

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

MATTHEW H. CHAMBERLAIN,)	
)	
Employee/Grievant,)	
)	Docket No. 24-08-932
v.)	
)	INTERIM DECISION GRANTING
DELAWARE DEPARTMENT OF NATURAL)	AGENCY MOTION TO JOIN
RESOURCES AND ENVIRONMENTAL CONTROL,)	INDISPENSABLE PARTY
)	
Employer/Respondent.)	

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board (the “Board”) at 9:05 a.m. on November 20, 2024 in the Delaware Public Service Commission Hearing Room, Silver Lake Plaza, Cannon Building, Suite 100, 861 Silver Lake Boulevard, Dover, DE 19904. The hearing was open to the public.

BEFORE Sheldon N. Sandler, Esq., Acting Chairperson; 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

Matthew H. Chamberlain, *pro se*
Employee/Grievant

Devera B. Scott
Deputy Attorney General
Counsel to Dept. of Natural Resources
and Environmental Control

BACKGROUND

Matthew Chamberlain (the “Grievant”) filed a grievance against the Department of Natural Resources and Environmental Control (“DNREC”), Division of Waste and Hazardous Substances, Emergency Response and Strategic Services (the “Agency”) alleging he was improperly compensated when working outside or in addition to his regularly scheduled work time, in violation of Merit Rule 4.13 and the Fair Labor Standards Act (“FLSA”).

Merit Rule 4.13 states:

FLSA-covered employees with a standard work week of 37.5 hours who are authorized to perform overtime service shall be paid at 1.5 times their regular rate for each hour worked after 37.5 hours per week¹ FLSA-covered employees with a standard work week of 40 hours who are authorized to perform overtime service shall be paid at 1.5 times their regular rate for each hour worked after 40 hours. The form of pay, time off or cash, is at agency discretion and shall be agreed to in advance. Only hours worked over 40 hours per week are covered by the overtime provisions of the FLSA. The regular rate of pay shall include all payments (e.g., shift differential, stand-by duty pay and hazardous duty pay). Agencies may assign reasonable periods of overtime to meet operational needs.

The Board convened on November 20, 2024 to hear the grievance. The Agency verbally presented a preliminary motion to join the Department of Human Resources (“DHR”) as an indispensable respondent to this grievance. The Agency argued the Secretary of DHR is responsible for establishing and maintaining a method of classifying and reviewing all state positions pursuant to MR 3.1. The Agency further argued that DHR made the decision that the Grievant’s position, State Emergency On-Scene Coordinator, is exempt from the overtime protections in the FLSA; consequently, it argued, the Agency does not have the authority or ability to grant the relief the Grievant seeks.

¹ Merit Rule 4.13 is modified by the Section 8, Merit System, Non-Merit System, and Merit Comparable Salary Scheduled, in Epilogue to the Fiscal Year 2025 State Budget which states in relevant part:

(j) Overtime

(1) Merit Rule Chapter 4.0 notwithstanding, overtime at the rate of time and one-half will commence after the employee has accrued 40 compensable hours that week....


The Grievant did not oppose the Agency's Motion.

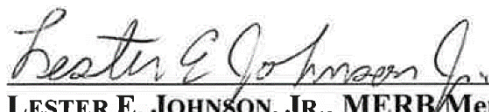
After hearing the parties' legal arguments, the Board granted the Agency's Motion to Join the Department of Human Resources as a required party to the grievance. Consistent with its holding in *Gomez, Hudson-Bluto, and Johnson v. Department of Correction, Probation and Parole*², the Board suspended the hearing on the merits and directed that DHR be joined as a proper party respondent to this grievance.

DECISION AND ORDER

It is this 22nd day of November, 2024, by a vote of 3-0, the Decision and Order of the Board to grant the Agency's preliminary Motion to Join the Department of Human Resources as a necessary party respondent. A hearing on the merits of this grievance shall be scheduled forthwith.


SHELDON N. SANDLER, ESQ., ACTING CHAIR


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


LESTER E. JOHNSON, JR., MERB Member

² MERB Dockets 23-12-907, 23-12-908, 23-12-909, Interim Decision Denying Agency's Motion to Dismiss (April 8, 2024).