemours & Co.*, 2004 WL 2827934, at *2 (Del. Super. 2004).

⁶ Appellees in both cases are the State of Delaware and different departments of the State government. Although only the State and the Department of Transportation are parties to both suits, all Appellees share a common interest in the types of issues raised by the two cases and will be similarly affected by the outcome of the litigation. Likewise, there is significant overlap among the Appellants. In both cases, the lead Appellant is the American Federation of State, County & Municipal Employees Council 81 (“AFSCME”). While the cases involve different local unions, all three locals in C.A. No. 6159 are in C.A. No. 6327, as well. Moreover, all the local unions share a common interest in the underlying disputes and will be represented in both cases by AFSCME.

Therefore, pursuant to Rule 42, I find that “justice can be administered between the parties without a multiplicity of suits”⁷ and that consolidation here would serve the interests of judicial efficiency and the administration of justice. Accordingly, I am entering, concurrent with this Letter Opinion, an Order granting Appellants’ Motion and consolidating C.A. Nos. 6327-VCP and 6159-VCP.

Sincerely,

/s/ Donald F. Parsons, Jr.

Donald F. Parsons, Jr.
Vice Chancellor

FS:DFP/ptp

⁷ *Cahall v. Lofland*, 108 A. 752, 754 (Del. 1920).