

**STATE OF DELAWARE**  
**PUBLIC EMPLOYMENT RELATIONS BOARD**

<b>SUSSEX TECH EDUCATION ASSOCIATION,</b>	)	
<b>DSEA/NEA,</b>	)	
	)	
Charging Party,	)	
	)	<b><u>ULP No. 14-08-970</u></b>
v.	)	
	)	<b>Decision on the Pleadings</b>
<b>SUSSEX TECHNICAL SCHOOL DISTRICT</b>	)	
<b>BOARD OF EDUCATION,</b>	)	
	)	
Respondent.	)	

APPEARANCES

*Patricia P. McGonigle, Esq., General Counsel, DSEA, for SVTEA*

*David Williams, Esq., Morris James, LLP, for the District*

**BACKGROUND**

The Charging Party, Sussex Tech Education Association, DSEA/NEA (“STEA”) is an employee organization within the meaning of §4002(h) of the Public School Employment Relations Act, 14 Del.C. Chapter 40 (“PSERA”). STEA is the exclusive bargaining representative of the certificated, non-administrative professional employees of the Sussex Technical School District (“District”) within the meaning of §4002(i) of the PSERA.

The Sussex Technical School District is a public school employer within the meaning of §4002(q) of the PSERA.

On August 22, 2014, STEA filed an unfair labor practice charge with the Public Employment Relations Board (“PERB”) alleging the District violated §4007(a)(5) of the

PSERA, which provides:

Unfair labor practices – Enumerated

- (a) It is an unfair labor practice for a public school employer or its designated representative to do any of the following:
  - (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit.

Specifically, the Charge alleges the District has unilaterally modified the negotiated grievance procedure by improperly mandating a contractual grievance challenging the application of Article 7 of the collective bargaining agreement, Reduction in Force, through the statutory termination appeal process. 14 Del.C. Chapter 14, Procedures for the Termination of Services of Professional Employees, establishes the statutory process for tenured teachers notified that they are to be terminated or non-renewed to appear before a local Board of Education to request review of that decision.

The Association requested PERB expedite the processing of this charge because the Chapter 14 termination hearing will be conducted prior to the scheduled grievance arbitration. It asserts that because the District, through its agent hearing officer, has determined that the contractual bumping rights issues must be litigated in the termination proceeding expedited consideration by PERB will save time, expense, and resources for the parties and will protect the grievant and STEA's rights under the PSERA to have contractual issues resolved through the negotiated grievance procedure.

The District filed its Answer on September 2, 2014, in which it denies violating the PSERA or circumventing the contractual grievance process. The District asserts it processed the contractual grievance through Steps II and III prior to exercising its right to contest the arbitrability of the grievance. It further asserts the issue of whether the bumping procedure under Article 7 was properly applied is "related to the dismissal or non-renewal of employees covered

by 14 Del.C. Chapter 14.” It therefore concludes “Chapter 14 of Title 14 is the exclusive avenue for determining whether the reduction in force was justified by a decrease in educational services, and whether [the individual] is the teacher who should be laid off due to the reduction in force.”

There was no new matter included in the District’s Answer and the underlying facts are undisputed in the pleadings. This determination results from a review of the pleadings.

### **FACTS**

The following facts are undisputed and are established by the pleadings and admissions of the parties:

STEA and the District are parties to a current collective bargaining agreement which has a term of August 15, 2011 through August 14, 2016. The negotiated agreement includes a grievance procedure in Article 9, which states, in relevant part:

9.2.1 A grievance is a claim arising out of an alleged violation, misinterpretation, or misapplication of this Agreement...

9.3 Procedure

In the event a grievance shall arise, an earnest effort shall be made to settle said grievance in the sequence listed below. The time limits have been specified, but may be extended or reduced by mutual agreement.

Problems which become grievances shall be resolved in the following manner...

