



STATE OF CONNECTICUT
BOARD OF LABOR RELATIONS

STATE OF CONNECTICUT, : CASE NO.: SE-29,381
DEPARTMENT OF CORRECTION :
-AND- :
NATIONAL CORRECTIONAL EMPLOYEES UNION :
-AND- :
AFSCME, COUNCIL 4 :

STATE OF CONNECTICUT : CASE NO.: SE-29,394
-AND- :
UNITED PUBLIC SERVICE EMPLOYEES UNION :
-AND- :
CSEA/SEIU LOCAL 2001 :

STATE OF CONNECTICUT, : CASE NO.: SE-29,408
DIVISION OF CRIMINAL JUSTICE :
-AND- :
UNITED PUBLIC SERVICE EMPLOYEES UNION :
-AND- :
LOCAL 749, COUNCIL 4, AFSCME, AFL-CIO :

STATE OF CONNECTICUT, JUDICIAL BRANCH : CASE NO.: SE-29,409
-AND- :
UNITED PUBLIC SERVICE EMPLOYEES UNION :
-AND- :
AFT/AFT-CT, AFL-CIO, PROFESSIONAL :
JUDICIAL EMPLOYEES :

STATE OF CONNECTICUT, JUDICIAL BRANCH : CASE NO.: SE-29,410
-AND- :
UNITED PUBLIC SERVICE EMPLOYEES UNION :
-AND- :
IBPO, LOCAL 731, JUDICIAL MARSHALS :

STATE OF CONNECTICUT : CASE NO.: SE-29,411
DEPARTMENT OF CORRECTION :
-AND- :
CSEA/SEIU, LOCAL 2001 :

STATE OF CONNECTICUT, JUDICIAL BRANCH : CASE NO.: SE-29,439
-AND- :
UNITED PUBLIC SERVICE EMPLOYEES UNION :
-AND- :
LOCAL 749, AFSCME, AFL-CIO : APRIL 18, 2012

**MEMORANDUM IN OPPOSITION TO THE PETITION FILED BY
THE UNITED PUBLIC SERVICE EMPLOYEES UNION**

I. LABOR ORGANIZATION STATUS

Ronald Suraci testified at the hearing on December 19, 2011, that he has been employed by the United Public Service Employees Union, (UPSEU) as the Regional Director of the Clinton office since 2005. In 2005, UPSEU petitioned to represent employees in the State of Connecticut (Ex. 19). Intent cards were solicited and filed in connection with the petition. The petition was ultimately dismissed for three reasons; 1) overfragmentation; 2) there was not a clear community of interest; and 3) that UPSEU was not a certified bargaining agent for state employees six months prior to the filing of the petition. A recommendation of dismissal of the petition was issued (ex. 20).

In 2008, UPSEU solicited intent cards from state employees for the judicial employees, court reporters and stenographers represented by AFSCME Local 749. (Transcript d. 12/19/11, pp.79-90) However, no petition was filed. (Transcript d. 12/19/11, p.89) Since then, UPSEU kept in contact with those employees that signed initial cards in 2008. (Transcript d. 12/19/11, pp. 105) In 2011, they started collecting cards from that same group of individuals, who were part of Local 749 AFSCME Judicial Employees. (Tr. 12/19/11, p. 105)

Katherine C. Foley testified that she has been employed by the State Board of Labor Relations for thirty-three years. She has been an Agent of the Board for approximately eight years. (Transcript 12/19/11, p. 159-160) She testified that she has experience in conducting informal conferences on petitions for representation. She led an informal conference on the petitions in this case in late September or early October of 2011. (Transcript 12/19/11, p. 160)

At the informal hearing, Ms. Foley informed the parties that the petition on the NP-4 unit had a unique issue, that being binding arbitration, and that issue would be heard before the Board and severed from the other petitions. Another issue raised at the informal hearing was contract bar. Ms. Foley did not give notice of the informal hearing to any other party than those involved in the binding arbitration and contract bar issues. (Transcript 12/19/11. p. 161-162)

II. NEGOTIATING HISTORY

A petition was filed by UPSEU (Case No. SE-29,408) on August 31, 2011 seeking to represent the employees represented by Local 749, Council 4, AFSCME, AFL-CIO in the Connecticut Division of Criminal Justice (Ex. 2). Another petition was filed by UPSEU on August 31, 2011, (Case No. SE-29,439) seeking to represent the employees represented by Local 749, Council 4, AFSCME, AFL-CIO in the Judicial Branch of the State of Connecticut (Ex. 6)

