



Both Mr. Murphy and Mr. Blake are employees of the Division of Public Health within the Department of Health and Social Services and both men were reclassified to the telecommunications Technician Career Ladder and slotted at the level of Technician III effective July 1, 1999. Both Mr. Blake and Mr. Murphy have grieved the decision to slot them at the Technician III level rather than the IV level.

#### **SUMMARY OF THE EVIDENCE**

In sworn testimony both Mr. Blake and Mr. Murphy testified about the work they perform for the Division of Public Health in their present positions. Both men testified that, in their opinion, they meet the minimum qualifications for Telecommunications/Network Technician IV which have been established by the Office of State Personnel (Appellant's Exhibit No. A, Tab 1). Both men also testified that they believe they meet all of the conditions established in the "Promotional Standards" approved by the Office of State Personnel for promotion to Telecommunications/Network Technician IV. (Appellant's Exhibit A, Tab 2) (Agency Exhibit No. 2). According to the testimony of Mr. Blake and Mr. Murphy both were recommended for slotting at the Telecommunications/Network Technician IV level by their supervisors (Appellant's Exhibit A, Tab 3) (Agency Exhibit No. 5).

Both men were advised by Human Resources personnel that they were ineligible for slotting at the IV level because the networks for which they had responsibility were at the Division level and it had been determined that networks at the Division level would only justify the slotting at the Technician III level. (Appellant's Exhibit D)

Wanda Pfeiffer, after being sworn, testified that she is a Human Resources Specialist V with the State Personnel office and is familiar with the development of the career ladders created as a result of the Maintenance Review for the Network Class Series which began in 1998. This was the

Maintenance Review which resulted in the reclassification of Mr. Blake and Mr. Murphy into the Telecommunications/Network Technician Career Ladder.

Ms. Pfeiffer explained the creation of the Technology Committee as a part of the reclassification consideration to review and determine the complexity of the various Information Technology ("IT") networks in State agencies. The networks were benchmarked at one of three levels: Less complex, Mid Range, and Most Complex. The determinations of relative network complexities were embodied in a document from the Career Ladder Committee dated December 1999 entitled "Complexity of Networks". (Agency Exhibit No. 6) The Complexity of Networks document was updated in June 2000 (Agency Exhibit No. 3) and the basis for determining the benchmarking of Networks is described therein.

Ms. Pfeiffer testified that the subject matter experts who made up the Committee responsible for the complexity of network determinations also determined the level of technical support which each classification of networks would support. She testified that there are 11 Divisions within the Department of Health and Social Services. Because of the relative complexities of the various networks, as determined by the Complexity of Networks Committee, the only Division which supports the assignment of a Technician IV is the Division of Management Services "DMS" which provides, among other things, Information Technology support across Division lines. All of the other Divisions within the Department are limited to Technician support up to the Technician III level.

Ms. Pfeiffer, referring to the July 5, 2000 Memorandum from the Director of the State Personnel Office to the Secretary of the Department of Health and Social Services, (Agency Exhibit 4; Appellant's Exhibit A, Tab 4), noted that the review of the Department of Health and Social Services Division's network complexity had confirmed the prior determination that Division networks

were not to be benchmarked as most complex. It was also noted that the Technician IV level is for positions at the Department level that provide major network upgrades across Divisions whereas Division level staff provide network support for the individual Division.

Ms. Pfeiffer stated that as the representative of the State Personnel Office she, together with Christopher Ross and Michael Smith from the Department of Health and Social Services, were the slotting committee charged with the responsibility of slotting Mr. Murphy and Mr. Blake on the Technician Career Ladder. Ms. Pfeiffer testified that slotting for these individuals was at the III level because that was the highest level under the Promotion Standards which was available for individuals employed at the Division level. She stated that the supervisor's recommendation for slotting Mr. Blake and Mr. Murphy at the IV level was considered by the Slotting Committee but rejected because of the limitation of the Career Ladder at the Division level to the III classification.

On cross examination, Ms. Pfeiffer agreed that the slotting decisions which were being appealed were based upon the determination of the type of network involved. She noted that the slottings were accomplished in May of 2000 on an interim basis pending the requested reconsideration of the complexity of network determination. Ms. Pfeiffer also testified that these slottings for Mr. Blake and Mr. Murphy were done in accordance with the Promotional Standards (Agency Ex. No. 2) which had been approved by the Director of the Office of State Personnel and which refer in bold type to the requirement that the agency's operations must support the work of the next level and must meet the criteria as outlined in the Complexity of Networks document.

Michael Smith, after being sworn, testified that he is employed with the Division of Management Services in the Department of Health and Social Services. He described the overview of the communications networks in the State and related that he sat as a subject matter expert on the

slotting committee which slotted Mr. Blake and Mr. Murphy at the Telecommunications Technician III level.

Mr. Smith testified that as a member of the slotting committee he was instructed to apply the promotional standards and he was given a copy of the Complexity of Networks document to use.