9.7.1 If a grievant is not satisfied with the disposition of the grievance at Level Three (III), the grievant may, within 15 days, appeal the matter to arbitration by filing a Demand for Arbitration with the Public Employment Relations Board (PERB)...

9.7.2 The decision of the Arbitrator shall be final and binding upon the parties. *Charge Exhibit A.*

Catherine L. Young (Young) has been a teacher at Sussex Tech High School for fifteen

(15) years, including during the 2013-2014 school year. Young holds a Continuing License in T&I Electronics, Math, and Exceptional Children (Grades K-12). During the 2013-2014 school year, Young taught “related additional” technical courses.

In February 2014, Young was verbally told that she would be receiving, at a future date, the Board’s notice of intent to terminate due to a reduction in force.

By letter dated April 16, 2014, the Board formally notified Young of its intent to terminate her services:

This letter is to notify you that the Board of Education of Sussex Technical School District intends to terminate your services as a Related Additional Technical teacher at the end of the 2013-14 school year pursuant to Chapter 14 of Title 14 of the Delaware Code due to a reduction in force as a result of a decrease in educational services. For this reason, at its April 14, 2014 meeting the Board exercised its right to send you notice of its intention to terminate your services prior to the May 15 deadline for providing such notice.

You have a right to a hearing as provided in Chapter 14 of Title 14 of the Delaware Code... Such a request for a hearing must be received by the district within 10 days after you receive this notice. In the event that you do not request a hearing within 10 days in the manner specified above, this notice shall constitute final notice of intention to terminate effective at the end of the 2011-2012 [*sic*] school year. *Charge Exhibit B.*

Appended to this letter was the District’s “Rules of Procedure for the Conduct of Termination Proceedings for Teachers.”

14 Del.C. §1411, Reasons for Termination, states:

Termination at the end of the school year shall be for 1 or more of the following reasons: Immorality, misconduct in office, incompetency, disloyalty, neglect of duty, wilful and persistent insubordination, a reduction in the number of teachers required as a result of decreased enrollment or a decrease in education services.

Pursuant to Article 7 of the 2011 – 2016 Agreement, Young, in response to the

Termination Notice, timely sent written notice of her intent to exercise her rights to bump into the Electronics Department. Article 7, Reduction in Force, states, in relevant part:

- 7.1 When the Board determines that a reduction in the staff is necessary, all such terminations will be in accordance with the following procedures:
  - 7.1.1. The department to be affected shall be determined by the Board
    - 7.1.1.1 To accomplish the necessary reduction in force, employees will be released from the field of the current major assignment based on their seniority with those being employed most recently being laid off first.
    - 7.1.1.2 Laid off employees in a field where “Highly Qualified” applies shall have the right to bump into another bargaining unit position for which they are fully certified and are presently Highly Qualified or eligible for Highly Qualified status to teach provided that they have taught at least two (2) years full-time at Sussex Technical High School (i.e., at least ninety-one (91) days in a school year) in the last five years. Laid off employees in a field where “Highly Qualified” status is not available shall have the right to bump into another bargaining unit position for which they are fully certified to teach provided they have taught at least two (2) years full-time at Sussex Technical High School (i.e., at least ninety-one (91) days in a school year) in the last five years. Any such employee exercising the right to bump must notify the Superintendent of the employee’s intention to do so within ten (10) days after receiving the District’s lay off notification....
    - 7.1.1.3 Seniority shall be calculated as the length of the most recent continuous service as an employee and/or administrator with the District. A Board approved leave of absence shall not constitute a break in service but shall not be counted toward seniority with the following exceptions (1) sabbatical leave; (2) military leave; (3) leave for officer of the Association; (4) workers compensation injury or illness; and (5) other positions mutually agreed to by the District and the Association. *Charge Exhibit A.*

The Bumping Notice was received by the District on April 25, 2014.

Young requested a hearing challenging her termination pursuant to Title 14, Chapter 14

of the Delaware Code.

On May 27, 2014, Young filed a grievance challenging the District's denial of her request to bump into the Electronics Department under the 2011-2016 Agreement.