Linda Yelmini has been the Director of the Office of Labor Relations since 1997. The role of the Office of Labor Relations is to represent the governor in all matters of collective bargaining regarding executive branch contracts. The Office of Labor Relations is also the governor's representative in issues having to do with coalition bargaining with the State Employees Bargaining Agent Coalition (hereinafter "SEBAC") regarding health care, pensions and other welfare benefits (26).¹ It represents all the bargaining units with which the State bargains in the various departments: executive, judicial, higher education and criminal justice (30).

At some point in time, discussions began with SEBAC by the State of Connecticut to resolve certain budget deficits that the State was experiencing and also, changes in pension and health benefits (29). Yelmini supervises the state negotiating representatives that handle the

¹ Numbers in parenthesis represent pages from the transcripts of hearings held on October 12, 2011, and October 31, 2011. Numbers without "Vol." are from the first hearing and Vol. 2 designates the second hearing.

negotiations for the individual contracts. Her office is responsible for all the executive branch contracts, and they are the Governor's representative in all negotiations regarding pension and health care in all of the branches of government. They negotiate, arbitrate and handle a variety of claims, such as freedom of information and grievance activity for all executive branch employees. She was present for the negotiating of the most recent SEBAC agreement (Transcript 1/11/12, p. 46-48), and was present when the first tentative agreement was reached in May 2011. (Exhibit 40) There were attachments to that agreement, however, she cannot recall how many there were. (Transcript 1/11/12, p. 50-60) Yelmini testified that Dan Livingston and Mark Ojakian signed the original tentative agreement in May 2011. This tentative agreement was voted on but did not pass. In June 2011, Yelmini learned that the agreement failed because it was not passed by the constituent union membership. (Transcript 1/11/12, p. 60-61)

At some point in July 2011, the parties reconvened to attempt to discuss a second tentative agreement. A second tentative agreement was signed in July 2011. Linda Yelmini was present for all of the meetings regarding the discussions for the second tentative agreement. There were attachments to this document as well. (Transcript 1/11/12, p. 72-75)

The final form of the second tentative agreement and attachment "H" were submitted to the legislature on August 22, 2011. (Transcript 1/11/12, p. 107) Yelmini testified that a certificate of ratification was signed by Dan Livingston. She signed the document stating that she received notification of the ratification. (Transcript 1/11/12, p. 138-139) She also signed a document that stated her signature indicated that the revised SEBAC agreement was approved by SEBAC leadership on August 18, 2011, that vote includes all appendices which are delineated in Attachments A through I. She had no concerns at all that Attachment H was not created in its

final form until after August 8th and that she signed the certificate of ratification indicating that the vote included all attachments A through I. (Transcript 2/9/12, p. 177)

Yelmini is generally familiar with Connecticut General Statute 5-275 regarding the filing of petitions for a potential change in union representation (Tr. 2/9/12, p. 178) Linda Yelmini's assistant, Fae Brown-Brewton, created the supercedence appendix. (Tr. 2/9/12, p. 187) Yelmini also signed the letters that were sent to the Clerk of the House of the Connecticut General Assembly and of the Senate. (Tr. 2/9/12, p. 190) The current SEBAC agreement expires on June 30, 2016. (Tr. 2/9/12, p. 197) The next open window period for filing of a petition would be August 1st through August 31st, 2015. (Tr. 2/9/12, p. 198)

The contract is retroactive to July 1, 2011. The concepts that are in Attachment H first were raised by Yelmini and agreed upon approximately in February or March 2011. (Tr. 2/9/12, p. 220) The Agreement that was signed on July 22, 2011 did not include all of the unit agreements. The separate unit agreements were all signed on different dates according to when they had been ratified by the different bargaining units. (Tr. 2/9/2012, p. 221-222) The supersedence appendix that was prepared by Yelmini's office only deals with issues regarding whether there is a conflict between the law and the agreement. The agreement between the State and SEBAC on health and pension issues has been extended to June 30, 2022 as part of the 2011 SEBAC agreement that went to the legislature in August 2011. (Tr. 2/9/12, 222-223)

