

**BEFORE THE MERIT EMPLOYEE RELATIONS BOARD
OF THE STATE OF DELAWARE**

IN THE MATTER OF)	
IRVING S. YOUNG, Corporal)	DOCKET NOS. 98-05-153
TERRIS MASSEY, Corporal)	98-05-154
WILLIAM J. PARKER, Corporal)	98-05-155
REGINALD B. GOLDSBORO, Corporal)	98-05-156
)	
APPELLANTS,)	
)	
v.)	
)	
DEPARTMENT OF CORRECTIONS,)	
)	
AGENCY.)	
)	

Before Robert Burns, Vice-Chairperson; Dallas Green; John F. Schmutz, Esquire; and John W. Pitts; members constituting a quorum of the Merit Employee Relations Board ("the Board") as required by 29 *Del. C.* §5908(a).

APPEARANCES

For the Department:
Ilona Kirshon
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801

For the Appellants:
Irving S. Young, Pro se
Terris Massey, Pro se
William J. Parker, Pro se
Reginald B. Goldsboro, Pro se

NATURE OF THE PROCEEDINGS

These grievance appeals came before the Merit Employees Relations Board ("Board") on April 28, 1999 for hearing on the Agency's motion to dismiss each appeal. All of the appellants were present except for Corporal Parker who advised the Board by telephone that he would be unable to

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attend the hearing on the motion to dismiss. At issue in these cases were four grievances which were filed on Delaware Correctional Officers Association ("DCOA") Official Forms and which were appealed to the Board on May 4, 1998.

In his grievance Corporal Young complains that the persons who are responsible for the mail rooms in other Delaware prisons are in paygrade 11 and are either Sergeants or Lieutenants. Corporal Young wishes to have the same paygrade and rank. Corporal Massey makes the same grievance complaint regarding the prison laundry room; Corporal Parker has the same complaint concerning the persons who run the loading dock; and Corporal Goldsboro makes the same complaint regarding the persons who run supplies at other Delaware prisons. Each of the appellants seek to be "made whole" by making the same pay and being given the same title as the persons they assert are performing the same functions in different Delaware prisons.

On October 2, 1998 the Agency moved to dismiss each of the grievance appeals on the grounds that each was not timely filed and thus beyond the Board's jurisdiction. The Agency motion also noted that each grievance seeks to challenge the classification and the paygrade assigned to the grievant's particular classification and absent a maintenance classification review appeal, position classifications and paygrade assignments are not permitted to be appealed to the Board.

All appellants were afforded the opportunity to provide a written response to the Department's motion to dismiss. In their responses the appellants oppose the dismissal of the appeals on the basis of the disposition of the Job Analysis Questionnaires submitted for review for position upgrades and on the basis of the non-receipt of the notification of the denial of the grievances in the April 6, 1998 memorandum sent to the union representative. At the hearing the Department stipulated that the appellants had been actively seeking review of their positions. The appellants

explained the delay in filing the appeals with the Board on the basis that their Union representative had left her employment and that they did not get notice in a manner which permitted them to file a timely appeal with the Merit Employee Relations Board.

FINDINGS AND CONCLUSIONS

It appears to the Board that the appellants may not have timely filed their appeals. While there are extenuating circumstances presented, Merit Rule No 20.0340 provides that the request for a hearing must be presented to the State Personnel Director within 10 working days of the decision at Step 3. The Step 3 decision was issued as a result of the April 6, 1998 memorandum from the Department's Director of Human Resources & Development to the DCOA Area III representative effectively establishing the deadline for the request for a Step 4 hearing for April 20, 1998. This Memorandum declaring that there would be no Step 2 or Step 3 hearing would have authorized the appellants under Merit Rule No. 20.0360 to directly file their appeals with the Director of the Office of State Personnel for a Step 4 hearing. They did not do so and sought to skip Step 4 filing their appeals with the Merit Employee Relations Board on May 4, 1998. Appeals to the Board through the Grievance Procedure must be submitted to the Board within fifteen (15) working days of receipt of a Step 4 decision. See Merit Rule No. 21.0120. There is no provision for skipping Step 4 in the absence of a waiver. Assuming that such a waiver occurred in these cases by virtue of the inclusion of the March 19, 1998 memorandum from Thomas LoFaro, the Deputy Director for Employee Relations, with the April 6, 1998 memorandum from Allen Machtinger, the Director of Human Relations and Development for the Department, the filing at the Board should have occurred within fifteen (15) working days and did not. As Corporal Young noted in his reply to the Department's motion to dismiss, the April 6, 1998 memorandum was initially forwarded to DCOA representative

Lisa Rajeovich but Corporal Young did not receive the information until after the deadline date when it was hand delivered to him by another DCOA representative. This inaction does not excuse the timely filing of a proper appeal with the Board under the Merit Rules. However, it is not necessary for the Board to determine in these instances whether or not the appeals are timely filed because, even if they were timely filed, they are not grievance appeals which the Board can hear and consider.

The essence of each grievance is a complaint about the perceived inequality in the paygrade assigned to various job functions performed in each of the prisons. The grievances reflect the attempt of these Correctional Officers with representation by the DCOA to have certain positions reclassified. The Department correctly responded on the existing methods for position reclassification in the April 6, 1998 memorandum with its attachment. The Delaware General Assembly has made it clear in the FY 99 Budget Act that grievances involving critical reclassifications or the determination of paygrade are not within the jurisdiction of the Merit Employee Relations Board. Maintenance Classification Reviews are within the Board's jurisdiction but in these cases there were no such reviews performed and this Board has previously concluded that the determination of which classifications to select for Maintenance Classification Reviews is a matter within the discretion of the Director of State Personnel. See *Casto v. DHSS*, MERB Docket No 98-10-130, Order (October 9, 1998). Therefore, these appeals are beyond the jurisdiction of the Board and must be dismissed. However, it does appear that a reasonable basis exists for further inquiry into the classification of the appellants' positions in light of the asserted disparity with similar positions in other institutions. Therefore, it is the unanimous recommendation of the Board that each of the appellants be personally interviewed and a review of their positions made so that if an inequitable situation is found to exist that

management can take the appropriate steps to have it addressed. The appellants should receive a written report of the results of such review.

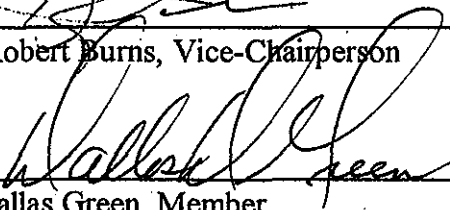
ORDER

By the unanimous vote of the participating members of the Merit Employee Relations Board, the above-captioned paygrade and classification appeals are, for the reasons stated above, **DISMISSED.**

IT IS SO ORDERED.



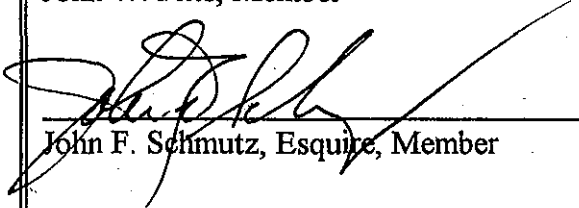
Robert Burns, Vice-Chairperson



Dallas Green, Member



John W. Pitts, Member



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 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:

(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: May 21, 1999

Distribution:

Original: File

Copies:: Appellants

Agency's Representative

Richard Senato, DCOA