BEFORE THE MERIT EMPLOYEE RELATIONS BOARD
OF THE STATE OF DELAWARE

IN THE MATTER OF DR. TIMOTHY BRANDAU, Grievant v. DEPARTMENT OF CHILDREN, YOUTH AND THEIR FAMILIES, Employer/Agency.	)	**DOCKET NO. 97-04-118** **ORDER ON MOTION TO DISMISS**

BEFORE Katy K. Woo, Chair, Robert Burns, Vice Chair, Dallas Green, Member, John Schmutz, Member, and Walter Bowers, Member, constituting the entire Merit Employee Relations Board (the "Board") pursuant to 29 Del. C. Section 5908(a).

AND NOW, this 18th day of September, 1997, before the Board is a motion by the Department of Children, Youth and Their Families to dismiss the appeal filed by the grievant Dr. Timothy Brandau.

1. On April 2, 1997, the Merit Employee Relations Office received a timely appeal by Dr. Timothy Brandau from a Step 4 decision by the State Personnel Office. In his letter of appeal, Dr. Brandau stated that "[m]y position was reclassified to an appropriate new classification. However, despite the addition of significant new and expanded duties and responsibilities the pay grade assigned to my new classification was the same as that assigned to my old classification."

2. On August 26, 1997, the State filed a motion to dismiss the appeal for lack of jurisdiction. The motion noted that the grievant does not contest his job classification, but rather "requests the Board to review the assignment of pay grade to his classification and to change the pay

COPY

grade to his classification [from pay grade 21] to pay grade 22." The State argues that the Board is precluded, by statute, from considering this kind of grievance by a merit employee.

3. Section 8(f)(1) of the Budget Act for Fiscal Year 1998 provides: "Critical reclassification requests and pay grade determinations shall not be appealed to the Merit Employees Relations Board." The General Assembly, therefore, has foreclosed the exercise of jurisdiction by the Board over Dr. Brandau's appeal of his pay grade determination. See Cunningham v. Department of Health & Social Services, Del. Super., 1996 WL 190757, at p. 2. (Mar. 27, 1996) (Ridgely, Pres. J.) (The Board's "'power and authority are derived exclusively from the statute, and its power therefore extends only to those cases which are properly before it in compliance with the statutory law.'") (quoting Maxwell v. Vetter, Del. Supr., 311 A.2d 864, 865 (1973)).

4. Dr. Brandau argues that the FY '98 Budget Act should not apply to his grievance, which was filed before the General Assembly adopted the act. The Board, however, must apply the law as it is written at the time it decides the case.

IT IS ORDERED that the motion to dismiss for lack of jurisdiction is granted.

Katy K. Woo, Chair

Robert Burns, Vice Chair

Walter Bowers, Member

John Schmutz, Member

Dallas Green, Member

Mailing Date: October 30, 1997
gt

Distribution:
Original: File
Copies: Grievant
Elizabeth A. Maron, Deputy Attorney General
Merit Employee Relations Board
Katy K. Woo, Chair
Robert Burns, Vice Chair
Walter Bowers, Member
John Schmutz, Member
Dallas Green, Member

I:\TUPMAN\FILES\MERB.OR5