SUPERIOR COURT
OF THE
STATE OF DELAWARE

JOHN A. PARKINS, JR.
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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May 31, 2012

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In Re: Tri-State Carpet, Inc. v. Delaware Dept. of Labor
C.A. No. N10A-11-003

Dear Counsel:

On November 12, 2010, Appellant, Tri-State Carpet, Inc., filed the above-captioned appeal of an October 13, 2010 Determination issued by Appellee, Delaware Department of Labor (DDOL). The DDOL found that Tri-State had improperly classified two of its workers, Harold McCanick and David Salerno, as independent contractors in violation of 19 Del. C. § 3501. Tri-State maintains in this appeal that DDOL erred in its finding and that the Determination must be vacated.

Tri-State offers two reasons why the Determination is in error. First, Tri-State argues that Mr. McCanick and Mr. Salerno were properly classified

as independent contractors. Second, Tri-State argues that the two workers "fit squarely within the definition of '[e]xempt person[s]' under 19 Del. C. § 3501(a)(6)."[1] The DDOL only addressed the issue of whether Mr. McCanick and Mr. Salerno were properly classified as independent contractors in its Determination, and found that they were not. It did not, however, address the issue of whether the two workers were appropriately considered "exempt persons" and thus exempt from employer-employee classification under 19 Del. C. § 3501. Because of the agency's regulations Tri-State did not have an opportunity to be heard on this issue below. The court, therefore, does not consider this contention to have been waived by Tri-State.

In reviewing an agency action, "the Court is required 'to search the entire record to determine whether, on the basis of all the testimony and exhibits before the agency, it could fairly and reasonably reach the conclusion that it did.'"[2] Because the Determination did not address the issue of "exempt persons," the record currently before the court is incomplete.[3] As a matter of judicial restraint the court will not rule on an issue in an administrative appeal until the agency from which the appeal is taken has first had an opportunity to consider it. The court instead **REMANDS** the matter to DDOL with instructions that DDOL make an

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[1] Appellant's Opening Brief at 11 (alteration in the original).

[2] *Campbell v. Chrysler LLC*, 2012 WL 1415700, at *7 (Del. Super.) (citing *Nat'l Cash Register v. Riner*, 424 A.2d 669, 674–75 (Del. Super. 1980)).

[3] *See id.* ("[E]very part of the record before an administrative agency which is necessary to a review of its decision must be made part of the record brought before this Court.") (citing *Perrine v. State*, 1994 WL 45341, at *1 (Del. Super.)); *see also McQuay v. Delaware Alcoholic Beverage Control Comm'n*, 338 A.2d 129, 131 n.1 (Del. 1975) (per curiam) ("The general rule is that remand is proper where an agency has made invalid, inadequate or incomplete findings.").

additional ruling on whether Mr. McCanick and Mr. Salerno are "exempt persons" under the statute.

The decision on remand shall be issued no later than July 16, 2012. This case is remanded and jurisdiction is retained.

IT IS SO ORDERED.

Very truly yours,

John A. Parkins, Jr.

oc: Prothonotary