BEFORE THE MERIT EMPLOYEE RELATIONS BOARD

OF THE STATE OF DELAWARE

IN THE MATTER OF WILLIAM J. HOLSTEIN, JR., ET AL., Grievants,	)	
v.	)	**DOCKET NO. 96-07-93**
STATE OF DELAWARE DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES, Agency.	)	**DECISION AND ORDER**

BEFORE Katy K. Woo, Chairperson, Robert Burns, Vice-Chairperson, Gary Fullman, Walter Bowers, and Dallas Green, Members, constituting a quorum of the Merit Employee Relations Board ("Board") pursuant to 29 Del. C. § 5908(a).

AND NOW, this 21st day of November, 1996, the Board makes the following conclusions and enters the following Order:

APPEARANCES

For the Grievants: Patricia Bailey
American Federation of State, County and Municipal Employees - Council 81
610 West Basin Road, First Floor
New Castle, Delaware 19720

For the Department: Janice Tigani, Deputy Attorney General
Department of Justice
Carvel State Office Building
820 North French Street
Wilmington, Delaware 19801

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NATURE OF THE PROCEEDINGS

These related and consolidated grievance appeals were filed *pro se* by the Grievants with the Merit Employee Relations Board under the grievance process pursuant to 29 Del. C. Ch. 59 and the Merit Rules after a fourth step grievance decision adverse to the Grievants.

The Grievants are five Family Service Specialist Supervisors within the Division of Youth Rehabilitation Services in the Department of Services for Children, Youth, and Their Families (DSCYF) who were approved for hazardous duty pay because of the necessity for them to handle a case load. The initial request for hazardous duty pay recognition was filed on October 31, 1994 by Grievant Elizabeth DiStefano followed thereafter by a request from George White on November 21, 1994. The Director of DSCYF, based on these requests, determined that all of the supervisors should be reviewed for hazardous duty status. The request for review was received at the State Personnel Office on June 7, 1995, and by a decision made February 6, 1996, the Director of the State Personnel Office determined that all of the Grievants were entitled to hazardous duty pay at the grade B level and made the qualification retroactive to July 1, 1995, the beginning of the fiscal year.

The Grievants, who asserted exposure to hazardous duty in periods ranging from July 1, 1984 to March 1, 1995, were not satisfied with the July 1, 1995 effective date and continued their grievances seeking retroactive pay adjustments to the date each claimed they were originally exposed to the hazardous duty at Level B.

At the hearing before the Merit Employee Relations Board on October 23, 1996, Patricia Bailey, the staff representative for the American Federation of State, County and Municipal Employees - Council 81, represented to the Board that she had been asked to speak for all of the Grievants and advised the Board that the relief now requested by all Grievants was that the retroactive effective date should be July 1, 1994 as the beginning of the fiscal year in which the

requests for hazardous duty pay had been submitted for approval, rather than the July 1, 1995 effective date which had been retroactively established by the State Personnel Office Director.

There are no facts in dispute. The issue presented by the parties to the Board for determination is whether, under the circumstances set forth above, July 1, 1994, July 1, 1995, or some other date was appropriate for the institution of the hazardous duty pay at Level B for the Grievants.

DISCUSSION, CONCLUSIONS AND ORDER

The Department takes the position that the Director of State Personnel is the only individual authorized to make the determination of whether and when an individual is qualified to receive hazardous duty pay and that therefore the Director's determination of eligibility for the Grievants effective on July 1, 1995 is controlling and that, prior to that time, these individuals are not qualified under 29 Del. C. § 5916(b) or under the Merit Rules, Chapter 5 to receive hazardous duty pay.

Grievants' position is that they were all carrying case loads and therefore exposed to the hazardous duty pay situations prior to the Director's retroactive approval date of July 1, 1995 and therefore seek a retroactive effective date to the beginning of the preceding fiscal year, July 1, 1994.

Grievants' entitlement to hazardous duty pay has been established by the Director of the State Personnel Office and was made retroactively effective by the Director to July 1, 1995. The Board, in this unique situation, has concluded that to appropriately redress the Grievants, in light of the delay in processing the ultimately approved hazardous duty requests for the Family Service Specialist Supervisors, all of whom, except for Grievant Holstein, were determined by the Director to be retroactively eligible for hazardous duty pay at Level B on the basis of duties assigned significantly prior requesting such recognition, the appropriate effective dates for these Grievants should be deemed to be October 31, 1994, date of the initial hazardous duty pay request. The retroactive

effective date for William J. Holstein, Jr., who sought a later effective date of March 1, 1995 based upon his transfer into the unit at that time, should be March 1, 1995.

ORDER

Therefore, under the authority of 29 Del. C. § 5931, by the unanimous vote of all members of the Merit Employee Relations Board, the grievances are upheld, and the effective dates for the Grievants' hazardous duty entitlement is October 31, 1994 for Grievants Kenneth Ryser, George White, Elizabeth DiStefano, and Ann Maloney, and March 1, 1995 for Grievant William J. Holstein, Jr.

IT IS SO ORDERED:

Katy K. Woo, Chairperson

Robert Burns, Vice-Chairperson

Gary Fullman, Member

Walter Bowers, Member

Dallas Green, Member

APPEAL RIGHTS

Pursuant to 29 Del. C. § 5949, the Grievant or the Agency may appeal to the Superior Court. The burden of proof of any such appeal to the Superior Court is on the appellant. All appeals to the Superior Court are to be filed within thirty (30) days of the notification of the final action of the Board.

Mailing Date: November 25, 1996

MMT:bfo

Distribution:
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Copies: Grievants' Representative
Agency's Representative
Merit Employee Relations Board
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