CONNECTICUT DEPARTMENT OF LABOR
STATE BOARD OF LABOR RELATIONS

STATE OF CONNECTICUT JUDICIAL BRANCH	**Case No. SE-29,409**
-and-	
UNITED PUBLIC SERVICE EMPLOYEES UNION	
-and-	
JUDICIAL PROFESSIONAL EMPLOYEES, AFT/AFT-CT, AFL-CIO	**May 7, 2012**

REPLY BRIEF OF THE EXECUTIVE BOARD AND MEMBERS OF THE JUDICIAL PROFESSIONAL EMPLOYEES, AFT/AFT-CT

Pursuant to the State Employees Relations Act, Conn. Gen. Stat. § 5-270 et seq (hereafter known as SERA), the Union, Judicial Professional Employees, AFT/AFT-CT, AFL-CIO (hereafter referred to as JPE or Union), submits this reply brief for the case(s) now being heard by the State Labor Board (hereafter referred to as the Board) as Case No. SE-29,409.

I. INTRODUCTION

As stated in our initial brief, the stance that the JPE members and executive board has taken regarding the now filed petition for decertification is in stark contrast to JPE's parent organization. It was also stated in our initial brief that the stance manifested by this memorandum or its predecessor should in no way be interpreted as an endorsement of the Petitioner (UPSEU) over JPE's parent organization, AFT. Only a counting of cast ballots in a Board ordered election would demonstrate such an endorsement. Despite the legal dicta offered by the myriad of incumbent unions to thwart any effort to see a true exercise of democratic principles, the fact remains that Conn. Gen. Stat. §5-271(a) provides, in pertinent part:

> *"**Employees shall have**, and shall be protected in the exercise of **the right of self-organization, to form, join or assist any employee organization**, to bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment ..." (emphasis added)*

The scope of this reply brief will be restricted to the information and material submitted by JPE's parent organization (AFT) and the information and material submitted by the Judicial Branch as these organizations have the most impact on the function and form of JPE.

II. SIX- MONTH RULE (C.G.S. 5-275)

AFT has suggested that UPSEU does not qualify as a valid Petitioner as they are not a labor organization who has been in state employment for at least six months (see AFT Brief, p 5). Interestingly enough, the Judicial Branch makes no such argument in their initial brief. As such, it can be inferred that the Judicial Branch has abandoned this issue through its failure to adequately brief. *Kelib v CHFA*, 100 Conn. App. 351, 353 (2007) (lack of any meaningful analysis or argumentation preclude review). Nevertheless, two important factors must be considered by the Board when assessing the arguments both for and against the "six-month" rule.

First, both Board Agent Catherine Foley and Assistant Board Agent Jose Santana could have dismissed the petitions at the informal level if they had thought that the evidence was overwhelmingly against the Petitioner as it pertains to the "six-month" rule, but they did not. Rather the petitions were consolidated into present cases and scheduled for formal hearings. Second, the evidentiary record as to when and with whom the Petitioner had solicit intent cards is quite clear. During the hearing of December 19, 2011 testimony was adduced that the Petitioner had in fact been collecting intent cards from members of the Union in the months preceding the filing of its petition. Tr., 12/19/11, pp. 100 - 102. Moreover, the Petitioner provided testimony that it had been engaged in the organization of state employees as early as 2005 and 2008, Tr. 12/19/11 p. 100.

As previously submitted to the Board, in the case *State of Connecticut and International Union of Operating Engineers and Connecticut State Employees Association*, Decision No. 1682, September 20, 1978, CSEA claimed that the IUOE had not been in existence in state employment for at least six months, thus making them ineligible to petition the Board. Board Chairman Fleming James, Jr., held that IUOE was an employee organization within the meaning of SERA and was eligible for file its petition. This holding was based upon the finding that IUOE had actively engaged in soliciting "intent cards" from members of the unit before the 1976 election but did not receive enough cards to be put on the ballot. As such the "six-month" threshold has been satisfied and an election must be ordered.

"CSEA urges that the Petitioner is ineligible "to participate for or participate in a recognition election" because it has not "been in existence in state employment for at least six months." But the evidence shows it solicited intent cards among State employees as early as 1976. We hold that at that time it came for use in an organizational campaign." Id., p. 4-5.

III. WINDOW PERIOD (Regulation of State Agencies § 5-273-10)

The "facts" articulated by the Judicial Branch as they pertain to the window period, ratification dates and the submission of the SEBAC agreement and unit agreements to the General Assembly are wholly inaccurate. The Judicial Branch, either in an effort to create an illusion that the window period was never opened or in an substantial factual oversight, has submitted to the Board that ratification dates occurred in July of 2011 and that the aforementioned agreements were submitted to the General Assembly on July 22, 2011 (see Judicial Branch brief p. 4).