By letter dated June 6, 2014, Assistant Superintendent Curt Bunting denied Young's grievance at Level II, stating:

While the grievance was filed at Level III, the appropriate Level for the initiation of the "first formal contact" is Level II.

For the following reasons, the grievance is not timely, and it is therefore denied:

1. In February, 2014 Catherine L. Young ("Young") was informed that she would be receiving a notice of intent to terminate due to a reduction in force ("RIF").
2. By email dated March 20, 2014, Young inquired whether the District considered permitting her to bump into the Electronics Department.
3. The March 25, 2014 responsive email from Curt Bunting informed Young that she had no right to bump into the Electronics Department because she had not taught "full-time" in the Electronics Department for at least 2 years in the last 5 years as required by Section 7.1.1.2 of the collective bargaining agreement.
4. On April 28, 2014, the District sent Young the notice of intent to terminate. Young received this notice on May 2, 2014.
5. Section 7.1.1.2 requires that: "Any employee exercising the right to bump must notify the Superintendent of the employee's intention to do so within ten (10) days after receiving the District's lay-off notification."

Young failed to provide this required notice within 10 days of her receipt of the lay off notification. For this reason, Young is barred from her untimely notification of her attempt to bump in the form of this grievance submitted on May 27, 2014.

6. Even if Young's March 20, 2014 email is deemed to satisfy the requirement that notice of the request to bump be provided within 10 days of Young's receipt of the layoff notification, the fact remains that the grievance is not timely under Section 9.5.1. This section requires that the Level II grievance be submitted within 15 working days of the date "..

on which the aggrieved party could logically be expected to become aware of the occurrence giving rise to the alleged grievance.” Young became aware of the occurrence giving rise to the grievance on March 25, 2014. The grievance was not, therefore, submitted within 15 working days of Young’s receipt of the lay off notification.

7. Finally, Section 8.1 states that in all cases of termination at the end of the school year, the rights of affected employees are set forth in Chapter 14 of Title 14 of the Delaware Code. Thus, the hearing afforded by Chapter 14 of Title 14 is the exclusive avenue for addressing issues relating to the termination of Young. *Charge Exhibit F.*

Young advanced the grievance to Level III in accord with the 2011-2016 Agreement. A Level III Grievance Meeting was held on June 23, 2014 with Superintendent Lathbury. The grievance was denied at Level III by letter dated July 2, 2014:

This response has been prepared after careful deliberation of presented information stemming from the Level III Grievance Meeting, occurring on June 23, 2014, citing Article 7 Reduction in Force sub article 7.1.1.2. As per DSEA’s request, the disposition rendered by Dr. Bunting was in question and appealed to Level III.

Below are the disposition in question and the findings corresponding to said disposition:

1. In February, 2014 Catherine L. Young (“Young”) was informed that she would be receiving a notice of intent to terminate due to a reduction in force (“RIF”). **Response: AGREE**
2. By email dated March 20, 2014, Young inquired whether the District considered permitting her to bump into the Electronics Department. **Response: AGREE**
3. The March 25, 2014 responsive email from Curt Bunting informed Young that she had no right to bump into the Electronics Department because she had not taught “full-time” in the Electronics Department for at least 2 years in the last 5 years as required by Section 7.1.1.2 of the collective bargaining agreement. **Response: AGREE**
4. On April 28, 2014, the District sent Young the notice of intent to terminate. Young received this notice on May 2, 2014. **Response: AGREE**
5. Section 7.1.1.2 requires that: “Any employee exercising the

right to bump must notify the Superintendent of the employee's intention to do so within ten (10) days after receiving the District's lay-off notification." Young failed to provide this required notice within 10 days of her receipt of the lay off notification. For this reason, Young is barred from her untimely notification of her attempt to bump in the form of this grievance submitted on May 27, 2014. **Response: DISAGREE – Argument Waived.**

