

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

DANIELA LAGONELL,)	
)	
Employee/Grievant,)	Docket No. 18-10-702
v.)	
)	DECISION AND ORDER
DEPARTMENT OF SERVICES FOR CHILDREN,)	
YOUTH, AND THEIR FAMILIES,)	
)	
Employer/Respondent.)	

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board (the Board) at 10:00 a.m. on January 17, 2019, at the Delaware Public Service Commission Hearing Room, Cannon Building, located at 861 Silver Lake Blvd., Dover, DE 19904.

BEFORE W. Michael Tupman, Chair, Paul Houck, Victoria D. Cairns, and Sheldon N. Sandler, Esq., Members, a quorum of the Board under 29 *Del.C.* §5908(a).

APPEARANCES

Rae M. Mims
Deputy Attorney General
Legal Counsel to the Board

Deborah L. Murray-Sheppard
Board Administrator

Daniela Lagonell
Employee/Grievant

Kevin Slattery
Deputy Attorney General
on behalf of the DSCYF, Division
of Family Services

BRIEF SUMMARY OF THE EVIDENCE

A hearing was convened by the Merit Employee Relations Board (the Board) on Thursday, January 17, 2019 to consider a motion to dismiss the grievance of Daniela Lagonell (Lagonell), against the Department of Services for Children, Youth and their Families, Division of Family Services (Agency).

The Grievant was employed by the Agency as a Social Service Technician. By letter dated August 21, 2018, she was notified she was being recommended for termination. On September 28, 2018, a pretermination hearing was conducted, pursuant to Merit Rules 12.4 – 12.6.¹ The hearing officer issued a decision and recommendation to proceed with termination on October 8, 2018. The Agency Secretary notified Lagonell by letter that her employment was terminated effective October 8, 2018.

On October 11, 2018, Lagonell filed a “dual” grievance to the Department of Human Resources (DHR) and the Board (pursuant to Merit Rule 12.9²). The grievance was immediately forwarded to DHR by the MERB Administrator.

By letter dated November 9, 2018, the DHR Labor Relations and Employment Practices

¹ **12.4** Employees shall receive written notice of their entitlement to a pre-decision meeting in dismissal, demotion for just cause, fines and suspension cases. If employees desire such a meeting, they shall submit a written request for a meeting to their Agency’s designated personnel representative within 15 calendar days from the date of notice. Employees may be suspended without pay during this period provided that a management representative has first reviewed with the employee the basis for the action and provides an opportunity for response. Where employees’ continued presence in the workplace would jeopardize others’ safety, security, or the public confidence, they may be removed immediately from the workplace without loss of pay.

12.5 The pre-decision meeting shall be held within a reasonable time not to exceed 15 calendar days after the employee has requested the meeting in compliance with 12.4.

12.6 Pre-decision meetings shall be informal meetings to provide employees an opportunity to respond to the proposed action, and offer any reasons why the proposed penalty may not be justified or is too severe.

² **12.9** Employees who have been dismissed, demoted or suspended may file an appeal directly with the Director or the MERB within 30 days of such action. Alternatively, such employees may simultaneously file directly with the DHR Secretary, who must hear the appeal within 30 days. If the employee is not satisfied with the outcome at the DHR Secretary’s level, then the appeal shall continue at the MERB.

Administrator notified Lagonell it declined to convene a grievance hearing, stating:

... [B]ecause [your] position is represented by an exclusive bargaining unit [*sic*] (American Federation of State, County and Municipal Employees Local 3078), and is covered by an active collective bargaining agreement that contains a negotiated grievance procedure, that grievance procedure is the exclusive process available to you to challenge DSCYF's disciplinary action. This is a standard required by Delaware law and is confirmed in Merit Rule 1.3.

By copy of this letter, I am informing MERB that DHR does not believe there is jurisdiction to maintain a Merit grievance in this matter and that we have declined the request to convene a Merit grievance hearing at the DHR/HRM level.³

The MERB Administrator contacted Lagonell by letter dated November 11, 2018, to ascertain whether she wished to continue her grievance and to have it heard by MERB. On December 5, 2018, Lagonell responded that she wished to proceed to a hearing before MERB.

Thereafter, on December 20, 2018, the Agency filed a Motion to Dismiss the grievance in which it asserts the Board lacked jurisdiction to hear it because just cause for discipline is a matter subject to the negotiated grievance procedure under the collective bargaining agreement between DSCYF and AFSCME Local 3078. The hearing on the Agency's motion was scheduled and noticed for January 17, 2019.

Both Lagonell and the Agency were afforded the opportunity to make argument with respect to Agency's motion to dismiss the grievance at the hearing on January 17, 2019.

CONCLUSIONS OF LAW

Merit Rule 1.3 provides:

If a subject is covered in whole or in part by a collective bargaining agreement, 29 Del. C. § 5938(d) provides that the Merit Rules shall not apply to such subject matters ... Collective bargaining agreements may govern matters of bargaining unit specific pay and benefits, probation...

³ The Board questions whether DHR/HRM violates its obligation under Merit Rule 12.9, which directs that DHR "must hear an appeal within 30 days" when it declines to convene a hearing at all. That issue, however, is not dispositive of the present matter and might be better addressed in a future case.

Merit Rule 18.3 provides:

An employee who is in a bargaining unit covered by a collective bargaining agreement shall process any grievance through the grievance procedure outlined in the collective bargaining agreement. However, if the subject of the grievance is nonnegotiable pursuant to 29 Del. C. § 5938, it shall be processed according to this Chapter.

It is undisputed that Lagonell's position is included within the bargaining unit for which AFSCME Local 3078 is the exclusive bargaining representative. The collective bargaining agreement negotiated by AFSCME Local 3078 with the Agency, on behalf of bargaining unit positions, covers discipline and just cause. Consequently, Lagonell's only recourse for grieving her termination is through that negotiated grievance procedure.

The Board concludes as a matter of law that it does not have jurisdiction to hear Lagonell's appeal because her termination was covered in whole or in part by the Agreement.

ORDER

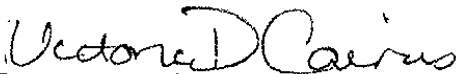
It is this 6th day of **February, 2019**, by a vote of 4-0, the Decision and Order of the Board to grant the motion to dismiss and to dismiss the grievance because challenge to the Grievant's dismissal is subject to resolution through the negotiated grievance procedure contained in the collective bargaining agreement between the Grievant's employer and her exclusive bargaining representative, AFSCME Local 3078. Pursuant to 29 Del.C. §5938, the Board is divested of jurisdiction to consider this grievance.



W. MICHAEL TUPMAN, MERB CHAIR



PAUL H. HOUCK, MERB Member



VICTORIA D. CAIRNS, MERB Member



SHELDON N. SANDLER, MERB Member