BEFORE THE MERIT EMPLOYEE RELATIONS BOARD

OF THE STATE OF DELAWARE

IN THE MATTER OF:	)	
THE GRIEVANCE APPEAL OF	)	**MERB DOCKET NO. 98-12-174**
TERRY DEPUTY	)	

COPY

ORDER GRANTING MOTION TO DISMISS

BEFORE Susan L. Parker, Esquire, Chairperson; Dallas Green, John F. Schmutz, Esquire, and John W. Pitts, Members, constituting a quorum of the Merit Employee Relations Board pursuant to 29 *Del. C.* § 5908(a).

APPEARANCES:

For the Appellant:
Roy S. Shiels, Esquire
Brown Shiels, Beauregard & Chasanov
108 East Water Street
P. O. Drawer F
Dover, DE 19903

For the Agency:
Sherry V. Hoffman
Deputy Attorney General
Department of Justice
820 N. French Street, 6th floor
Wilmington, DE 19801

WHEREAS, on December 30, 1998, counsel for Mr. Terry Deputy filed with the Merit Employee Relations Board (hereinafter "MERB") a letter seeking to "...initiate a grievance alleging a failure of the State Personnel Director to carry out applicable procedures or regulations for non-merit reasons in violation of Merit Rule 21.0112. It is therefore a direct appeal to MERB" and,

WHEREAS, the letter further describes the nature of the act complained of in the following terms: "Failure of State Personnel Director to carry out in good faith the terms of the 'release and

settlement agreement' drawn by or contributed to by counsel for the State Personnel Director and executed in February of 1998" and further states that: "The grievant was at that time an employee of the Department of Natural Resources and Environmental Control, but now occupies a position in the Delaware Economic Office."; and,

WHEREAS, the Agency has, by motion dated January 28, 1999, sought the dismissal of the appeal on the basis that it is untimely, fails to state a proper claim for relief, is barred by virtue of an affirmative defense of Agreement and Release, and, that Mr. Deputy has no standing to bring such a grievance before the Board to which motion the grievant filed a written response on February 17, 1999; and,

WHEREAS, under the provisions of 29 *Del. C.* § 5943(a), the standing of a classified employee to maintain a grievance is expressly limited to an alleged wrong that affects his or her status in his or her present position;

NOW THEREFORE, because the terms of the filing with MERB establish that Mr. Deputy is no longer an employee of the Department of Natural Resources and Environmental Control (DNREC") but now occupies a position in the Delaware Economic Development Office, he has no standing to pursue the present grievance and it will be dismissed by the unanimous vote of the members of the Board hearing this matter. Mr. Deputy's remedy for the non-payment of his overtime by the Office of State Personnel, if one exists, is not for a violation of the Merit System Statute or Rules and is in another forum. His dissatisfaction with not having been paid for compensatory time after leaving his position with DNREC can not be processed as a grievance. It is therefore unnecessary to address the other basis for dismissal set forth in the Agency's motion to dismiss.

ORDER

THIS GRIEVANCE/APPEAL IS DISMISSED BY ORDER OF THE BOARD this 3rd day of June, 1999.

Susan L. Parker, Chairperson

John W. Pitts, Member

Dallas Green, Member

6-8-99

John F. Schmutz, Esquire, Member

APPEAL RIGHTS

29 *Del. C.* § 5949 provides that the grievant shall have a right of appeal to the Superior Court on the request of whether the appointing agency acted in accordance with the 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.

29 *Del. C.* § 10142 provides:

(a) Any party against whom a case decision has been decided may appeal such decision to the Court.

(b) The appeal shall be filed within thirty (30) days of the day the notice of the decision was mailed.

(c) The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the agency for further proceedings on the record.

(d) The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.

Mailing Date: June 9, 1999

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Agency's Representative
Merit Employee Relations Board