BEFORE THE MERIT EMPLOYEE RELATIONS BOARD

OF THE STATE OF DELAWARE

IN THE MATTER OF J. R. MORRIS Grievant, v. STATE OF DELAWARE DEPARTMENT OF CORRECTIONS Agency	**DOCKET NO. 96-01-72** **DECISION AND ORDER**

COPY

BEFORE Burns, Vice Chairperson, Bowers, Fullman and Green, Members of the Merit Employee Relations Board, constituting a lawful quorum of the Board pursuant to 29 Del Code, Section 5908(a).

And now on this date, the 18th of July, 1996, the Board makes the following findings and conclusions and enters the following Order:

APPEARANCES

For the Grievant: David A. Boswell, Esquire
Schmittinger & Rodriguez
Brandywine Gateway Plaza, Suite 205
1300 North Market Street
Wilmington, DE 19801

For the Department: Elizabeth D. Maron
Deputy Attorney General
Department of Justice
820 North French Street
Wilmington, DE 19801

NATURE AND STATE OF PROCEEDINGS

This is an appeal which was filed with the Merit Employee Relations Board under the grievance process pursuant to 29 Del. C. Ch. 59 and the Merit Rules as the result of a fourth-step grievance decision adverse to the Grievant.

The grievant, J. R. Morris, a Correctional Sergeant with the Department of Corrections (hereinafter "Department" or "DOC"), filed a grievance on July 4, 1995 alleging that he was improperly ordered by the acting shift commander to perform an inmate head count in the main kitchen in violation of Merit Rule 3.0410, because this duty is a formal responsibility of the Lieutenant of the area who belongs to a different bargaining unit.

MOTION TO DISMISS

This matter came before the Board for hearing on July 18, 1996. Prior thereto, by written motion, the Department moved to dismiss the grievance for lack of jurisdiction on the basis that Sergeant Morris' grievance is covered in whole or in part by a collective bargaining agreement and is therefore beyond the jurisdiction of the Board pursuant to 29 Del. C. § 5938 (d).

DISCUSSION AND FINDINGS

The Merit Employee Relations Board has jurisdiction to hear grievances filed by an employee covered by a collective bargaining unit in certain limited circumstances. 29 Del. C. § 5938. There is no question here that the employee is covered by a bargaining unit, i.e., the Delaware Correctional Officers Association ("DCOA") who submitted the appeal on behalf of Sergeant Morris. The issue is whether the subject of the grievance is covered in whole or in part by a collective bargaining agreement such that the Merit Rules do not apply, and the motion to dismiss be granted. 29 Del. C. § 5938.

CONCLUSION OF LAW AND ORDER

The Board decision on this Motion to Dismiss is guided by the ruling of the Delaware Supreme Court in Sullivan v. Local 1726 of AFSCME, Del. Supr., 464 A.2d 899 (1983). In that case, the Court held that Merit Rule No. 3.0420 (since re-numbered and now designated as Rule 3.0410 under which this grievance was filed) was not adopted pursuant to 29 Del. C. § 5915.

There is no other statutory provision covered by 29 Del. C. § 5938 (c) alleged to form the basis for this grievance and which would control whether or not there was a collective bargaining agreement involved. Thus, the only question here is whether the subject of the grievance is covered in whole or in part by a collective bargaining agreement.

The essence of the grievance is that Sergeant Morris was directed to perform one of the duties of a Correctional Lieutenant which the Department acknowledges is outside of the Grievant's bargaining unit. The Board concludes that this grievance is therefore a dispute regarding the deployment or work assignment for Sergeant Morris and that the deployment of the Grievant's classification as a Correctional Sergeant is covered in whole or in part by the bargaining agreement between the Department and DCOA. Therefore, the grievance is not within the Merit Rules, and the Motion to Dismiss is granted.

IT IS SO ORDERED

Robert Burns, Vice Chairperson

Dallas Green, Member

Walter Bowers, Member

Gary Fullman, Member

APPEAL RIGHTS

29 Del. C. §5949 provides that the grievant shall have a right of appeal to the Superior Court on the question of whether the appointing agency acted in accordance with law. The burden of proof of any such appeal to the Superior Court is on the grievant. All appeals to the Superior Court are to be filed within thirty (30) days of the employee being notified of the final action of the Board.

Mailing Date: July 18, 1996

MMT:jlt

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