

violated Article 10, Disciplinary Action, of the collective bargaining agreement, and State Merit Rule 3.0900, Status of Incumbent Upon Reclassification of Position, specifically sections 3.0910 and 3.0911. The grievants requested they be retained in their Counselor positions pending qualification at the higher level.¹

The grievance was heard at Step 4 of the grievance procedure on or about May 19, 1995. The Hearing Officer concluded:

... the Grievants, because they lack the required credits, are treated as a class of employee separate and apart from those who have the credits, and are therefore being unfairly denied the opportunity to take advantage of the Education program offered to others.

Decision

After careful review of the evidence in this matter, the Department must grant the Grievants an equal opportunity to obtain the degree necessary for the Specialist position.

The Step 4 decision of the Hearing Officer, issued on June 30, 1995, was not appealed by either party.

Grievant Scott was subsequently advised that she was to be involuntarily transferred from the day shift (6:00 a.m. to 2:00 p.m.) to the night shift (10:00 p.m. to 6:00 a.m.). On July 19, 1995, the Petitioner filed this unfair labor practice charge alleging that:

All other Counselors who have the right to participate in the free tuition program have been assigned to the day shift from the night shift so that they can have access to the tuition free program. No person that has the opportunity to participate in the free tuition program has been involuntarily transferred to the night shift.

The unfair labor practice charge alleges that the involuntary transfer of the grievant violates 19 Del.C. §1307(a)(1) and (a)(5). The Union sought, among other relief, preliminary injunctive relief prohibiting the involuntary transfer of Counselor Scott to the night shift until the unfair labor practice charge is resolved.

¹ It is unclear whether the grievants were reclassified to a lower rated position; however, a resolution of that question is unnecessary for the limited purposes of this decision on the request for preliminary relief.

Discussion

It is established Delaware law that, to be successful, a request for preliminary injunctive relief must satisfy two requirements. First, the charging party must establish that there is a reasonable probability that it will ultimately prevail on the merits of the dispute; and secondly, that it will suffer irreparable injury if its request for injunctive relief is denied. Gimbel v. Signal Companies, Inc., Del.Chan., 316 A.2d 599 (1974). Failure to establish either element precludes the granting of the requested relief. New Castle County Vocational Technical Education Association v. New Castle County Vocational Technical School District, Del.PERB, ULP 85-05-024 (1988).

Under the investigatory powers conferred upon the PERB by 19 Del.C. §1306 ², the Executive Director has determined that the free tuition program offered by the Respondent to eligible employees consists of their completing the necessary degree requirements by attending courses offered at Wilmington College. Course offerings are, over a period of time, available during both day and evening class times. The program requirement that an employee must be flexible so as to complete the degree requirement within the prescribed time period is to permit the employee to enroll in required courses offered only during scheduled working hours and to adjust his or her work schedule accordingly.

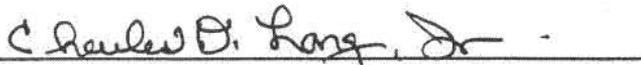
Courses are available at Wilmington College during the regular fall session, commencing on October 31, 1995, and the regular spring semester, commencing on January 8, 1996. Courses are also available during four (4) condensed sessions commencing on September 5 and October 31, 1995, and January 8 and March 4, 1996.

² 19 Del.C. §1306 specifically incorporate by reference the powers of the Board granted at §4006 of the Public School Employment Relations Act, 14 Del.C. Chapter 40 (1982,1989)

It is apparent employee Scott is not suffering irreparable harm from her transfer to the night shift insofar as her treatment or opportunity to participate in the free tuition education program necessary for her to become eligible for consideration for advancement to the Specialist classification. ³

For these reasons, the Petitioner has failed to satisfy the two (2) prerequisites for temporary injunctive relief and its request is, therefore, denied.

DATED: 26 July 1995



CHARLES D. LONG, JR., Executive Director
Delaware Public Employment Relations Bd.

³ The unfair labor practice charge raises the issue of employee Scott's status insofar as her participation in the free tuition education assistance program. The impact of her personal circumstances, if any, upon her contractual rights are strictly a matter for the grievance procedure.