IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE, Employer - Appellant,	)	
v.	)	C.A. 04A-09-012 PLA
CHARLES DALTON, Claimant - Appellee.	)	

Submitted: December 16, 2004
Decided: January 20, 2005

UPON APPEAL FROM A DECISION OF
THE INDUSTRIAL ACCIDENT BOARD
AFFIRMED

MEMORANDUM OPINION

Dennis J. Menton, Esquire, Tybout, Redfearn & Pell, Wilmington, Delaware, Attorney for Employer - Appellant.

Thomas J. Roman, Esquire, Kimmel, Carter, Roman & Peltz, Wilmington, Delaware, Attorney for Employee - Appellee

ABLEMAN, JUDGE

On this appeal from the Industrial Accident Board ("IAB" or "Board"), the Court finds that the Board's decision to grant benefits (1) was supported by substantial evidence and (2) was a proper application of the Workmen's Compensation Act. The Board's decision is therefore **AFFIRMED**.

Facts

Appellee Charles Dalton works as a State Trooper (i.e. policeman) for Appellant State of Delaware. In July 2003, Dalton's supervisor sent a message through the State Police email system asking troopers to volunteer to play in a charity softball game against volunteers from the New Castle County Police Department. Dalton volunteered and was chosen to play in the game, which took place on August 30, 2003. During the game, Dalton severely broke his wrist. He was totally disabled from his police duties from August 30, 2003 until November 2003, and incurred medical expenses to treat the injury.

The police charity softball game is an annual event organized by the Town of Middletown and played at Silver Lake Elementary School, which is owned and maintained by the State. Trooper participation in the event was approved seven years ago by high-ranking State Police personnel. The State Police provide uniforms for their officers to play in the game, and the officers provide the rest of their equipment. The game takes place on a weekend and involves only officers who are not on duty.

Six State Police officers testified during the IAB hearing on August 8, 2004. All agreed that participation in charity events such as the softball game is part of the job of a state trooper. The officers further agreed that the State Police receive a benefit from participation, namely, that charity work presents a positive image of police officers to the community. It is vitally important that the public view troopers positively, so that they will be willing to assist police efforts to prevent crime. Recognizing this, the State Police maintain a credit system to govern trooper rank advancement, and significant credits are awarded for charitable work.

The State does not contest the existence of the injury or the bills associated with it. Instead, the State argues that the injury did not occur during the course and scope of Dalton's employment, and therefore is not compensable. The Board disagreed, finding the fact that Dalton was asked to participate by his superior officer, combined with the importance the State Police placed on charitable work, drew the softball game into the scope of Dalton's employment. The Board therefore awarded Dalton disability benefits, and this appeal followed.

Standard Of Review

A decision as to whether a given activity is within a scope of employment is a conclusion of law based on a fact-specific analysis.[1] The Court reviews the

[1] *Bedwell v. Brandywine Carpet Cleaners*, 684 A.2d 302, 304 (Del. Super. 1996).

agency's finding of factual sufficiency under the substantial evidence standard.[2] This limited review determines only whether the Board heard enough evidence to fairly and reasonably support its conclusion, regardless of whether the Court would have reached a different result in the first instance.[3] Phrased another way, this process measures the legal sufficiency of the evidence.[4]

Discussion

Having reviewed the transcript of the hearing, the Board's decision, and the attorneys' briefs, it is readily apparent that the IAB's decision is supported by substantial evidence and must be **AFFIRMED**. In fact, Dalton offered overwhelming evidence that he took part in the event to benefit his employer, and that the State recognized and ardently pursued the benefit his attendance conferred.

Nocks v. Townsend's Inc.[5] established the standard for determining whether a company-sponsored recreational event is within the injured employee's course of employment. Under *Nocks*, the Court should consider four factors: "1) the time and place factor; 2) the degree of employer initiative; 3) financial support and equipment furnished by employer; and 4) employer benefit from company team."[6]

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[2] *Mellow v. Board of Adjustment*, 565 A.2d 947, 954 (Del. Super. Ct. 1988), *aff'd*, 567 A.2d 422 (Del. 1989).
[3] *Id.* at 954 (citing *National Cash Register v. Riner*, 424 A.2d 669, 674-75 (Del. Super. Ct. 1980)).
[4] DEL. CODE ANN. tit. 29, § 10142(d) (1997 & Supp. 2002).
[5] 1999 WL 743658 (Del. Super.).
[6] *Id*. at 3.

The *Nocks* court took these factors from *Larson's Workers' Compensation Law*[7] ("Larson's"), a leading treatise that the IAB had relied on in similar cases that were not appealed.

This decision, however, does not cite *Nocks* nor walk through its four factors. The reason appears to be that the softball match in this case was sponsored by the Town of Middletown, rather than the State Police. The parties agree therefore that *Nocks* does not squarely apply, and both suggest that the Court adopt Larson's test for recreational activities that are not sponsored by the employer but still have some nexus to the injured party's employment. Under this modified test, the Court should consider whether:

> (1) it occurs on the premises during a lunch or recreation period as a regular incident of the employment; (2) the employer, by expressly or impliedly requiring participation, or by making the activity part of the services of the employee, brings the activity within the orbit of the employment; or (3) the employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life.[8]

Though the Board did not expressly say so, it appears to have followed these factors in its analysis. That, combined with the fact that the Superior Court has already adopted Larson's test for company-sponsored recreational activities, persuades the Court that Larson's is the correct test for company-encouraged recreational activities.

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[7] 2 Arthur Larson and Lex K. Larson (1999).
[8] *Larson's* at ¶ 22.01.

Dalton easily satisfies two of the three Larson factors. It is clear from the hearing testimony, including that of the officer presented as a witness for the State, that charity work is part of the job of a state trooper. As such, a trooper would reasonably believe that he is acting on behalf of the State when he responds to a request from a senior officer to "volunteer" for a charity event. The State, by soliciting volunteers via requests from superior officers, and by creating a promotion system that effectively requires attendance at charity events, has brought charitable events such as this one into "the orbit of employment" for troopers, within the meaning of the second prong of Larson's test.

On the third factor, benefit, the Court agrees with the Board's finding that the State derives substantial benefit from trooper participation in such events. The State's argument that such benefit is merely incidental is belied by its own promotion policy and the testimony of every officer at the hearing, including a former superintendent of police. Far from being "merely incidental," the good will that police participation in charity events engenders is institutionally recognized and actively promoted by the State. These factors establish a base of substantial evidence that supports the Board's decision.

Appellant's argument to the contrary is unpersuasive. The State makes much of the fact that the game took place off police property and while officers were not on duty, but this is not enough to rebut the overwhelming evidence that

Dalton was serving the State while he was injured. Appellant's brief also complains that the Board's reasoning was not sufficiently articulated in its decision. The Court disagrees. The Board clearly stated the facts, cited applicable cases, and succinctly explained its ruling. Specifically, the Board stated that:

> In participating in a softball charity game at the request of his Lieutenant on a team comprised exclusively of fellow state troopers, Claimant was within the scope of his responsibilities for the State and went about the State's business by his participation.[9]

If anything, the Board's decision was refreshingly thorough and well-reasoned; it is not procedurally flawed in any way.

Conclusion

Because it is supported by substantial evidence, the decision of the Industrial Accident Board is hereby **AFFIRMED**.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

cc: Dennis J. Menton
Thomas J. Roman
Industrial Accident Board
Prothonotary

[9] Tr. of August 8, 2004 Industrial Accident Board Hear'g at *6.