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May 1, 2012

Katherine C. Foley, Director
State of Connecticut
Board of Labor Relations
38 Wolcott Hill Road
Wethersfield, CT 06109

Re: State of Connecticut, Judicial Branch-and-United Public Service Employees Union-and-AFT/AFT-CT, AFL-CIO, Judicial Professional Employees-and-AFT, American Federation of Teachers, AFL-CIO
Case No. SE-29,409

Dear Ms. Foley:

Enclosed please find four (4) copies of my reply brief, filed on behalf of AFT/AFT-CT, AFL-CIO, Judicial Professional Employees and AFT, American Federation of Teachers, AFL-CIO in connection with the above-referenced matter.

Sincerely,

Brian A. Doyle
FERGUSON, DOYLE & CHESTER, P.C.

BAD:gwf

cc: Attorney Robert J. Krzys, Attorney John M. Walsh, Jr., Attorney Barry Scheinberg, Attorney Morris Busca, Attorney Saranne Murray, Attorney Douglas Hall, Attorney George Kelley, Jr., Attorney Ellen Carter, Attorney John Connor and Attorney J. William Gagne, Jr.

IN THE MATTER OF:

STATE OF CONNECTICUT, JUDICIAL BRANCH	:	CASE NO. SE-29,409
-and-		
UNITED PUBLIC SERVICE EMPLOYEES UNION	:	
-and-		
AFT/AFT-CT, AFL-CIO, JUDICIAL PROFESSIONAL EMPLOYEES	:	
-and-		
AFT, AMERICAN FEDERATION OF TEACHERS, AFL-CIO	:	MAY 1, 2012

REPLY BRIEF OF JUDICIAL PROFESSIONAL EMPLOYEES, AFT/AFT-CT, AFL-CIO and AFT, AMERICAN FEDERATION OF TEACHERS, AFL-CIO

This reply brief is filed in response to the UPSEU brief and the brief filed by the Executive Board and members of the Judicial Professional Employees. This reply brief does not address each and every contention made by UPSEU and the JPE Executive Board and members in support of its positions in this matter because most of those arguments were addressed in the Union's main brief, dated April 14, 2012. This reply brief limits itself to the statements, misrepresentations and other discrepancies between the factual records and the brief submitted by UPSEU and JPE Executive Board and members. Therefore, the Union replies as follows.

The UPSEU and the JPE Executive Board briefs argue that the incumbents claimed that UPSEU is not an employer organization pursuant to the State Employees Relations Act and it has not been in existence as state employment for at least six months is without merit. To

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support that contention, both briefs cite State of Connecticut International Union of Operating Engineers of Connecticut State Employees Association, Decision No. 1682 (December 20, 1978). In that case the SBLR's rationale for holding that the petitioner was qualified to represent state employees because it had solicited intent cards from state employees in 1976. The distinction between the facts of that case and the instant case is readily apparent. According to UPSEU's Regional Director Suraci, in 2011 UPSEU had not been collecting cards for at least six months. (Tx. P. 102 Additionally, there is no evidence offered at the hearing that UPSEU represents state employees in any capacity whatsoever. Previously, UPSEU had attempted to collect cards from two different units. These insignificant actions certainly do not comply with the statute and certainly offer no evidence that UPSEU has been in *"existence in state employment for at least six months."*

The JPE Executive Board brief would have the SBLR believe that the Union membership will be denied its right to vote if the petition is dismissed. Nothing could be farther from the truth. As the record reveals, the Union membership had two recent votes. The membership voted to ratify the successor bargaining agreement which contained the new duration dates. It also had a vote in late 2011 in which it elected a new President, Mr. Satti, who also took over the duties of the Executive Director. (Tx. P. 483-486) Within the course of four months the Union membership had the opportunity to vote twice. It had the opportunity to vote whether to accept

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the successor agreement with a new ratification vote and a few months later, had the opportunity to vote on leadership and the direction of the Union and, indeed, it voted for new leadership. The totality of the facts and the evidence in this case indicates that the Union membership has had more than one opportunity recently to exercise the democratic process of voting for a successor agreement and leadership of the Union. The idea that somehow the Union members are being denied a right to vote is disingenuous and not true.

The UPSEU and JPE Executive Board briefs claim that UPSEU's petition for an election was filed at the appropriate time. In fact, nothing could be further from the truth. UPSEU did not file its petition until after the ratification of the SEBAC 2011 Agreement, and the successor Union Agreement. During four days of hearings in this case, UPSEU offered no evidence or testimony as to why it neglected to file a petition before the contract was ratified by the membership and by the legislature. UPSEU offered no evidence during the hearings that it had the requisite showing of interest prior to the August 22nd contract ratification. UPSEU could not explain why it did not file its petition prior to the ratification of the successor Agreement which now creates a new window for petitioning.

During the course of the hearing and in its brief, UPSEU has stated that it would not attempt to reopen the SEBAC Agreement or the individual bargaining agreement. But, in fact, UPSEU is attempting to modify this successor JPE contract, along with the other individual

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agreements, with no regard for the contracts' recognition and duration clauses. UPSEU should not, and cannot, be allowed to claim on one hand that the contracts were bargained fairly and then on the other hand, claim that the recognition and duration clause of the new individual agreements should be eviscerated in order to allow its petitions can go forward. UPSEU's contention is self-serving and not logical and therefore should be dismissed by the SBLR.

