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BRIEF SUMMARY OF THE EVIDENCE

The Board heard legal argument on the motion of the Delaware Department of Health and Social Services, Division of Social Services (“Agency”) to dismiss the grievance for lack of jurisdiction. The Employee/Grievant, Sonja Taylor (“Grievant”), filed a written response in opposition to the Motion to Dismiss.

The Board reviewed the Agency’s motion and the Grievant’s response and heard argument from the parties at the hearing. This decision results therefrom.

FINDINGS OF FACT

The Grievant was employed as a Social Service Specialist I with the Agency from February 10, 2025 to October 29, 2025.

The Grievant’s position is included in the bargaining unit of DHSS/DSS employees represented by the American Federation of State, County, and Municipal Employees, AFL-CIO, Council 81, Local 2030 (“Union”) for purposes of collective bargaining, pursuant to 19 *Del. C.* Chapter 13.

The Agency and the Union are parties to a current collective bargaining agreement (“CBA”)¹ which establishes the terms and conditions of employment for bargaining unit employees. Article 11 of the CBA defines a grievance as “a dispute limited to the application or interpretation of [the CBA], except that complaints which allege a violation of the State Merit Rules may be processed under this procedure through Step 3.”² Article 13 of the CBA, which governs probation, seniority, and layoffs, states, in relevant part:

¹ Agency Motion to Dismiss, Exhibit A, “Agreement between State of Delaware, Department of Health and Social Services, Division of Social Services, *et al.*, and Delaware Public Employees Council 81, Locals 1832, 2030, 2031, AFSCME, AFL-CIO, July 1, 2025 to June 30, 2028”.

² *Id.*, Art. 11 § 11.1 at 9.

- 13.1 All full-time newly appointed employees (excluding lateral transfers with permanent State status) shall be subject to a probationary period of nine (9) months which may be extended by mutual consent.
- 13.2 During the probationary employment period new employees may be discharged by the State without the same causing a breach of [*the CBA*] or constituting a grievance.”³

Article 10 of the CBA governs non-discrimination and prohibits any “discriminatory practices with regard to any respect of employment because of race, religion, color, sex, age, national origin, political affiliation, disability or for any reasons which may be covered in future Federal and State laws.”⁴

On October 20, 2025, the Agency placed the Grievant on leave with pay during an investigation into a personnel matter involving allegations of Grievant misconduct. On October 29, 2025, the Agency terminated the Grievant’s employment, pursuant to §13.2.

The Grievant filed a grievance which was processed up to a Step 3 decision from the Delaware Department of Human Resources. The Grievant then filed an appeal from the Step 3 decision with the Board on April 27, 2026.

DISCUSSION

The Agency moved to dismiss the grievance asserting the Board lacks jurisdiction to hear a complaint which arises under the terms of a collective bargaining agreement. Both claims of discrimination and unjust discipline are covered by the terms of the CBA to which the Grievant is subject.

Section 5938 of Delaware Merit System of Personnel Administration, 29 *Del. C.* Chapter 59 limits the Board’s jurisdiction over grievances where the subject is covered in whole or in part

³ *Id.*, Art. 13 § 13.2 at 12.

⁴ *Id.*, Art. 10 § 10.3 at 9.

by a collective bargaining agreement. The applicable Merit Rules state:

Merit Rule 1.3

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. These Rules govern in matters of: classification, uniform pay (except in the case of collective bargaining agreements reached pursuant to §1311A of Title 19), and benefits, examination, screening and ranking, rejection of candidates, appointment, paid leave, promotional requirements and standards, and veteran's preference. 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

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 according to this Chapter.

The Board concludes the 2025-2028 CBA between the Agency and the Union includes Non-Discrimination (Article 10), Probation (Article 13)⁵, and a negotiated grievance procedure which concludes with binding arbitration (Article 11). The Agency and the Union agreed to resolve disputes and differences which arise under the terms of the CBA through the negotiated grievance procedure. Merit Rule 18.3 makes it clear disputes which arise under the terms of the CBA shall be processed through the negotiated grievance procedure.

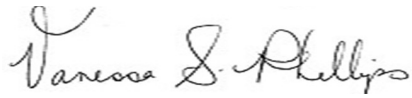
The Grievant, as a bargaining unit employee covered by the CBA, is foreclosed from filing a merit grievance with the Board which challenges her termination or alleged discrimination because both are covered by the applicable collective bargaining agreement, specifically by §13.2

⁵ Because this grievance involves the termination of a probationary employee, Article 5, Discipline and Discharge, does not apply by operation of §13.2 of the CBA.

and §10.3. Consequently, the Board does not have jurisdiction to hear this grievance.

ORDER

It is this **11th** day of **August, 2026** by a unanimous vote of 3-0, the Decision and Order of the Board to grant the Agency's Motion and to dismiss the grievance for lack of jurisdiction.



VANESSA S. PHILLIPS, MERB Chair



LESTER E. JOHNSON, JR., MERB Member



CURTIS D. LINTON, MERB Member