

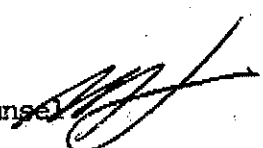
STD-501, 9-85

COMMONWEALTH OF PENNSYLVANIA

DATE: June 12, 1991

SUBJECT: Commonwealth Court Decision in Lower Merion School District, et al v. Cnwlt., Human Relations Commission, et. al., No. 46 M.D. 1991

TO: COMMISSIONERS

FROM: Michael Hardiman, Assistant Chief Counsel  
PHRC - Philadelphia Regional Office 

Commonwealth Court, in an unreported, memorandum opinion and order by Judge Doyle that was filed on May 27, 1991, sustained the Commission's preliminary objection pertaining to its jurisdiction to decide questions of its own jurisdiction and dismissed the petition for review that had been filed by Lower Merion.

In this case, Lower Merion had gone to court seeking to enjoin the Commission from investigating an age discrimination complaint filed against Lower Merion by its superintendent of schools. Lower Merion argued that the Commission lacked jurisdiction to investigate because the Pennsylvania constitution conferred absolute authority on the School District regarding appointment and reappointment of a superintendent. The Commission, in seeking dismissal of the matter, argued that under Pennsylvania law questions regarding the Commission's jurisdiction to investigate, at least initially, are for the Commission, not the courts, to resolve. In this case, Commonwealth Court agreed with the Commission and, therefore, dismissed Lower Merion's petition.

dar

LOWER MERION SCHOOL DISTRICT,  
J. ROGER WILLIAMS, JR., JOHN P.  
GIANGIULIO, REGINA B. COHEN,  
KEVIN P. GILROY, HENRY C. LUCAS,  
III, REAVES C. LUKENS, JR.,  
NELSON RAY, JR., MERIDYTH M. SENES,  
AND MARY A. WRIGHT,

Petitioners

v.

THE COMMONWEALTH OF PENNSYLVANIA,  
THE PENNSYLVANIA HUMAN RELATIONS  
COMMISSION AND JAMES B. PUGH,

Respondents

IN THE COMMONWEALTH COURT  
OF PENNSYLVANIA

No. 46 M.D. 1991

PER CURIAM

O R D E R

AND NOW, May 22, 1991, Respondent James B. Pugh's  
Application for Leave to File Post-Submission Communication  
Pursuant to Pa. R.A.P. 2501(a) is hereby dismissed as moot.

**CERTIFIED FROM THE RECORD  
AND ORDER EXIT  
MAY 24 1991**

*C. J. Heston*  
Deputy Prothonotary - Chief Clerk

LOWER MERION SCHOOL DISTRICT, : IN THE COMMONWEALTH COURT  
J. ROGER WILLIAMS, JR., JOHN P. :  
GIANGIULIO, REGINA B. COHEN, : OF PENNSYLVANIA  
KEVIN P. GILBOY, HENRY C. LUCAS, :  
III, REAVES C. LUKENS, JR., :  
NELSON RAY, JR., MERIDYTH M. :  
SENES, AND MARY A. WRIGHT, :

Petitioners :

v. :

THE COMMONWEALTH OF PENNSYLVANIA, :  
THE PENNSYLVANIA HUMAN RELATIONS :  
COMMISSION AND JAMES B. PUGH, :

Respondents :

No. 46 M. D. 1991  
Argued: April 4, 1991

BEFORE: HONORABLE DAVID W. CRAIG, President Judge  
HONORABLE JOSEPH T. DOYLE, Judge (P.)  
HONORABLE FRANCIS A. BARRY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE DOYLE

FILED: May 22, 1991

Before us for disposition in our original jurisdiction is a motion for summary relief filed by the Lower Merion School District (School District). Also before us are the preliminary objections of the Pennsylvania Human Relations Commission (Commission) to the "Petition for Review in the Nature of a Complaint for Declaratory and Injunctive Relief" filed by the School District.

The following facts are alleged in the School District's petition. James B. Pugh is the current Superintendent of the School District. His current contract expires on June 30, 1991. On December 17, 1990, the School Board unanimously passed a resolution indicating, inter alia, that "another or other candidates will be considered for the office of Superintendent to serve after the expiration of the current term of Dr. James B. Pugh as Superintendent on June 30, 1991." On December 20, 1990, Pugh filed an action with the Commission alleging that the School District discriminated against him on the basis of his age (he was 64 on December 20, 1990) in not renewing his contract.<sup>1</sup>

Thereafter, the Commission scheduled a fact-finding conference. The School District then filed the instant action in our original jurisdiction. By this action it seeks a declaration that the Commission lacks jurisdiction over Pugh's complaint and an order enjoining the Commission from exercising jurisdiction over Pugh's complaint and enjoining Pugh from proceeding further with any action before the Commission.

---

<sup>1</sup> We observe that the resolution did not actually say that Pugh would not be retained, but only that other candidates would be considered.

The Commission has filed preliminary objections to the petition for review contending that it has jurisdiction to decide whether it has jurisdiction and, alternatively, that the School District has failed to exhaust its administrative remedies.<sup>2</sup> It is the School Board's position that the Commission lacks jurisdiction in this matter because under Article 6, Section 1 of the Pennsylvania Constitution the School District has absolute unbridled authority with respect to the appointment and reappointment of a superintendent<sup>3</sup> and that its constitutional power cannot be abrogated by a statute, here the Pennsylvania Human Relations Act (Act).<sup>4</sup>

First, we consider the preliminary objection pertaining to the question of whether the Commission has jurisdiction to determine whether it has jurisdiction. In Mercy Hospital of Pittsburgh v. Pennsylvania Human Relations

---

<sup>2</sup> This preliminary objection is not necessarily procedurally responsive. The threshold question facing us is who has jurisdiction to determine whether the Commission has jurisdiction. A preliminary objection raising the failure to exhaust administrative remedies assumes that the administrative body has jurisdiction.

