[J-36-2012] [MO: Saylor, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

THE PENNSYLVANIA STATE EDUCATION ASSOCIATION, BY LYNNE WILSON, GENERAL COUNSEL, WILLIAM MCGILL, F. DARLENE ALBAUGH, HEATHER KOLANICH, WAYNE DAVENPORT, FREDERICK SMITH, JAMIE MCPOYLE, BRIANNA MILLER, VALERIE BROWN, JANET LAYTON, KORRI BROWN, AL REITZ, LISA LANG, BRAD GROUP AND RANDALL SOVISKY, Appellants v. COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT, OFFICE OF OPEN RECORDS, AND TERRY MUTCHLER, EXECUTIVE DIRECTOR OF THE OFFICE OF OPEN RECORDS, Appellees PENNSYLVANIA ASSOCIATION OF SCHOOL RETIREES, URENEUS V. KIRKWOOD, JOHN B. NYE, STEPHEN M. VAK, AND RICHARD ROWLAND AND SIMON CAMPBELL, Intervenors	:	No. 59 MAP 2010 Appeal from the order of Commonwealth Court at No. 396 MD 2009 dated 09-24-2010. ARGUED: April 10, 2012

DISSENTING OPINION

MR. JUSTICE EAKIN **DECIDED: August 21, 2012**

As I would affirm Judge Leavitt's determination that the Office of Open Records (OOR), as a quasi-judicial tribunal, is not an indispensable party to this action, I respectfully dissent.

An agency must have a direct interest in the outcome of the action to be named as an indispensable party to a lawsuit. Sprague v. Casey, 550 A.2d 184, 189 (Pa. 1988); see also Mechanicsburg Area School Dist. v. Kline, 431 A.2d 953, 956 (Pa. 1981). An indispensable party is one whose rights are so connected with the claims of the litigants that no relief can be granted without infringing upon those rights. Id. A Commonwealth agency should not be declared an indispensable party to a proceeding unless such action cannot conceivably be concluded with meaningful relief without the sovereign itself becoming directly involved. Scherbick v. Community College of Allegheny County, 387 A.2d 1301, 1302-03 (Pa. 1978) (quoting Ross v. Keitt, 308 A.2d 906, 909 (Pa. Cmwlth. 1973)). An adjudicatory agency serves as an independent decision-maker with no interest in the underlying matter. East Stroudsburg University Foundation v. Office of Open Records, 995 A.2d 496, 507 (Pa. Cmwlth. 2010) ("The OOR does not have standing to defend its decision because it is not aggrieved by the release of another's agency records[.]"). Such an agency is not aggrieved by its own decisions; therefore, it is a dispensable party. Id.

It is fundamental that litigants exhaust all adequate and available administrative remedies prior to resorting to judicial remedies. County of Berks ex rel. Baldwin v. Pa. Labor Relations Board, 678 A.2d 355, 360 (Pa. 1996); see 1 Pa.C.S. § 1504.[1] In order

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[1] In all cases where a remedy is provided or a duty is enjoined or anything is directed to be done by any statute, the directions of the statute shall be strictly pursued, and no penalty shall be inflicted, or anything done agreeably to the common law, in such cases, further than shall be necessary for carrying such statute into effect.

Id., § 1504.

for a party to avoid this requirement, there must be an "absence of a statutorily-prescribed remedy or, if such a remedy exists, then a showing of its inadequacy under the circumstances." County of Berks, at 360.

The OOR, as a tribunal to which a dispute or cause is referred for decision, cannot be a "party" to an action in the customary sense of the word. A quasi-judicial tribunal such as the OOR was intended to be impartial, to hear and to adjudge, and it should not be forced to convert itself into the partisan advocate against a party whose action it has heard. To require such would abolish its quasi-judicial character and impartiality, and is repugnant to the traditional common law heritage of judicial detachment and freedom from interest. See Pa. Labor Relations Board v. Heinel Motors, 25 A.2d 306, 307 (Pa. 1942).

"The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly." 1 Pa.C.S. § 1921(a). When a statute's words are "clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." Id., § 1921(b). The majority concludes the OOR's administrative process under the RTKL is inadequate and unreliable; however, inconvenience does not equate to inadequacy. The statutory procedure mandated by the RTKL is clearly defined; it requires the parties to this action be the requester and the school districts whose records are being requested. As a quasi-judicial tribunal, the OOR has no cognizable interest in the outcome of PSEA's claim; therefore, it is not an indispensable party to this action.

Because I find OOR is not an indispensible party to PSEA's action, I would affirm the Commonwealth Court's holding. Accordingly, I respectfully dissent.