

BACKGROUND

Amber Grinnage, Aylan Brown, Dana Veasey, Elyse Mendez, Jessie Wolfe-Parson, John Tierney, Nicole Jackson, Rock Lopez, Sarah Fox, Shane Miller, Danielle Travers, Karen Duffy, and Kristine Krzemian (collectively, the “13 Grievants”) filed individual grievances¹ against the Delaware Department of Services for Children, Youth and their Families (“DSCYF”), Division of Prevention and Behavioral Health Services (“DPBHS”) (collectively, the “Agency”), alleging that the Agency consistently required them to perform the duties of a higher rated position in violation of Merit Rule 3.2.

By decision dated June 14, 2023, the Department of Human Resources (“DHR”) Hearing Officer denied the grievances, and that decision was timely appealed to the Merit Employee Relations Board (“MERB”) in accordance with Merit Rule (“MR”) 18.9.

The Board convened on January 17, 2024 to hear the grievances. At the request of the Grievants, and without objection from the Agency, a single hearing was convened to hear all 13 grievance.

BRIEF SUMMARY OF THE EVIDENCE

The Grievants offered thirty-one (31) documents, of which eleven (11) were admitted into evidence, marked for identification as Grievants Exhibits 1, 2, 3, 5, 7, 9, 11, 12, 14, 17, 19, and 31.²

The Agency offered five (5) documents, of which three (3) were admitted into evidence,

¹ Merit Rule 18.2 defines a “grievance” to mean “... an employee complaint about the application of the Rules or the Merit System law (29 Del. C. Chapter 59) which remains unresolved after informal efforts at resolution have been attempted.” The merit rules do not provide for the filing of group or class action grievances. The Board does have authority to consolidate multiple grievances for hearing, where the underlying issues arising from similar facts and circumstances. *Bishop, et al., v. Family Court*, MERB 11-01-491 through 11-01-503, Order of Consolidation for Hearing Appeals (June 22, 2011).

² Grievants Exhibit 31, the Child and Family Care Coordination Unit organizational chart (dated 12/1/23), was admitted during the January 17, 2024 hearing.

marked for identification as Agency Exhibits A, C and E.³

The Board heard testimony from five of the Grievants: Jessie Wolfe-Parsons, Elyse Mendez, Kristine Krzemien, John Tierney, and Danielle Travers. It also heard from three witnesses on behalf of the Agency: Dr. Aileen Fink, Director of DSCYF, Division of Prevention and Behavioral Health Services; Lauren Colletti, DSCYF/DPBHS Treatment Team Leader, New Castle County; and Joseph Santone, DSCYF/DPBHS Treatment Team Leader, Georgetown.

DISCUSSION

Merit Rule 3.2 states:

Employees may be required to perform any of the duties described in the class specification, any other duties of a similar kind and difficulty, and any duties of similar or lower classes. Employees may be required to serve in a higher position; however, if such service continues beyond 30 calendar days, the Rules for promotion or temporary promotion shall apply, and they shall be compensated appropriately from the first day of service in the higher position.

The thirteen individual grievants all work as Adolescent Treatment Services Coordinators (“ATSC”) in DSCYF/DPBHS and are compensated at paygrade 13. The Grievants assert they were performing the duties of Psychiatric Social Workers (“PSW III”) who are compensated at paygrade 15.

Only five of the thirteen Grievants testified. They testified there are no differences in the duties they perform from the duties and responsibilities of PSW III’s with whom they work in the DPBHS Child & Family Care Coordination Unit (“CFCCU”). The ATSC and PSW III positions require the employees to coordinate care for children and families with complex mental health, substance abuse, and other issues which include homelessness, disrupted family situations (e.g., multiple unsuccessful foster care placements, etc.), and transitioning from institutionalization for treatment. Both positions regularly interface with the courts, schools, government agencies,

³ Agency Exhibits B and D were identical to Grievants Exhibits 1 and 2. In order to avoid redundancy and confusion, Grievants Exhibits 1 and 2 were admitted.

treatment providers and families in coordinating care for their assigned cases. Many of their cases require crisis management. ATSC's and PSW III's work together on teams and regularly assist in and cover cases for each other. At one point in 2022, there were no PSW III's on staff in Sussex County; ATSC's covered all of the work during this period. ATSC's have also been required to cover periods where there were PSW III vacancies in other parts of the State.

The 2023 ATSC Performance Plan⁴ and the 2023 PSW III Performance Plan⁵ differ only in that the PSW III Plan uniquely includes Goal #4, which states:

GOAL #4: Psychiatric Social Worker (PSWIII) Duties and Responsibilities

- A. Effectively manages complex cases as assigned by CFCCTL⁶
- B. May provide support to staff by accompanying them to Court hearings and/or meetings as needed or requested.
- C. Supports the Treatment Team Leader in providing shadowing opportunities, skill development, role modeling, etc. for new and existing care coordination staff.
- D. Provides coverage for the cases of team members who are unavailable.
- E. Completes chart reviews for the team to assist with ensuring accuracy and completeness in accordance with CARF standards and CFCC unit expectations.

The record establishes that ATSCs perform Duties A-D as needed, and that neither ATSC's nor PSW III's perform Duty E. Because ATSCs and PSW IIIs work in teams, they perform these duties based on experience, with more senior ATSCs providing extensive on-the-job training to other ATSCs and PSW IIIs. In recent years, the Agency has experienced turnover and extended vacancies in PSW III positions, which necessitated ATSCs assuming PSW IIIs workload.

After reviewing and considering the parties' legal arguments, the Board granted the grievances and concluded generally that the grievants were working out of class. The record, however, did not include specifics for all thirteen grievants, individually. The Board further found

⁴ Agency Exhibit C.

⁵ Agency Exhibit E.

⁶ Child and Family Care Coordination Team Leader

that the determination of which grievants were entitled to receive compensation at the higher rate of a PSW III (both back pay compensation for the 30 days prior to the filing of the individual grievance and compensation going forward) would be determined by whether each individual grievant qualified for compensation, based on the extent to which each grievant performed tasks which fell within the PSW III classification.

The Board directed the Union and the Agency to discuss and determine, if possible, which individuals were entitled to a benefit from his/her grievance. The Board deferred its decision on the remedy for a period of thirty (30) days.

By email dated February 22, 2024, counsel for the Grievants notified the Board "... that the parties have mutually resolved [the grievances] and entered into an agreement consistent with MERB's ruling." The Grievants requested to withdraw their grievances.

WHEREFORE, the Board hereby dismisses the thirteen grievances filed by Adolescent Treatment Services Coordinators with prejudice, namely 23-06-882 through 23-06-894. The files are closed and no further action is required of the parties.

SO ORDERED this 24th day of June 2024..



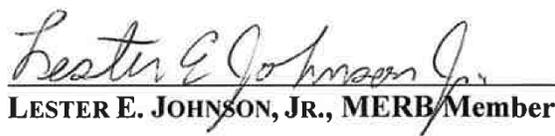
JENNIFER COHAN, MERB Chairperson



SHELDON N. SANDLER, ESQ., MEMBER



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



LESTER E. JOHNSON, JR., MERB Member