

**BEFORE THE MERIT EMPLOYEE RELATIONS BOARD  
OF THE STATE OF DELAWARE**

**IN THE MATTER OF  
PERRY SMYTH**

Grievant,

v.

**STATE OF DELAWARE, Department of  
Transportation  
Agency**

**DOCKET NO. 96-02-81**

**FINDING OF FACT**

**CONCLUSION OF LAW**

**OPINION AND ORDER OF REMAND**

**COPY**

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

AND NOW, on this date, the 5th of September, 1996, the above-referenced matter being before the Board on March 28, 1996, the Board makes the following Finding of Fact and Conclusions of Law; to wit:

**FINDING OF FACT AND CONCLUSION OF LAW**

1. This is an appeal of a denial of a critical reclassification of the position of Civil Engineer V in the Department of Transportation by the State Personnel Office.
2. No relief can be afforded this appeal in the Department of Transportation, since the State Personnel Office has the exclusive power to review and reclassify positions upon request of an agency.
3. This appeal was filed with the Board prior to a 4th Step hearing at the State Personnel office level due to an incorrect explanation to the grievant of the Board's jurisdiction and powers and the grievant should be afforded the opportunity to have his grievance considered by the Director or the Director's designee.

**THE LAW**

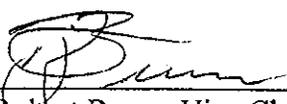
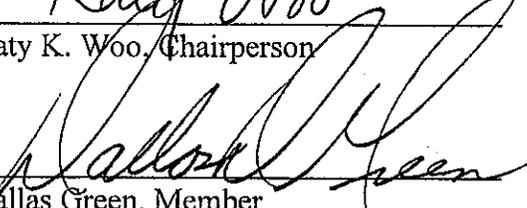
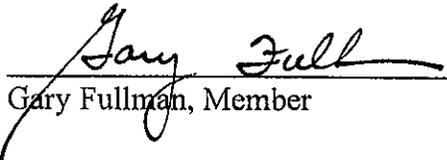
**29 Del. C. §5931. Grievances.**

“The rules shall provide for the establishment of a plan for resolving employee grievances and complaints. The final two (2) steps of any such plan shall provide for hearings before the Director or the Director’s designee and before the Board, respectively, unless a particular grievance is specifically excluded or limited by the Merit Rules. The director and the Board, at their respective steps in the grievance procedure, shall have the authority to grant back pay, restore any position, benefits or rights denied, place employees in a position they were wrongfully denied, or otherwise make employees whole, under a misapplication of any provision of this chapter or the Merit Rules. The rules shall require that the Board take final action on a grievance within ninety (90) calendar days of submission to the Board. Upon approval of all parties, the ninety (90) days may be extended an additional thirty (30) calendar days. (29 Del. C. 1953, §5931; 55 Del Laws, c. 443, §6, 69 Del. Laws, c. 436, §7.)” Effect of amendments -- 69 Del: Laws, c. 436, effective July 14, 1994, rewrote this section.

**ORDER**

This matter is referred to the State Personnel Office for prompt consideration of the critical reclassification of the position of Civil Engineer V.

**IT IS SO ORDERED**

 _____ Katy K. Woo, Chairperson	 _____ Robert Burns, Vice Chairperson
 _____ Dallas Green, 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: October 7, 1996 ~~98~~

Distribution:

Original: File

Copies: Grievant

Grievant's Representative

Agency

Agency's Representative

Merit Employee Relations Board

Katy K. Woo, Chairperson

Robert Burns, Vice Chairperson

Walter Bowers, Member

Gary Fullman, Member

Dallas Green, Member

State Personnel Office (2 copies)