Daniel Livingston testified at the hearing. He is employed as an attorney by Livingston Adler, Pulda, Meiklejohn and Kelly. He acted as chief negotiator on the most recent SEBAC contract. (Tr. 2/9/2012, p. 226-227) He acts as chief negotiator for the coalition in setting up the framework which required the State to make offers to individual bargaining units. He signed the SEBAC agreement of May 2011. (Tr. 2/9/2012, p. 233) Fifty-seven percent of the members

avored the agreement, 11 of 15 SEBAC voting units voted for the agreement, but it was not sufficient to be a full ratification and was rejected. Livingston stated that SEBAC is a coalition of unions and not a union. Ratification is done by the vote of the constituent unions, not by membership vote.

The coalition is set up so that the leaders get together to cast their votes. The vote was an 11 to 4 vote in favor of the first legislative contract, however, according to SEBAC bylaws, it was not sufficient to allow the changes to go through. A revised agreement was negotiated. The contract was voted on toward the end of July 2011. Every single SEBAC voting member indicated that they were voting "yes" on the SEBAC agreement. The vast majority of voting members reported that they were advised on how to vote by their members. The voting results of the second tentative agreement were 13 to 0 in favor of the agreement with Attachment H. (Tr. 2/9/2012, p. 239-244)

Livingston was involved in the creation and drafting of Attachment H by drafting the original language of the last paragraph concerning contract bar language. His purpose for drafting that language was to reflect the agreement between the coalition and the administration. The issue was raised in March 2011. (Tr. 2/9/2012, p. 257)

Linda Yelmini and Livingston discussed the issue of incorporating contract bar language similar to what Barry Scheinberg had negotiated previously in one of the bargaining units. Attachment H was included in the SEBAC agreement that was ratified on August 18, 2011 by a 15 to 0 vote. Livingston was aware at the time that the contract needed to go to the General Assembly that it needed to have a supersedence appendix and that management was preparing the document. (Tr. 2/9/12. P. 264-267)

The need to renegotiate the SEBAC agreement was initiated by the State. Livingston stated that he was told by the administration to continue talks because there was a \$7 billion budget deficit, and they wanted the state employees to make changes to reduce that deficit. At various points in the discussions there were threats of layoff for 7,000 and 9,000 employees as well as changes in the laws regarding collective bargaining. His understanding of the law was that the agreement needed to be before the legislature five days before August 31, 2011. (Tr. 2/9/12, p. 283-290)

Robert Rinker testified that he is employed by CSEA/SEIU Local 2001 and has been so employed since February 13, 1983. He is the Executive Director of the Local and has held that position since 1994. He is responsible for running the day to day operations of the local and he is also involved in contract negotiations for bargaining unit members. He is the chief negotiator for the state division. He has provided supervision to staff that has negotiated for contracts on the municipal side. (Tr. 2/9/2012, p. 291-292)

He was the chief negotiator for CSEA/SEIU Local 2001 in the most recent bargaining negotiations for the current contract. He remembers the concept of attachment H being discussed within the coalition which makes up SEBAC in March 2011. The reason for the discussion was to put into place or codify when the open window period would occur if the agreement was ratified. (Tr. 2/9/12, p. 296) Prior to August 22, 2011, the tentative agreement was sent to the bargaining unit members of P4 Local by mail. There were also informational meetings, and he believes that the agreement was also posted on the Local's web site. (Tr. 2/9/12, p. 300) Rinker was aware of an open window period for the filing of petitions to change union representation. He did not feel it was necessary to notify the bargaining unit members of

Attachment H prior to the vote because he felt that Attachment H codified when the window period would be if the bargaining unit ratified the agreement. (Transcript 2/9/12, p. 307- 319)

Patrice Peterson testified that she is employed by the State of Connecticut as a state school teacher with the Department of Developmental Services. She is also the Elected President of Local 2001 CSEA/SEIU for which she received a stipend. For the past decade she held other positions in the Local such as secretary/treasurer, president of her bargaining unit, chief steward within that unit, served on negotiating teams. (Tr. 2/9/2012, p. 321-323) She was on the team of negotiators for the most recent SEBAC agreement. She was also on the negotiating team for the 2009 SEBAC negotiations. (Tr. 2/9/2012, p. 323-324) She was aware at some point of Attachment H. (Tr. 2/9/12, p. 324) She did not have any discussions with any bargaining unit members of the P4 bargaining unit regarding Attachment H. She hosted informational meetings prior to the P4 vote. (Tr. 2/9/12, p. 327) She did have knowledge at that time that intent cards were being solicited to change representation. (Tr. 2/9/12, p. 331)