6. Even if Young's March 20, 2014 email is deemed to satisfy the requirement that notice of the request to bump be provided within 10 days of Young's receipt of the layoff notification, the fact remains that the grievance is not timely under Section 9.5.1. This section requires that the Level II grievance be submitted within 15 working days of the date "... on which the aggrieved party could logically be expected to become aware of the occurrence giving rise to the alleged grievance." Young became aware of the occurrence giving rise to the grievance on March 25, 2014. The grievance was not, therefore, submitted within 15 working days of Young's receipt of the lay off notification. **Response: AGREE**
7. Finally, Section 8.1 states that in all cases of termination at the end of the school year, the rights of affected employees are set forth in Chapter 14 of Title 14 of the Delaware Code. Thus, the hearing afforded by Chapter 14 of Title 14 is the exclusive avenue for addressing issues relating to the termination of Young. **Response: AGREE**

For the aforementioned reasons, the grievance is denied. Therefore the request: "Cathy Young shall have the right to bump into the Electronics position at Sussex Tech for which she is certified" is denied.

As a point of clarification stemming from the Level III Grievance request, at no time during Ms. Young's employment during the past five years at Sussex Technical High School has Ms. Young been listed as or accrued seniority as an "Electronics" teacher as stated within said grievance. Also, Ms. Young's position as listed on annually distributed seniority rosters to STEA and DSEA is 'Related/Additional Technical Areas/Computer Applications/Maintenance' which does not fall under NCLB as a "Highly Qualified" position as referenced in aforementioned grievance. *Charge Exhibit G.*

On July 9, 2014, STEA filed a Demand for Grievance Arbitration with the PERB alleging the District refused to allow Young to bump into another bargaining unit position for which she

was fully certified. The arbitration demands asserts the District violated §7.1.1.2 and §7.1.1.3 the 2011 - 2016 Agreement.

An arbitrator was selected and appointed by PERB pursuant to the requirements of 14 Del.C. §4013(c). She contacted the parties directly by email to offer dates for arbitration on July 29, 2014.

By email dated July 31, 2014, the District advised the Arbitrator:

... This email will also serve as notice that the District disputes whether this matter is arbitrable. Section 9.7.3 of the controlling CBA provides that Section 4013(c) of Title 14 of the Delaware Code shall control the arbitration proceeding. Section 4013(c)(2)(a) prohibits claims relating to dismissal or nonrenewal of employees covered by Chapter 14 of Title 14 from proceeding through binding arbitration. This claim relates to the dismissal or nonrenewal of an employee covered by Chapter 14 of Title 14.

Section 4013(c)(5) states that disputes relating to whether a matter is arbitrable must be ruled upon by the arbitrator prior to hearing the merits of the dispute, and, if the arbitrator determines that the dispute is arbitrable, there shall be a second day of hearing on the merits of the dispute. *Charge Exhibit I.*

The arbitration hearing is scheduled for October 22, 2014.

Pursuant to 14 Del.C. §1413(b)<sup>1</sup>, the District appointed James D. Griffin, Esq., to serve as the hearing officer in the termination hearing. The District, through its counsel, verbally advised Young's attorney on July 30, 2014 that it intended to present evidence and litigate the bumping rights issue in the termination hearing, which was scheduled for August 7, 2014.

On August 4, 2014, Young made application to Hearing Officer Griffin that the August 7 termination hearing be limited to the statutory issue of whether the District could prove the

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<sup>1</sup> 14 Del.C. §1413(b) Any provision of this chapter to the contrary notwithstanding, the [District's Board of Education] may designate a hearing officer to conduct the hearing prescribed by subsection (a) of this section under rules and regulations promulgated by the board. The hearing officer shall submit a report with a recommendation to the board, within 5 days of the conclusion of the hearing, which shall become part of the record. A majority of the board shall convene to review the records of the proceedings and, within 15 days of the hearing before the hearing officer, shall submit to the employee its decision in writing.

reduction of Young's position was the result of a decrease in education services (i.e., that the termination hearing be limited to the issue of termination under Chapter 14 of Title 14), and that the issue of whether the Board properly interpreted the bumping rights language of the 2011-2016 Agreement not go forward, in deference to the Grievance Arbitration. Alternatively, Young sought a continuance of the August 7 hearing as necessary witnesses for the bumping rights issue were unavailable. *Charge Exhibit J.*

The District filed its response to Young's request on August 5, 2014, objecting to all relief sought, except agreeing to a continuance due to the unavailability of witnesses.