Mr. Smith also testified that both Mr. Blake and Mr. Murphy met all of the minimum qualifications for slotting at the Technician IV level. However, since the networks at the Division of Public Health could support only a Technician III under the Complexity of Networks document, both Mr. Blake and Mr. Murphy were slotted at the III level rather than the IV level.

### THE LAW

#### **MERIT RULE 13.0100 PROMOTION**

Vacancies shall be filled by promotion wherever practical and in the best interest of the classified service.

Whenever a position is to be filled by promotion the candidate shall meet the minimum requirements of the class specification. Consideration shall be given to qualifications, performance record, seniority, conduct and, where applicable, the results of competitive examinations.

No grievance may be maintained concerning a promotion except where:

- (1) the person who has been promoted does not meet the minimum qualifications;
- (2) there has been a violation of Merit Rule 19.0100 or any of the procedural requirements in the Merit Rules; or
- (3) there has been a gross abuse of discretion in the promotion.

#### **MERIT RULE 3.0710**

An authorized position may be underfilled in Authorized Career Ladder Classes in accordance with criteria developed by the appointing authority and approved by the State Personnel Director. Underfilling may start at any level in the Career Ladder in accordance with the approved criteria. The position incumbent may be promoted through the Career Ladder in accordance with promotional standards included in the criteria approved by the Director. Promotional standards must include written examinations, performance tests, oral examinations, performance evaluations or other tests which demonstrate the ability to move to the next level in the Career Ladder.

**MERIT RULE 3.0930**

When a position is reclassified to a position in an Authorized Career Ladder, as defined in Merit Rule 3.0710, placement of the position incumbent in the Career Ladder is determined in accordance with promotion standards approved by the Director.

**DISCUSSION AND FINDINGS**

The Appellants argue that there has been a gross abuse of discretion and a violation of the procedural requirements of the Merit Rules in their slotting at the Telecommunications Technician III level. They contend that the evidence establishes that they would be placed at the Technician IV level but for the fact that they work for one of the Divisions of the Department of Health and Social Services. They argue that promotion and slotting under the Merit Rules must be based upon an individual's qualifications and performance rather than the place of employment.

The Promotional Standards adopted by the Director under Merit Rule 3.0930 clearly incorporates the determinations made by the subject matter experts on the Complexity of Networks Committee and expressly note that the agency's operations must support the level sought. The Board finds there is a rational relationship between the complexity of various networks and the level or classification determined to be appropriate for the various agency support positions. Various divisions within the Department of Health and Social Services have challenged the determination that their networks do not qualify to be benchmarked as Most Complex. The Complexity of Networks Committee, upon reconsideration, determined that the Department of Health and Social Services' network is properly benchmarked as Most Complex while the networks at the Division level do not qualify as Most Complex and will support up to a Technician III. (Agency Exhibit No. 3). The limitation of the highest Technician classification to networks at the Department level is a reasoned

decision and is neither arbitrary nor capricious. Nor is it a gross abuse of discretion under the Merit Rules.

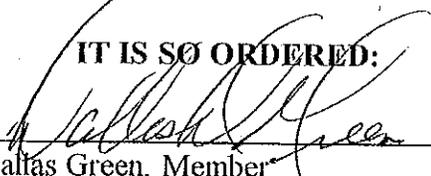
The Committee of experts reviewed and reconsidered the concerns of the Department of Public Health with the determination of relative complexity of the Department networks and the Appellants have not, by a preponderance of the evidence presented, sustained their allegations of a gross abuse of discretion or Merit Rule procedural violations.

It is clear that both Mr. Blake and Mr. Murphy are very talented individuals who do an excellent job in their respective positions. The evidence also establishes that there has been a reasoned and objective determination of the level of complexity of the various networks and a determination of the Technician levels which each level of complexity will support. While it is proper and appropriate to base promotions or slotting on the qualifications and performance of an individual, such performance determinations in totality should not ignore the complexity of the job being done.

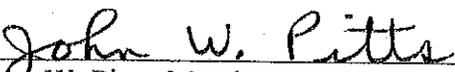
**ORDER**

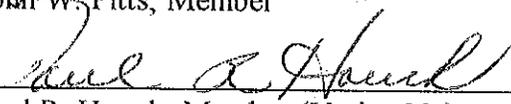
The evidence presented does not establish a violation of the Merit Rules in the slotting of either Mr. Blake or Mr. Murphy at the Technician III level. Therefore, by the vote of Commissioners Green, Pitts, and Schmutz (Commissioner Houck voting no), the appeals are denied and the action of the Agency is upheld.

**IT IS SO ORDERED:**

  
Dallas Green, Member

  
John F. Schmutz, Member

  
John W. Pitts, Member

  
Paul R. Houck, Member (Voting No)

**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.

29 Del. C. § 10142 provides that any party against whom a case decision has been decided may appeal such decision to the Court.

Mailing Date: October 26, 2001

Distribution:

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Agency's Representative  
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