Senator Joseph Markley testified that he is the State Senator for the 16th District of Connecticut. He has been Senator since January 2011. His district covers the towns of Southington and Wolcott and also covers the east end of Waterbury and part of Cheshire. (Tr. 2/15, 2012, p. 347) He is familiar with Connecticut Regulation 5-273-10. He stated that the regulation covers the window of opportunity which is open to employees for which to petition for a change in union representation. He stated that he is familiar with General Statute 5-275 and stated that it gives the authority to the Labor Board to make decisions about the calling for election and certification process. (Tr. 2/15/12, p/ 350-351) He is familiar with Attachment H of the SEBAC agreement. (Tr. 2/15/12, p. 361) Markley testified that when a contract is submitted to the legislature the legislature may choose to vote on the contract. The legislature can vote on

the contract in a positive or negative way by vote. It has been his experience that they were all passed in the 1980's. In more recent years, he stated, the contracts almost always have gone through by inaction. (Tr. 2/15/12, p. 370-372)

At the most recent submission of the contract to the legislature, the legislature was out of session at the time, so the contract was passed without legislative action. Markley stated that the legislature, under the statute, has five days to make a decision about acting on the contract. If they do not make a decision after five days it takes effect without legislation. (Tr. 2/15/12, p. 373-381) In August 2011, he reviewed the supersedence appendix in the context of a Republican Senate discussion of the terms of the contract. (Tr. 2/15/12, p. 385) Senator Markley testified that he does not believe that he was fully informed to either act or not act on the approval of the contract. (Tr. 2/15/12, p. 387) He stated that the Labor Board has authority under the statutes to make election determinations and that authority was not removed by the agreement. Also, he stated, that there was no notification to the legislature that such a change was being made. (Tr. 2/15/12, p. 390) He has been aware of Attachment H for quite some time now. He does not remember if he read Attachment H when it was submitted to legislature. (Transcript 2/15/2012, p. 410) Markley is not sure if he read some or all of it.

He is not sure if he physically had the agreement in front of him in August of 2011, but it was available to him. (Tr. 2/15/12, p. 410-411) He stated that he may not formally look at a bill when it is presented. It may just be discussed with people and not in a formal written document. (Tr. 2/15/12, p. 412) He becomes aware of things because people have brought his attention to things more often than not. (Tr. 2/15/12, p. 412) He is not sure if he was present on August 22nd to read the SEBAC agreement, but he was certainly in the building during August. He does not recall if he was in the building during August 22nd to August 27th. (Tr. 2/15/12, p. 413-414)

At some point he reviewed the supersedence terms in the SEBAC agreement with other Republicans. (Tr. 2/15/12, p. 415-416) He did not feel that he was informed of the provisions of the SEBAC agreement because they conflicted with State statutes. (Tr. 2/15/12, p. 417) Specifically, one conflict was the change in window period for the petition for changing representation. (Tr. 2/15/12, p. 418) Markley did not ask the Office of Labor Relations whether the SEBAC agreement changed the window period. (Tr. 2/15/12, p. 420) He did not conclude that the SEBAC agreement changed the window period. (Tr. 2/15/12, p. 428) Senator Markely has no recollection of reading the individual unit agreements. (Tr. 2/15/12, p. 450)

Salvatore Luciano testified that he is the Executive Director for AFSCME Council 4. He has been employed by AFSCME Council 4 since June 1, 2001. (Tr. 2/15/12, p. 467) Luciano runs the day to day operations of the union. He also participates in negotiations and participated in the negotiations for the most recent SEBAC agreement along with many of the bargaining units presidents. (Tr. 2/15/12, p. 468) He is the negotiator for SEBAC portion of AFSCME Local 749. Tricia Cardin is the negotiator for AFSCME Local 749 Unit portion. He along with many other people from AFSCME participated in the SEBAC portion of the negotiations. Some of those people are: Tricia Cardin, Neal Cunningham, Jeff Scanlon, Jim LoMonaco, Matt Brokman, Larry Gorman and Kevin Murphy. (Tr. 2/15/12, p. 469) The first time that he was present when the concept of Attachment H was raised in negotiations was early summer which was prior to the vote on the original tentative agreement. (Tr. 2/15/12, p. 470) He does not believe that the concept of Attachment H was included in the agreement that was voted on in June by members of the bargaining unit. (Tr. 2/15/12, p. 471) Luciano believes that all of the units, except for State Police where done voting by August 16, 2011. He believes that the second tentative agreement was reached by the end of July, and it did not include Attachment H. (Tr.