On August 5, 2014, the District's Hearing Officer issued the following decision:

This letter is in response to your respective letters of August 4 and August 5, 2014 regarding the hearing noticed for August 7, 2014.

As the Hearing Officer, my role is to hear the evidence presented and to make a recommendation to the Board as to whether substantial evidence was presented to justify a termination of services based on a decrease in educational services. Ultimately, the Board is the decision maker.

Although 14 Del.C. §4013(c) authorizes binding arbitration as to the interpretation or application of any term of the Collective Bargaining Agreement, it required the parties to include in their respective agreements provisions excluding from binding arbitration claims relating to the dismissal or nonrenewal of employees covered by Chapter 14.

The reasons for termination contained in Section 1411 include a reduction in the number of teachers required as result of a decrease in educational services, which appears to include the right of tenured teacher to bump a less senior tenured teacher in the terminated teacher's area of major assignment.

Since Ms. McGonigle's letter states that the primary issue at the termination hearing will be whether the District satisfied the criteria by proving through substantial evidence that Ms. Young's services were no longer required as a result of a decrease in educational services, of necessity, that will require me to consider whether Ms. Young had a right to bump another teacher under Article 7.1.1. of the Collective Bargaining Agreement.

If I should recommend to the Board that substantial evidence was not presented to justify her termination (either because it was not required by a reduction of services or that she had the right to bump another teacher), it would then be up to the Board to determine whether to accept or reject my recommendation. In the event the Board found that just cause existed to justify the termination, Ms. Young would appear to have the right to raise the bumping rights issue on appeal, as occurred in the case of *Board of SCH, Trustees v. O'Brien, 190 A.2d 23 (Del.Supr. 1963)*, where the Court held that where a decrease in enrollment or educational services occurs, a tenured teacher has a right to replace a non-tenured teacher in the subject of the tenured teacher's principal area of certification. Although that case involved the bumping of a non-tenured teacher, it indicates that the right to bump is a justiciable issue under Chapter 14.

The bottom line is that it appears that the hearing officer would have the same jurisdiction to hear the issues the Board would have heard if the Board had elected to hear the case itself as opposed to appointing a hearing officer to hear the evidence and make a recommendation to the Board.

Since Mr. Williams agreed that if essential witnesses are not available for the August 7 hearing he does not oppose a postponement to a date that will allow all of Ms. Young's proposed witnesses to be present, including those as to whether the District properly interpreted the bumping rights issue in making its decision as to which teacher would be terminated, I will wait to receive information as to dates of your mutual availability for the rescheduling of the termination hearing. I assume the District will cancel the service of the court reporter for the scheduled August 7 hearing. *Charge Exhibit L.*

The District admits in its Answer to the Charge, “. . . Young had a right to pursue a grievance; that the grievance involves a claim relating to the dismissal or non-renewal of an employee covered by Chapter 14 of Title 14 of the Delaware Code; and that the District exercised its right under 14 Del.C. §4013(c) to dispute ‘. . . whether a matter is arbitrable’; and the arbitrability dispute be ruled upon by the arbitrator prior to hearing the merits of the dispute.” *Answer ¶20.*

The District also admits, “In the grievance arbitration, STEA and Young challenge the Board's interpretation of Article 7.1.1.2 [of the] Agreement and its refusal to permit Young to

bump into the Electronics Department.”

