

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

FRED S. SILVERMAN  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 North King Street, Suite 10400  
Wilmington, DE 19801-3733  
Telephone (302) 255-0669

March 27, 2014

**(E-FILED)**

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RE: *Marianne Watson-Pedryns v. Brandywine School District, et al*  
*C.A. No. 13C-03-222 FSS*

**Upon Defendant's Motion for Summary Judgment –**  
***DENIED without prejudice.***

**Upon Plaintiff's Motion to file Second Amended Complaint –**  
***DENIED.***

Dear Counsel:

This is a wrongful termination case. Plaintiff was a paraprofessional at a public school. She was injured on the job and went out on long term disability. Accordingly, consistent with state law,<sup>1</sup> she was terminated. Meanwhile, Plaintiff

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<sup>1</sup> 29 Del. C. § 5253(c)(5).

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*Marianne Watson-Pedrys v. Brandywine School District, et al*  
C.A. No. 13C-03-222 FSS  
Letter/Order  
March 27, 2014  
Page 2

claims that she attempted to go back to work before she hit the long term disability point. That forms the basis of her claim. Defendant has moved for summary judgment alleging Plaintiff had no protected interest in her job, she failed to exhaust administrative remedies before filing suit, and assorted, make-weight arguments.

On its face, the argument that Plaintiff did not have a protected interest is weak.<sup>2</sup> The argument about not exhausting administrative remedies has potential merit but the record is open and far from complete. Accordingly, the argument is premature. Defendants have aggressively pursued motion practice, but discovery is not complete. Actually, a discovery deadline is not even in place.

Accordingly, the record as to what, if any, administrative remedies Plaintiff pursued is sketchy. In conclusory fashion, Plaintiff alleges, “I fully cooperated with both my employer and the Delaware OMB in my efforts to secure alternative employment.” It remains to be seen what that means. At a minimum, she had to get her doctor’s return to work authorization,<sup>3</sup> and the court does not see one.

For Plaintiff’s part, she has repeatedly filed motions to amend. This time she wants to add disability and age discrimination claims. Recently, she received a “right to sue” letter from the EEOC. While this motion to amend’s timing is understandable, it is difficult to see what the latest claims add. In other words, if Plaintiff prevails on her first amended complaint, she will receive the full measure of damages, including attorney’s fees, that she would receive under the second amended complaint. Conversely, if she cannot prevail on her first amended complaint, she will not be able to make out a case under the new claims. Meanwhile, as mentioned, the parties are focused on motion practice, and the second amended

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<sup>2</sup> Although Defendant is correct that state employment is not a protected interest generally, 29 *Del. C. § 5257* likely creates a protected interest here.

<sup>3</sup> 19 *Del. Admin. C. § 2000-20.1.1.2*.

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C.A. No. 13C-03-222 FSS  
Letter/Order  
March 27, 2014  
Page 3

complaint will precipitate another round, which will further delay this case's resolution and greatly add to its costs. It is time to get on with discovery.

If Plaintiff can explain how she could lose on the first amended complaint yet win on the second amended complaint, she has leave to file a motion for reargument within ten days of this letter/order's date. She must also explain, however, the extent that she believes the second amended complaint will add to the litigation's costs and length.

For the foregoing reasons, Defendant's motion for summary judgment is **DENIED** without prejudice to Defendant's renewing the motion upon completion of discovery. Plaintiff's motion to file a second amended complaint is **DENIED**, except as provided above.

**IT IS SO ORDERED.**

Very truly yours,

/s/ Fred S. Silverman

FSS:mes  
oc: Prothonotary (Civil)