UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

CIVIL ACTION NO. 80-46

JOHN YOUNCE, JR. PLAINTIFF

V. MEMORANDUM OPINION & ORDER

UMWA, ET AL DEFENDANTS

* * * *

Plaintiff has noticed the deposition of Douglas E. Cordle, the hearing officer who rendered an adverse decision to plaintiff upon reconsideration of plaintiff's claim for pension benefits. Defendants first moved for an Order staying the taking of that deposition until such time as they were able to file a motion with accompanying memoranda for an Order preventing the taking of Cordle's deposition.

Defendants state that judicial review in this action is limited to a determination of whether the Trustees' denial of plaintiff's pension application is supported by substantail evidence, or is arbitrary, capricious, an abuse of discretion, or not in accordance with law. Hall v. Mullins, 621 F.2d 252, 254 (6th Cir. 1980). Defendants argue that this Court should consider only the record of proceedings before the Trustees, and "not some new record made additionally in the reviewing court." Camp v. Pitts, 411 U.S. 138, 142 (1973). By way of analogy, defendants cite administrative law and refer the Court to the case of Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 419, 420 (1971). In that case, the Supreme Court left by the wayside its earlier holding in United States v. Morgan, 313 U.S. 409, 422 (1941) that "it was not the function of the court to probe the mental processes of the Secretary," and held that

> The court may require the administrative officials who participated in the decision to give testimony explaining their action. Of course, such inquiry into the mental processes of administrative decisionmakers is usually to be avoided.

Overton Park, supra, at 420.

The Court enunciated the standard for reviewing the mental processes of administrative decisionmakers as follows:

> And where there are administrative findings that were made at the same time as the decision, as was the case in Morgan, there must be a strong showing of bad faith or improper behavior before such inquiry may be made.

Ibid.

While the Court notes that the Overton Park decision gave no reasons for departing from the precedent so clearly set forth in Morgan, supra, there is no argument by defendants that Overton Park should not control here. As noted before, defendants cite Overton Park as controlling the present situation. By way of affidavit, defendants assert that the record is complete. Attached to that affidavit is a copy of Cordle's decision upon reconsideration, complete with specific findings of fact. Defendants contend that plaintiff is in no position to argue that the record is not complete since plaintiff failed to discover that record. Finally, defendants argue that plaintiff cannot make a showing of bad faith or improper conduct as required by Overton Park. The reason for this, they argue, is that the plaintiff has failed to discover the record. The Court agrees. Plaintiff has made no allegations of bad faith or improper conduct on the part of Cordle, nor has plaintiff made the requisite "strong showing" of such conduct. See Overton Park, supra. Thus, the Court sees no reason to allow the taking of Cordle's deposition. Accordingly,

IT IS HEREBY ORDERED that defendants' motion to prevent the taking of Cordle's deposition be SUSTAINED. IT IS FURTHER ORDERED that defendants' motion to stay the taking of said deposition be OVERRULED AS MOOT.

This the 9th day of April, 1982.

G. Wix Unthank

G. WIX UNTHANK, JUDGE