### **DISCUSSION**

Section 4008(a) of the PSERA, provides: “The Board is empowered and directed to prevent any unfair labor practice described in §4007 (a) and (b) of this title and to issue appropriate remedial orders.”

PERB Regulation 5.6(b) provides where pleadings establish probable cause to believe that an unfair labor practice may have occurred, the Executive Director may issue a decision based upon the pleadings. Since no issues of material fact are raised by the pleadings in this matter, the following decision is issued pursuant to the authority vested in the PERB pursuant to 14 Del.C. §4008(a) and PERB Regulation 5.6(b).

It is well-established in Delaware PERB case precedent that a unilateral change in the status quo of mandatory subjects of bargaining constitutes a *per se* violation of a party’s duty to bargain in good faith. *ILA Local 1694-1 v. Diamond State Port Corporation*, ULP 11-02-787, VII PERB 4977, 4983 (2011); *affirmed* VII PERB 5069 (6/21/11). PERB has held that the “grievance procedure is a mandatory subject of bargaining and may not be unilaterally changed by either party, either overtly or by inaction.” *Donahue v. City of Wilmington*, ULP 08-11-637, VI PERB 4123, 4128 (2008). Once agreed upon, the negotiated grievance procedure may not be modified or ignored unless the parties have mutually agreed to do so. *Caesar Rodney Education Assn. v. Bd. of Education*, ULP 02-06-360, IV PERB 2729, 2733 (PERB Decision on Review, 2002); *affirmed* C.A. No. 1549-K, IV PERB 2933 (Chan.Ct., 2003).

The parties’ negotiated agreement sets forth in Article 8, Termination, “In all cases of ...termination at the end of the school year..., the rights of the affected employees are set forth in Chapter 14 of Title 14 of the Delaware Code.” The grievance procedure in Article 9 of the

agreement establishes final and binding arbitration as the last step of the process, in accordance with §4013 of the PSERA, which prohibits the dismissal or non-renewal of employees covered by Chapter 14 of Title 14 from being submitted to arbitration.

There is no dispute that the District's decision to terminate Ms. Young's services at the end of the 2013-2014 school year "due to a reduction in force as a result of a decrease in educational services" is subject to challenge exclusively through the procedure established by 14 Del.C. §1413. The District has chosen to exercise its option under §1413(b) to designate a hearing officer to conduct the hearing and to return a recommendation to the District's Board of Education, which must convene to consider the recommendation and make a decision on the merits of the termination. The hearing, recommendation and decision "shall be confined to the aforementioned written reasons as stated in the board's written notice of the board's intention to terminate the teacher's services." 14 Del.C. §1413(a). The designated hearing officer is an agent of the Board of Education and has no authority beyond those explicitly granted to the Board in Chapter 14 of Title 14.

The negotiated collective bargaining agreement, however, establishes at Article 7, Reduction in Force, the procedure and rights of employees when the District "determines that a reduction in staff is necessary." There is no corollary to the contractual reduction in force process in Chapter 14 of Title 14.

The grievance procedure lies at the heart of the continuous collective bargaining obligation and constitutes the primary vehicle by which the parties' agreement is defined and refined during its term. For the agreement as a whole to have real meaning, it is incumbent upon the parties to administer the grievance process in accordance with the negotiated contractual terms. *Indian River Education Association v .Board of Education of Indian River School*

*District*, ULP 90-09-053, I PERB 667, 675 (1991).

The District's contention that the bumping issue is a matter related to Young's termination is misplaced. There is no direct coextensive relationship between these two issues; rather, they are related simply in time and sequence. The statutory termination due to a reduction in force as a result of a decrease in educational services must occur before the grievant's contractual bumping rights become viable.

The District, through its hearing officer, attempts to conflate the statutory issue under 14 Del.C. Chapter 14 concerning whether Young was properly terminated at the end of the school year with the contractual issue involving her bumping rights as set forth in Section 7.1.1.2 of the collective bargaining agreement.