<sup>3</sup> Article 6, Section 1 provides, "All officers, whose selection is not provided for in this constitution shall be elected or appointed as may be directed by law." The School District alleges that Pugh is an officer within the meaning of this provision and that the pertinent provisions in the Public School Code of 1949, Act of March 10, 1949, P.L. 30, as amended, 24 P.S. §§1-101 through 27-2702, have been followed.

<sup>4</sup> Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §§951-963.

Commission, 499 Pa. 132, 451 A.2d 1357 (1982), a physician filed a complaint with the Pennsylvania Human Relations Commission against the hospital after it denied him hospital privileges; he alleged that the denial of privileges was based upon his race and national origin. Thereafter, the hospital filed a petition for review directed to this Court's original jurisdiction seeking, in the alternative, injunctive relief or a writ of prohibition. The Chancellor granted injunctive relief directing that the Commission could not continue its investigation or otherwise proceed with the merits of the case; it was permitted only to determine whether it had jurisdiction. The Chancellor's order was fashioned "to permit the Commission to move forward with the resolution of the doctor's complaint, cutting short the wasteful procedural infighting in which the hospital and Commission are now engaged." Id. at 135, 451 A.2d at 1358 (quoting the Chancellor's opinion).

Although acknowledging that the Chancellor had fashioned a practical solution, the Supreme Court nonetheless, reversed. It explained that "the fact that a court of equity may be capable of achieving an expeditious resolution of a dispute does not warrant its intrusion where there is a statutory process designed for its resolution." Id. at 136, 451 A.2d at 1359. The Court also stated, "There is no question that the [Commission] is vested with the authority to consider and

decide the challenge raised to its jurisdiction over the matter." Id. at 137, 451 A.2d at 1359. Further, it observed, "What we are here confronted with is an attempt by a chancellor who concedes the competence of the administrative body, [but] nevertheless, seeks to supervise the manner in which the jurisdiction is exercised. Such an intrusion would erode the very core of the administrative scheme." Id. at 137-38, 451 A.2d at 1359.

The School District contends that this situation is distinguishable from Mercy Hospital because it has raised a constitutional question and the agency is not empowered to declare its own enabling legislation unconstitutional. The School District's reasoning, however, is slightly askew because the challenge here is not that the Human Relations Act is unconstitutional on its face, but only that the Act may be unconstitutional if applied to this case. The Commission would thus not be deciding that the Act is unconstitutional, but only that the Commission itself (1) has no jurisdiction to consider the merits of this case because of a constitutional provision or (2) that it does have jurisdiction because the constitutional provision is inapplicable or because some other constitutional provision gives it jurisdiction.

While there is no doubt that this Court is empowered to decide the legal question of jurisdiction of a lower tribunal upon appellate review, Mercy Hospital makes it clear that the Supreme Court looks with great disfavor upon us doing so in an original jurisdiction action. Accord Shovel Transfer and Storage Inc. v. Simpson, 523 Pa. 235, 565 A.2d 1153 (1989) (Board of Claims "of necessity" must determine its own jurisdiction).

It is obvious that if the Commission determines that it lacks jurisdiction and dismisses the case, the School District will seek no further review. Pugh, of course, would then have a final order that he could appeal to this Court. If, on the other hand, the Commission determines that it has jurisdiction, it can if it desires certify its order as one involving a controlling question of law so that the parties may endeavor to seek discretionary interlocutory review. See Section 702(b) of the Judicial Code, 42 Pa. C.S. §702(b). Even if such review were not sought or were denied, however, the question of jurisdiction is one of law and would be fully reviewable on final appeal. Robertshaw Controls Co. v. Human Relations Commission, 67 Pa. Commonwealth Ct. 613, 447 A.2d 1083 (1982).



Based upon the foregoing discussion, we conclude that the Commission's preliminary objection pertaining to its authority to decide its own jurisdiction must be sustained and, hence, that the petition for review must be dismissed. The School District's motion for summary relief, therefore, is dismissed on the basis of mootness.<sup>5</sup>

  
JOSEPH T. DOYLE, JUDGE

---

<sup>5</sup> This does not mean, of course, that the legal question raised in that motion cannot be reviewed again in another context in these proceedings.

LOWER MERION SCHOOL DISTRICT,  
J. ROGER WILLIAMS, JR., JOHN P.  
GIANGIULIO, REGINA B. COHEN,  
KEVIN P. GILBOY, HENRY C. LUCAS,  
III, REAVES C. LUKENS, JR.,  
NELSON RAY, JR., MERIDYTH M.  
SENES, AND MARY A. WRIGHT,

Petitioners

v.

THE COMMONWEALTH OF PENNSYLVANIA,  
THE PENNSYLVANIA HUMAN RELATIONS  
COMMISSION AND JAMES B. PUSH,

Respondents

IN THE COMMONWEALTH COURT  
OF PENNSYLVANIA

No. 46 M. D. 1991

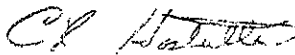
ORDER

NOW, May 23, 1991, the preliminary objection of the Commission pertaining to its jurisdiction to decide questions of its own jurisdiction is sustained and the petition for review is dismissed. It is further ordered that the School District's motion for summary relief is dismissed as moot.

  
JOSEPH T. DOYLE, JUDGE

CERTIFIED FROM THE RECORD  
AND ORDER EXIT

MAY 22 1991

  
Deputy Prothonotary - Chief Clerk