

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

MALIKAH AARON,)	
)	
Employee/Grievant,)	DOCKET No. 20-07-776
v.)	
)	
DEPARTMENT OF HEALTH AND SOCIAL)	
SERVICES,)	DECISION AND ORDER
)	OF DISMISSAL
Employer/Respondent.)	

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board (the Board) at 9:00 a.m. on Thursday, April 15, 2021 in the Delaware Public Service Commission Hearing Room, Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904. Pursuant to Governor John Carney’s 27th Modification of a State of Emergency Declaration, the parties were provided the opportunity to participate by teleconference.

BEFORE W. Michael Tupman, Chair, (in-person); Paul Houck (by teleconference), Jacqueline D. Jenkins, Ed.D (in-person), Victoria Cairns (by teleconference), and Sheldon N. Sandler (by teleconference), Members, a quorum of the Board under 29 *Del. C.* §5908(a).

APPEARANCES

Ilona Kirshon (*by teleconference*)
Deputy State Solicitor
Legal Counsel to the Board

Deborah L. Murray-Sheppard
Board Administrator

Victoria Sweeney
Deputy Attorney General
on behalf of the Department of
Health and Social Services

BRIEF SUMMARY OF THE EVIDENCE

The Board heard legal argument from the Department of Health and Social Services (“Agency”) on its motion to dismiss the appeal of the employee/grievant, Malikah Aaron, because the Board lacks jurisdiction to hear this grievance. The Agency attached to its motion a copy of the 2017-2020 collective bargaining agreement between the State (on behalf of the Agency) and Communications Workers of America, Local 13101; and the Merit Rule (“MR”) 12.9 decision issued by the Department of Human Resources on September 22, 2020 denying the grievance.

Ms. Aaron filed a response in opposition to the Agency’s motion by email on March 29, 2021.

Ms. Aaron did not appear nor did she join the teleconference line¹ to participate and advocate on her behalf at the April 15, 2021 hearing. In her absence, the Board heard and considered the Agency’s motion, resulting in the decision below.

FINDINGS OF FACT

Ms. Aaron was hired by the Agency as a Senior Social Worker/Case Manager on February 3, 2020. Her position is included in the bargaining unit of all full-time and casual seasonal Senior Social Worker/Case Managers employed by the Department of Health and Social Services, Division of Services for Aging and Adults with Physical Disabilities. The bargaining unit is represented by Communications Workers of America, Local 13101, AFL-CIO (“CWA Local 13101”). At all times relevant to this grievance, the State and CWA Local 13101 were parties to a collective bargaining agreement.

¹ On April 7, 2021, Ms. Aaron was provided with call-in instructions for the hearing (should she choose not to participate in-person). The instructions were sent both by State email and by US Mail. Ms. Aaron was originally advised of the April 15, 2021 hearing date on February 15, 2021 and reminded by correspondence on March 15, 2021.

On July 20, 2020, the Agency terminated Ms. Aaron. This termination occurred during the contractual six month probationary period set forth in Article 1 of the collective bargaining agreement.

On July 27, 2020, Ms. Aaron grieved her termination through the State merit system, by filing a dual grievance with both the Department of Human Resources and this Board.²

DHR heard the grievance on August 13, 2020, and issued its decision denying the grievance on September 22, 2020. Ms. Aaron requested the Merit Employee Relations Board hear and consider her grievance.

CONCLUSIONS OF LAW

Merit Rule 1.3 states:

If a subject is covered in whole or in part by a collective bargaining agreement, 20 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, emergency employment, transfer and promotional selection processes, reinstatement, performance records, layoff, fines, discipline up to and including dismissal, grievances, work schedules and working conditions.

Merit Rule 18.3 states

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

² 12.9 Employees who have been dismissed, demoted or suspended may file an appeal directly with the DHR Secretary 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.

according to this Chapter.

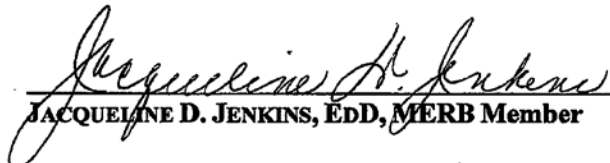
The Board concludes as a matter of law that it does not have jurisdiction to hear Ms. Aaron's grievance because the process to challenge her termination is covered in whole or in part by the 2017-2020 collective bargaining agreement between the State and CWA Local 13101. It is undisputed that Ms. Aaron's position is included in the bargaining unit for which CWA Local 13101 is the exclusive bargaining representative. The negotiated collective bargaining agreement governs discipline and includes a grievance procedure. Consequently, Ms. Aaron's recourse, if any, to grieve her termination is through that negotiated grievance procedure and she is foreclosed from filing a merit system grievance. Merit Rule 18.3.

ORDER

It is this **4th** day of **May, 2021**, by a unanimous vote of 5 - 0, the Decision and Order of the Board to dismiss the grievance for lack of jurisdiction.


W. MICHAEL TUPMAN, MERB CHAIR


PAUL R. HOUCK, MERB Member


JACQUELINE D. JENKINS, EDD, MERB Member


VICTORIA D. CAIRNS, MERB Member


SHELDON N. SANDLER, ESQ., MEMBER