BEFORE THE MERIT EMPLOYEE RELATIONS BOARD OF THE STATE OF DELAWARE

IN THE MATTER OF THE PROPOSED MODIFICATION OF EXISTING MERIT RULES 10.0230 AND 10.0240.	)	ORDER

BEFORE Brenda Phillips, Chairperson; Dallas Green, John F. Schmutz, John W. Pitts, and Paul Houck, Members, Constituting a Quorum of the Merit Employee Relations Board Pursuant to 29 *Del. C.* § 5908(a).

COPY

BACKGROUND

On August 1, 2002, the State Personnel Director transmitted to the Merit Employee Relations Board ("MERB" or "Board") certain proposed revisions to Merit Rules No. 10.0230 and 10.0240. (Board Exhibit No. 2). The Board considered the Director's filing and determined to schedule and conduct a public hearing concerning the Director's proposed changes to Merit Rule No. 10.0230 and Merit Rule No. 10.0240.

The Board gave notice of the proposed changes and the hearing by publication in two newspapers of general circulation on two occasions. Publication was also made of the proposed Rules changes and notice of the hearing in the Delaware Register of Regulations in Volume 6, issue 6, dated December 1, 2002. (Board Exhibit No. 1). The hearing was held before the entire Board on Thursday, January 9, 2003 at 9:30 a.m. in the Margaret O'Neal Building, 410 Federal Street, Dover, Delaware. There were no written comments filed and no members of the public attended the hearing.

SUMMARY OF EVIDENCE PRESENTED

Thomas LoFaro, Deputy Director of Employee Relations with the Office of State Personnel presented sworn testimony that the proposed changes to Merit Rules 10.0230 and 10.0240 were based upon statutory changes made by HB # 141, as amended by Senate Amendment No. 1 which amended 29 *Del. C.* §5921 (Appointment of highest ranking candidates)

and by SB # 227 which amended 29 *Del. C.* §5919.(Eligibility lists). Mr. LoForo also testified that these statutory changes were reflected in the proposed changes to the relevant Merit Rules and that the proposed changes had been presented to the Labor-Management Committee for review and comment prior to submission to the Board as required by 29 *Del. C.* §5907(3). Mr. LoFaro further stated that the Labor-Management Committee had approved the proposed changes at its meeting of May 10, 2002 as reflected in the minutes of that meeting. (Board Exhibit No.2).

FINDINGS AND CONCLUSIONS

Pursuant to 29 *Del. C.* §5914, the Board, having reviewed the proposed changes to the Merit Rules submitted by the Director, and having found that the proposed revisions are consistent with recent legislative changes to Chapter 59 of Title 29 of the Delaware Code, concludes that the Director's proposed revisions to Merit Rule No. 10.0230 and Merit Rule No. 10.0240 should become effective at the conclusion of the hearing process upon the expiration of ten (10) days after the publication of this Order in the Delaware Register of Regulations.

The Board finds that basis for the proposed changes are legislative modifications of the Delaware Statutes governing State Classified Service and the Merit Rules as follows:

a. Seventy two *Del. Laws.* c.359, amending 29 *Del. C.* §5921 [relating to the appointment of the highest ranking candidates] was modified by the Delaware General Assembly by deleting the second sentence which read: "The rules shall not require the employing agency to interview more than 1 person on such list."and substituting in its place a new sentence reading "These rules shall not require an employing agency with less than 200 full time employees to interview more than 1 person on such list. If the employing agency has 200 or more full time employees, the rules shall require the employing agency to interview at least 5 persons on such list."

As a result of the legislative change, the Director proposed that Merit Rule No. 10.0230 be modified as follows [Note, underlined = addition; line through=deletion]:

Rule No. 10.0230 Any candidate whose name appears on a certified list may be considered to fill the vacancy for which the list was requested. Agencies with 200 or more full-time employees shall interview at least five candidates from the list if there are at least five names on the list. Agencies with fewer than 200 full-time employees shall interview at least one candidate from the list. If ~~Should~~ the list ~~be~~ is unsatisfactory, it may be returned and ~~subsequent~~ new lists may be requested, provided the reasons for rejection accompany the returned list.

(b) By 73 Del. Laws. c.142, the provisions of 29 *Del. C.* §5919 [relating to eligibility lists] was modified by the Delaware General Assembly by deleting 29 *Del. C.* §5919 in its entirety and replacing it with a new §5919 which reads:

> The rules shall provide for the establishment of eligibility lists for appointment and promotion. Such lists shall include the names of successful candidates in the order of their relative performance in the particular examinations, except where such lists contain fewer than 15 candidates, in which case the names of the successful candidates may be listed in alphabetical order. Eligibility for appointment from any such list shall continue for not more than 3 years. Vacant positions in pay grades 1-4 will be filled by agency recruitment efforts unless an eligibility list is required by federal law for that position.

The Director proposed the following change to Merit Rule No. 10.0240 [Note, underlined = addition; line through=deletion]:

Merit Rule No. 10.0240 Eligibility lists must be rank ordered in accordance with procedures outlined by the Director~~.~~, except that if the number of qualified candidates is less than 15, the ~~In those circumstances where there are no ranking procedures in place and the number of qualified candidates is equal to or fewer than the maximum number to be certified,~~ names may be certified in alphabetical order. In those instances, the appointing authority ~~must~~ shall be informed that the list is in alphabetical order.

The Board, as a result of its review and deliberations on this matter, suggests to the State Personnel Director that in any future revisions to the Merit Rules, consideration be given to whether or not there should be a requirement that the applicant ultimately selected for a position be an individual who received an interview for the position.

ORDER

For the foregoing reasons by the unanimous vote of the undersigned members of the Board, Rule 10.0230 and 10,0240 are modified as described above and shall read as follows:

Rule No. 10.0230 Any candidate whose name appears on a certified list may be considered to fill the vacancy for which the list was requested. Agencies with 200 or more full-time employees shall interview at least five candidates from the list if there are at least

five names on the list. Agencies with fewer than 200 full-time employees shall interview at least one candidate from the list. If the list is unsatisfactory, it may be returned and new lists may be requested, provided the reasons for rejection accompany the returned list.

Merit Rule No. 10.0240 Eligibility lists must be rank ordered in accordance with procedures outlined by the Director, except that if the number of qualified candidates is less than 15, the names may be certified in alphabetical order. In those instances, the appointing authority shall be informed that the list is in alphabetical order.

Merit Rule No. 10.0230 and Merit Rule No. 100240 as so modified shall become effective ten (10) days following the publication of this Order in the Register of Regulations.

BY ORDER OF THE BOARD

Brenda C. Phillips

Brenda Phillips, Chairperson

Dallas Green

Dallas Green, Member

John F. Schmutz

John F. Schmutz, Member

John W. Pitts

John W. Pitts, Member

Paul A. Houck

Paul Houck, Member

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