2/15/12, p. 471-472) He testified that the second tentative agreement was mailed out to the members. AFSCME also conducted information meetings and posted the second tentative agreement on their website. The agreement was posted on the website approximately around the end of July, beginning of August. He posted a copy of the second tentative agreement on the website to begin to educate the members about the agreement. The agreement that was mailed to the members did not include Attachment H, nor did the agreement that was posted on the website. (Tr. 2/15/12, p. 474-475) He believes that he discussed at the leadership meeting and at some membership meetings that if there was an agreement, then there was a contract bar, which meant the closing of the window period. (Tr. 2/15/12, p. 477-478) Since Attachment H was created on August 18th, after the vote, he believes that no bargaining unit member saw the language of Attachment H prior to their vote. (Tr. 2/15/12, p. 478-479) Prior to the mailing of the second tentative agreement to members, posting of it on the AFSCME website and at meetings, Attachment H was not reviewed, because it had not been created yet. (Tr. 2/15/12, p. 480) Luciano testified that the meetings to discuss the contract were for both SEBAC agreement and the individual unit agreements. He stated that there was no objection to the agreements being in effect for a five-year duration. (Tr. 2/15/12, p. 481).

LEGAL ARGUMENT

A. Labor Organization Status of UPSEU

Connecticut General Statutes §5-275(a)(3) states: "No employee organization shall be eligible to petition for or participate in a recognition election until it has been in existence in State employment for at least six months." It is significant to note that a similar provision in C.G.S. 7-467(a) concerning municipal employees reads: "No employee organization shall be eligible to petition for exclusive recognition or to participate in a recognition election unless it

had been in existence for not fewer than six months.” While there are few cases dealing with the definition of a labor organization status in state employment concerning state employees, it is significant to note that two statutes are different. The statute governing labor organizations in the state sector requires that the organization be in existence in state employment for six months. Since the state employers relations act (SERA) came into existence after the municipal employers relations act (MERA), one has to conclude that there was a reason for the legislature to require “state employment” as a condition to establishing labor organization status. The phrase “in state employment” cannot be considered superfluous. It can only mean that the labor organization has to be in state employment for at least six months before it can represent employees. Black’s Law Dictionary defines employ as “to engage in one’s service; to hire” Employment is defined as “act of employing or state of being employed” (Black’s Law Dictionary, by Henry Campbell Black, M.A. Sixth Edition, by Joseph R. Nolan, Jacqueline M. Nolan-Haley, 1990, (p. 524-525)). Thus, the phrase “in state employment” has to mean being in the employment of the State of Connecticut, which UPSEU is not.

A basic tenet of statutory construction is that a statute is to be construed as a whole and so as to reconcile all parts as far as possible. Further, no word in a statute should be treated as superfluous. Rustici v. Stonington, 174 Conn. 10, 13 (1977); Winchester v. Connecticut State Board of Labor Relations, 175 Conn. 349, 355 (1978); State v. Grant, 176 Conn. 17, 20 (1978). Thus, the requirement that a labor organization be in state employment for six months cannot be ignored, UPSEU has not satisfied this requirement.

In Town of Milford -and- Teamsters Local Union No. 677, Decision No. 939 (1970), the Labor Board discussed the reasons for the six-month rule. The purpose was to ensure a measure of stability so that “mushroom” organizations would not spring up overnight and not have the

financial resources or capability or representing employees on a continual basis (p. 2,3). UPSEU does not represent any state employees in the State of Connecticut, and clearly with the number of employees employed by the State of Connecticut, the legislature was concerned that labor organizations that seek to represent those employees have the stability to represent them for the duration of any collective bargaining agreements that are negotiated. It would not be conducive to labor relations stability to allow a labor organization to represent employees and then not be able to represent those employees as they are entitled to under SERA. Clearly, UPSEU has not been in existence in state employment for the requisite six month period and its petition should be dismissed.