The question that begs an answer that was not asked during the course of the hearings or in the UPSEU brief is, *"Why did UPSEU wait until the end of August to file its petition?"* They knew that SEBAC and the State were negotiating a new SEBAC Agreement, and they were also aware that the individual bargaining units were negotiating. Yet UPSEU was delinquent in filing its petition and could not offer rationale for this fact. The clear inference is that UPSEU did not have the requisite showing of interest before Union membership ratified the SEBAC 2011 Agreement and the individual Union successor contracts, which was finally legislatively ratified.

UPSEU also claims that *"The incumbent Unions, the State, and SEBAC knowingly sought to foreclose the interested labor organizations by prematurely extending the CBAs and closing the window period."* This grand conspiracy theory is without merit. To what end is it beneficial to the State Unions and SEBAC to conspire against UPSEU? It makes no sense. Of course, there was no evidence or testimony during the numerous days of hearings to support this conspiracy theory. There was no evidence because there was no conspiracy. In fact, contrary to

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UPSEU's arguments, bargaining unit members did have the opportunity to vote. They voted on the SEBAC 2011 Agreement, as well as the individual agreement, which carry the new duration date. The witnesses have said that the individual agreement, as well as the SEBAC 2011 Agreement was available for review prior to the vote. All members of the Union knew what they were voting on when they voted for the new individual agreement with a new duration date.

Just as significant is the fact that the Legislature was aware that the individual agreements as well as the SEBAC 2011 Agreement contained new duration dates. Further, the Legislature was aware of the change in duration date when it ratified the individual agreement, as well as the SEBAC 2011 Agreement.

The UPSEU brief offers nothing but a grand conspiracy theory as to why there is good cause for the SBLR to order an election. After numerous days of hearing on this matter, UPSEU could not offer testimony or documentary evidence as to why there was just cause to order an election. The fact is, there is not good cause to order an election and the SBLR has no choice but to dismiss UPSEU's petition.

UPSEU also claims in its brief that Attachment H is in conflict with C.G.S. §5-275 and Connecticut Regulation 5-27310. UPSEU claims that Attachment H closes the window period provided in the Statute on the regulation. UPSEU goes on to claim that Attachment H changed the window period by closing it for four additional years, until August, 2015. Attachment H did

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not close the window period. The window period was changed by the ratification of the Union membership Union and the Legislature in the new individual agreement, which has a new duration clause. UPSEU's claim that Attachment H and not the ratification by the membership and the Legislature changed the window period is nothing less than disingenuous, twisting the facts of this case.

In its brief, UPSEU places a great deal of weight on a Wilton Public School decision. Wilton Public School Decision No. 2104 (1981) Factually, the Wilton case is quite different from the instant matter. In Wilton, the incumbent Union entered into salary re-opener negotiations which led to an extension with the Collective Bargaining Agreement. With Wilton, the membership was unaware that there was a salary re-opener negotiation and, in fact, those negotiations would result in the extension of the contract. In the instant case, the membership of the Union was very well aware that the ratification included an extension of the contract. Members were given the opportunity to review the entire contract including the new and extended duration clause. UPSEU's reliance on Wilton Public Schools is misplaced and is not relevant to the instant case. (See also Woodstock Board of Education, Decision No. 1992 (February 24, 1981))

UPSEU contends in its brief that despite the fact that Attachment H was part of materials that the General Assembly approved, that it was within the powers of the SBLR to determine the

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validity of Attachment H. UPSEU argues that C.G.S. §5-278(b) was not complied with when Attachment H was submitted to the General Assembly. It buttresses this argument in SBLR Case State of Connecticut Western Connecticut State University, Decision No. 3020 (1992) (upheld in Connecticut Employees Union Independent, Inc., vs. Board of Labor Relations, et al, Docket No. CV-92-0452168) In that case, the State alleged that it was not required to adhere to a grievance settlement because the terms of the settlement did not comply with §5-278(b) because it was not approved by the Legislature. The distinction between the State of Connecticut Western Connecticut State University and the instant case is that Legislature did approve of the individual contract in the SEBAC 2011 Agreement including Attachment H. Attachment H as we all know, was part of the materials that went to the Legislature. Unlike the facts of State of Connecticut Western Connecticut State University, the facts in the instant case are that the Legislature received notice and was well aware of Attachment H and, in fact, approved it as part of the Agreement. Unlike the case cited, it does nothing more than support the Union's position that §5-278(b) has been complied with and that Attachment H was properly before the Legislature when it was approved. The Union believes that the facts of the instant case are dissimilar from State of Connecticut Western Connecticut State University, as the Legislature approved the SEBAC 2011 with attachments. The SBLR should not, and cannot, determine that Attachment H is void.

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membership. UPSEU is asking the SBLR to allow it to have an election and hopefully reap the benefits of the incumbent Union's diligent negotiating. The Union urges the SBLR to dismiss UPSEU's petition.

JUDICIAL PROFESSIONAL EMPLOYEES, AFT/AFT-CONNECTICUT, AFL-CIO, and AFT AMERICAN FEDERATION OF TEACHERS, AFL-CIO,

By _____

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CERTIFICATION

This is to certify that a copy of the foregoing Brief was mailed May 1, 2012 to the following:

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