

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

JOSHUA DICKSON,)	
)	
Employee/Grievant,)	
)	DOCKET No. 13-12-599
v.)	
)	
DEPARTMENT OF CORRECTION,)	DECISION AND ORDER
)	
Employer/Respondent.)	

After due notice of time and place this matter came to a hearing before the Merit Employee Relations Board (“the Board”) at 9:15 a.m. on April 17, 2014, at the Public Service Commission, Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

BEFORE Martha K. Austin, Chair, John F. Schmutz, Dr. Jacqueline Jenkins, and Paul R. Houck, Members, a quorum of the Board under *29 Del. C. §5908(a)*.

APPEARANCES

W. Michael Tupman
Deputy Attorney General
Legal Counsel to the Board

Deborah L. Murray-Sheppard
Board Administrator

Kevin R. Slattery
Deputy Attorney General
on behalf of the Department of Correction

BRIEF SUMMARY OF THE EVIDENCE

The Department of Correction (DOC) filed a motion to dismiss the appeal of the employee/grievant, Joshua Dickson (Dickson), for lack of jurisdiction. The DOC attached to its motion as Exhibit “F” an Agreement between the State of Delaware, Department of Correction and the Merit Employee Compensation Unit 10 Bargaining Coalition (Correctional Officers Association of Delaware, and the American Federation of State, County and Municipal Employees, AFL-CIO, Council 81, Locals 247, 3384 and 2004) for the period July 1, 2012 – June 30, 2014 (Collective Bargaining Agreement).

Dickson did not file a written response to the motion to dismiss. Dickson did not appear for the hearing on April 17, 2014. The Board waited until 9:15 a.m. before deliberating on the motion to dismiss.

FINDINGS OF FACT

The jurisdictional facts are not in dispute.

Prior to resigning on October 28, 2013, Dickson worked as a Correctional Officer II/Trades Instructor.

The DOC proposed to terminate Dickson for sleeping on duty, negligence in the performance of his duties, and insubordination. After a pre-decision meeting on September 25, 2013, the Director of Human Resources & Development (Janet L. Durkee) notified Dickson by letter dated October 1, 2013 that: “After reviewing all of the documentation and discussing the situation with you and your Union Representatives, I decided that dismissal was not the appropriate penalty for the violation. In lieu of dismissal, you are to receive a 15-day suspension without pay.”

On October 9, 2013, Dickson appealed his 15-day suspension pursuant to the Collective

Bargaining Agreement. By memorandum dated October 23, 2013, the DOC notified Dickson that his Step 2 grievance hearing was scheduled for October 29, 2013 before Perry Phelps, Bureau Chief – Prisons.

Dickson resigned on October 28, 2013.

By memorandum dated October 29, 2013, Phelps notified Dickson: “Due to Joshua Dickson no longer being employed by the DE Department of Corrections and his absence from his scheduled grievance hearing at 10 am on Tuesday, October 29, 2013, the hearing was not heard as scheduled.”

On December 19, 2013, Dickson appealed to the Board. He wrote at the bottom of the Merit Appeal Form: “This grievance was scheduled to be heard by the Bureau Chief on October 29. He would not hear the case because I could not make it due to the birth of my first child on the same day. I was later told that I could submit to MERB. Thank you.”

Article 9.1 of the Collective Bargaining Agreement provides: “Disciplinary action or measures shall include only the following: written warnings, written reprimands, suspensions, demotion or dismissal. Disciplinary action or measures shall be for just cause and shall be subject to the grievance procedures as outlined in this Agreement.”

Article 8.4 of the Collective Bargaining Agreement provides: “Appeals of suspensions shall begin at Step 2 of the Grievance procedure. If an employee appeals a suspension, the suspension shall be delayed until a Step 2 decision is rendered.” Article 8.3.4 provides that “If the Step 2 decision is unsatisfactory,” then the grievance will proceed to pre-arbitration and arbitration.

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,

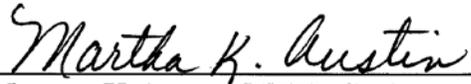
Merit Rule 18.3 provides:

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 Delaware Code §5938, it shall be processed according to this Chapter.

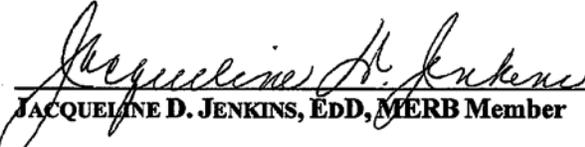
The Board concludes as a matter of law that it does not have jurisdiction to hear Dickson's appeal because his 15-day suspension was a subject covered in whole or in part by the Collective Bargaining Agreement. Dickson can grieve his suspension only through the grievance procedure outlined in the Collective Bargaining Agreement.

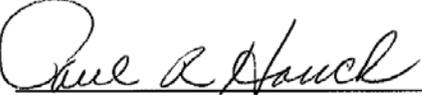
DECISION AND ORDER

It is this **22nd** day of **April, 2014**, by a unanimous vote of 4-0, the Decision and Order of the Board to dismiss Dickson's appeal for lack of jurisdiction.


MARTHA K. AUSTIN, MERB Chairwoman


JOHN F. SCHMUTZ, MERB Member


JACQUELINE D. JENKINS, EDD, MERB Member


PAUL R. HOUCK, MERB Member