The reasons for termination contained in Section 1411 include a reduction in the number of teachers required as result of a decrease in educational services, which appears to include the right of tenured teacher to bump a less senior tenured teacher in the terminated teacher's area of major assignment.

There is no basis in fact or law under the Title 14 which permits or authorize the District to substitute the process for challenging termination to extend to consideration of the application or interpretation of a provision of the collective bargaining agreement. In fact, the parties have not negotiated into their contractual grievance procedure a step in which the full Board of Education (or its designee) considers the merits of a grievance. By attempting to incorporate consideration of the contractual bumping procedures into the statutory termination appeal, the District unilaterally modified the negotiated grievance procedure by including an additional step which has not been negotiated by the parties for resolution of contractual disputes.

The PSERA does not permit a public school employer to unilaterally substitute a similar process for the negotiated grievance procedure to resolve a question of application or

interpretation of a contractual right or process. *CWA Local 13101 v. Kent County Levy Court*, ULP 13-10-926, VII PERB 6089, 6101 (2014); affirmed VIII PERB 6203. The law requires the parties to enter into a collectively bargained agreement which includes a "...written grievance procedures by means of which bargaining unit employees, through their collective bargaining representatives, may appeal the interpretation or application of any term or terms of an existing collective bargaining agreement; such grievance procedures shall be included in any agreement entered into between the public employer and the exclusive bargaining representative." 14 Del.C. §4013(c). When the District chooses to unilaterally ignore its obligation to process grievances through the negotiated procedure, it violates its duties and obligations under the PSERA.

For these reasons, the pleadings are sufficient to establish that the District committed a *per se* violation of 14 Del.C. §4007(a) (5), as alleged, by failing or refusing to abide by the terms of the negotiated grievance procedure.

### **CONCLUSIONS OF LAW**

1. The Sussex Tech Education Association, DSEA/NEA ("STEА") is an employee organization within the meaning of §4002(h) of the Public School Employment Relations Act, 14 Del.C. Chapter 40 ("PSERA"). STEА is the exclusive bargaining representative of the certificated, non-administrative professional employees of the Sussex Technical School District - ("District") within the meaning of §4002(i) of the PSERA.

2. The Sussex Technical School District is a public school employer within the meaning of §4002(q) of the PSERA.

3. STEА and the District are parties to a current collective bargaining agreement which has a term of August 15, 2011 through August 14, 2016. The negotiated agreement includes a

grievance procedure in Article 9.

4. The grievance procedure is a mandatory subject of bargaining. Unilateral changes to the status quo of a mandatory subject of bargaining constitutes a per se violation of the PERA.

5. The pleadings are sufficient to support a finding that the District's unilaterally modified the negotiated grievance procedure by attempting to process the contractual question of application of bumping rights through an alternative statutory procedure constitutes a unilateral change to the contractual grievance procedure and a violation of 14 Del.C. §4007(a)(5).

**WHEREFORE, SUSSEX TECHNICAL SCHOOL DISTRICT IS ORDERED TO TAKE THE FOLLOWING AFFIRMATIVE STEPS:**

- A) Cease and desist immediately from violating §4007(a)(5) of the Public School Employment Relations Act;
- B) Cease and Desist immediately from processing Young's grievance contesting the District's application of the contractual reduction in force provision of Article 7 of the parties' negotiated collective bargaining agreement by its agent hearing officer appointed by the Board of Education pursuant to Title 14 Ch. 14 of the Delaware Code;
- C) Immediately post the Notice of Determination in all areas where notices affecting employees in the bargaining unit represented by Sussex Tech Education Association are normally posted and in the District's Administrative Offices. These notices shall remain posted for at least thirty (30) days in order to provide to all affected employees of the decision in this matter.
- D) Notify the Public Employment Relations Board within thirty (30) calendar days of the date of this decision of all steps taken to comply with this Order.

Dated: September 11, 2014



Charles D. Long, Jr., Hearing Officer  
Del. Public Employment Relations Board