The record is clear that the SEBAC agreement and the unit agreements were not ratified until August of 2011 and the submission to the General Assembly did not occur until August 22, 2011 (see Exhibits 27 and 28). The distinction on the date period is significant as the window period as defined by § 5-273-10 opened on August 1 and did not close until August 31. The Petitioner was organizing during the window period and the incumbent unions and the employers knew of the organizational efforts, Tr. 12/19/11, testimony of Ronald Suraci, p. 102. According to the brief submitted by the Judicial Branch, they would have the Board believe the window period never opened and that the extension contract was negotiated and ratified prior to August 1. This is not accurate and contrary to the evidence on the record. As such, an election must be ordered

IV. RIGHT TO SELF-ORGANIZATION (C.G.S. 5-271(a))

Both AFT and the Judicial Branch have argue that since either collective bargaining agreements have been voted upon or internal union officer have run for election, that these factors satisfy the statutory elements of 5-271(a). 5-271(a) reads in pertinent part as . . .

> *"Employees shall have, and shall be protected in the exercise of the right of self-organization, to form, join or assist any employee organization, to bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment . . ."*

Whereas one half of the aforementioned statute has been satisfied, and JPE will readily admit that it has been able to collectively bargain through representatives of their own choosing, the first half of the statute proves to be more elusive. The right of self-organization is the central matter in these proceedings. Whether JPE had opportunity to ratify or reject the extension contracts in August of 2011 or whether they had internal elections for local union officers does not eviscerate or override the other components of the statute. JPE seeks, and is exercising its right to do so, to vote on who their labor organization will be. This right is clear and unambiguous. As such, an election must be ordered.

V. THREE-YEAR RULE (*City of Bridgeport* and *General Cable Corp.*)

Both AFT and the Judicial Branch argue that the "three-year" rule articulated in *General Cable Corp.*, 139 NLRB 1123 (1962) and adopted by the Board in City of Bridgeport, Decision No. 3338 p. 4 (1995) does not apply in the present set of facts. JPE submits to the Board the following question, when would these cases apply if not here?

Despite the contentions of the Judicial Branch that the incumbent unions and the employers are in the first year of a collective bargaining agreement (see Judicial Branch brief p. 8), the record is clear that the extension contract negotiated as part of the August 2011 discussions has created a contractual duration from July 2009 until June 2016, thus making 2012 the third year of the contract and not the first year and hence creating an opportunity for organizational campaigns pursuant to the holding of *General Cable Corp.* Furthermore, AFT and the Judicial Branch have speculated that any window period prior to 2015 would create labor unrest. Again the record does not support such a contention. The Petitioner's legal representative stipulated before the Board that UPSEU would honor all existing collective bargaining agreements. As such, an election must be ordered.

VI. ATTACHMENT "H" and C.G.S. 5-278(f)(1)

SEBAC is a statutory creation. C.G.S. 5-278(f)(1) reads in pertinent part as . . .

"Notwithstanding any other provision of this chapter, collective bargaining negotiations concerning changes to the ***state employees retirement system*** *to be effective on and after July 1, 1988, and collective bargaining negotiations concerning* ***health and welfare benefits*** *to be effective on and after July 1, 1994, shall be conducted between the employer and a* ***coalition committee*** *which represents all state employees who are members of any designated employee organization" (emphasis added)*

SEBAC's statutory mandate is clear and unambiguous and is centered on the negotiations of retirement and health benefits. Attachment H (see Exhibit 23) has no relevance to any aspect of the statutory mandated areas. Attachment H is essentially a pair of "hold harmless" clauses and a union security provision by virtue of an artificial duration period. Neither of these components falls within the statutory authority of SEBAC and are outside SEBAC's authority to bargain. As such an election must be ordered.

VII. EFFECTS OF MERA and the NLRA

Both AFT and the Judicial Branch have argued that any reliance by the Board on MERA and the NLRA to interpret SERA or to provide legal precedence is misplaced. The Board has traditionally looked to other state and federal labor law precedence for guidance. JPE's contention is one of labor jurisprudence and not a protectionist stance as displayed by AFT and the Judicial Branch. Connecticut Courts and judicial interpretation accorded National Labor Relations Act is of great assistance and persuasive force in interpretation of the State Employee Labor Relations Act and the Municipal Employees Relations Act in that state statutes dealing with labor relations are closely patterned after the NLRA and because language of three acts is essentially the same. MERA and the NLRA are a larger body of law and have dealt with a wider variety of issue than SERA. Due diligence dictates that any and all legal authorities be queried to fashion a just and fair resolution to this matter.

VIII. CONCLUSION

For the reasons set forth herein, the Judicial Professional Employees, through their legal representative, request that this Board dismiss objections to the instant petition and order an election for the members of JPE in order to enforce their right to choose their bargaining representative.

Respectfully submitted,

for the Executive Board and members of the Judicial Professional Employees.

By their Attorneys.

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CERTIFICATION

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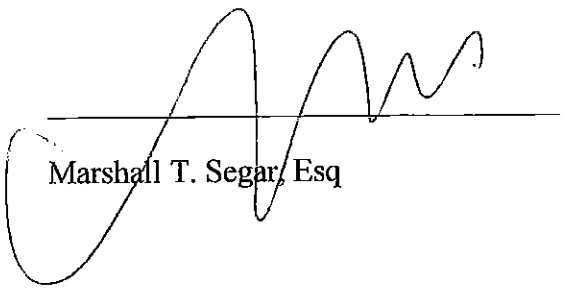

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