

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

STACEY CASHMAN,)	
)	
Employee/Grievant,)	<u>MERB Docket No. 23-07-898</u>
)	
v.)	
)	DECISION AND ORDER
DELAWARE DEPARTMENT OF CORRECTION,)	ON MOTION TO DISMISS
)	
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 January 3, 2024, at the Delaware Public Service Commission, Silver Lake Plaza, Cannon Bldg., Suite 100, 861 Silver Lake Boulevard, Dover, DE 19904.

BEFORE Jennifer Cohan, Chair; Sheldon N. Sandler, Esq., Joseph A. Pika, III, Ph.D., and Lester E. Johnson, Jr., Members; a quorum of the Board under 29 *Del. C.* §5908(a).

APPEARANCES

Victoria R. Sweeney
Deputy Attorney General
Legal Counsel to the Board

Deborah L. Murray-Sheppard
Board Administrator

Lance Geren, Esq.
O’Donoghue & O’Donoghue
on behalf of the Grievant

Lisa Morris
Deputy Attorney General
on behalf of DOC

BRIEF SUMMARY OF THE EVIDENCE

A hearing was convened by the Merit Employee Relations Board (“MERB”) on Wednesday, January 3, 2024, to consider the grievance of Stacey Cashman (“Grievant”) against the Department of Correction (“Agency”).

Admitted exhibits of the Grievant and the Agency were reviewed by the Board prior to the hearing, as well as the Agency’s Motion to Dismiss the grievance.

The Board heard legal argument from the parties on the Agency’s motion at the hearing. This decision results therefrom.

BACKGROUND

Ms. Cashman is employed as an Administrative Specialist II at the Plummer Community Correction Center (a DOC Level IV facility) where she reports directly to the Warden.

On or about July 27, 2022, the Agency supported and submitted a Critical Reclassification Request to the Department of Human Resources, requesting Ms. Cashman’s position be reclassified from Administrative Specialist II to an Administrative Specialist III. *Grievant Exhibit 2.*

By email dated January 18, 2023 from the State Human Resources Manager for Classification, the Agency Human Resources staff were notified:

... Admin Specialist III positions with DOC are *typically* located at large, complex Level V secure facilities, reporting to Wardens; therefore, reclassifying the Level IV facility positions to Admin Specialist III would be organizationally inconsistent. Reclassifying these positions beyond the Admin Specialist II level would further create inequities with Probation and Parole administrative positions.

BP 7669, currently an Admin Specialist III position at Hazel D. Plant, was part of a grievance decision. However, in the future, upon vacating, this position should be reviewed.

In addition to organizational consistency, decisions on the admin specialist

series factor in the level that a position reports to, as well as complexity of administrative support duties performed.

...BP 56697, S. Cashman, Plummer Community Corrections Center, Admin Specialist II, - Requested Admin Specialist III:

- The work described in the requests remains consistent with the Admin Specialist II.
- ...
- Examples of work that remain consistent with the II level for BP 56697 include: *Creates interview letters, communicates with potential employees and schedules interviews for all upper management. Once the interviews are scheduled, makes interview packets to give to those on the panel. Communicates with outside officials to coordinate and make arrangements for inside activities at both facilities. Works with excel and word spreadsheets to track the community service hours and good time for the residents that do ecrew, road crew, kitchen, spca, grass cutting and recycling at both facilities. Agency Exhibit C.*

In a later email, the DHR Classification Administrator advised the Agency that Administrative Support positions would be part of the Fiscal Year 2024 Maintenance Review process, stating:

... This will be a review of all of the positions in this requested reclassification and all other Administrative Specialist I, II, III and related classes statewide to determine if there needs to be changes to the job descriptions, potential career ladders, or pay grade changes. Supra.

At some point after the issuance of DHR's denial of the requested reclassification of Ms. Cashman's Administrative Specialist II position, a grievance was filed. A decision was issued by a DHR Division of Employee and Labor Relations Specialist on July 13, 2023, denying the grievance. Ms. Cashman advanced her grievance to be heard by this Board on July 24, 2023, in which she alleged violations of Merit Rules 3.0 - 3.3.3; 4.0, 4.12 – 4.12.4; 7.0 – 7.7; 10.4; 10.9; and 18.5.

CONCLUSIONS OF LAW

The Agency moved to dismiss the grievance asserting the Board lacks jurisdiction to hear a

complaint which asserts a challenge to the denial by the Department of Human Resources to grant a critical reclassification requested by the Department of Correction and the Grievant.

Section 8(e) of the Epilogue to the Fiscal Year 2024 Budget Act states: “Critical reclassification determinations, pay grade determinations and grievances alleging working out of class which arose out of a denial of a critical reclass shall not be appealed to the Merit Employee Relations Board...”

The Grievant does not dispute that this grievance arises out of a critical reclassification determination.

The Board’s power and authority are statutorily proscribed and limited to grievances which are properly placed before it. In this case, the Board’s authority explicitly excludes consideration of critical reclassification determinations made by the Department of Human Resources.

Consequently, the Board does not have jurisdiction to hear this grievance.

ORDER


It is this **4th** day of **January, 2024** by a vote of 4-0, the Decision and Order of the Board to grant the Agency’s Motion and to dismiss the grievance for lack of jurisdiction.



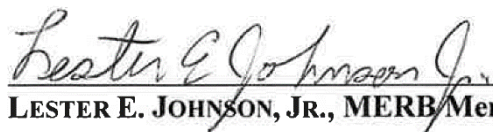
JENNIFER COHAN, MERB Chairperson



SHELDON N. SANDLER, ESQ., MEMBER



JOSEPH A. PIKA, III, PH.D., MEMBER



LESTER E. JOHNSON, JR., MERB Member