B. Contract Bar

Connecticut General Statutes §5-275(a) provides, in relevant part:

No election shall be directed in any bargaining unit or any subdivision thereof within which in the preceding twelve month period a valid election has been held. No election shall be directed by the Board during the term of a written collective bargaining agreement except for good cause.

Connecticut regulations 5-273-10 provides for an open period within which a labor organization or employees may petition for a change in union representation. The open period is in the August next preceding the expiration of the collective bargaining agreement. In both of these units that are in dispute the open period was in August 2011, when the instant petitions were filed. However, the legislative action discussed below established a contract bar any election until June 30, 2016 and an open window period in August 2015.

In early 2011, negotiations began between the State of Connecticut and the State Employees Bargaining Agent Coalition (hereinafter "SEBAC") regarding health care, pensions

and other welfare benefits. Local 749 is one of the labor organizations covered by SEBAC. While negotiations were going on with SEBAC, individual negotiations were taking place between the State and Local 749 concerning other aspects of its collective bargaining agreements. The tentative agreement covering SEBAC issues and other collective bargaining matters was signed in May of 2011; however, the agreement was not approved by the members of the labor organizations compiling SEBAC under the then existing rules governing the voting process.

At some point in July 2011, the parties reconvened to continue negotiations. A tentative agreement was signed in July 2011. The agreement was voted on and passed by a majority of the voting members and also the members of SEBAC by August 16, 2011. On August 22, 2011, the SEBAC agreement, with its attachments, including Attachment H, was submitted to Thomas P. Sheriden, Clerk of the Senate and Garey E. Coleman, Clerk of the House. As a result of inaction by the House and the Senate, the agreement was approved and became law.

At issue here is a document referred to as Attachment H. Attachment H was part of the SEBAC agreement and was submitted to the Legislature for approval. The collective bargaining agreements that were approved by the Legislature for Local 749 and the State covered the employees in the Division of Criminal Justice and Judicial Employees of the State of Connecticut and commences on July 1, 2011 and expires on June 30, 2016. Attachment H provided that the window period for filing any petition would now be August 2015. Salvatore Luciano, Executive Director of Council 4, testified that the second tentative agreement was mailed out to the members, and there were informational meetings regarding the tentative agreement. Luciano indicated that Attachment H was not mailed to the members nor posted on the website.

So the issue before the panel is whether the new contract with Attachment H approved by the Legislature would act as a bar to the instant petitions filed by UPSEU. We start with "the Legislature is presumed to be aware and to have knowledge of all existing statutes and the effect which its own action and non-action may have on them" Achillion Pharmaceuticals Inc. vs. Law, 291 Conn. 525, 535 (2009)(quoting Miller v. Ace Utilities District, 179 Conn. 589, 594 (1980). In passing this legislature, one has to assume that the Legislature was aware of the fact that a window period existed in August of 2011, and that by passing this statute it effectively closed out the window period in August of 2011, and statutorily mandated that a new window period would be in effect in August of 2015. The Labor Board does not have the authority to overrule the enactment of statute by the Legislature.

C.G.S. §5-278 requires that any agreement which is in conflict with any statute or any regulation of any state agency must be submitted to the House of Representatives and the Senate for approval. Attachment H clearly was in conflict with regulations 5-273-10 which provides a window period in August 2011 for the employees in dispute. The General Assembly approved this provision of the collective bargaining agreement by its inaction. This was a clear mandate that the Legislature did not want an open period as currently existed.

Additionally, the Legislature approved the collective bargaining having an effective date of July 1, 2011, establishing a contract bar. This was clearly further indication that the Legislature clearly wanted no petition for representation to exist until the open period in Attachment H.

Also, the Labor Board does not have jurisdiction over the issue raised by the UPSEU petition. The Legislature by its inaction approved the term of the contract from July 1, 2011 to June 30, 2016. It also fixed the window period for this time period to the August next preceding

2016. The Labor Board only has jurisdiction over “employers” and “employee organizations” 5-273. The Labor Board has no jurisdiction over the General Assembly. It cannot alter a statutory scheme regarding duration of a collective bargaining agreement and a corresponding window period established by the legislature. State of Connecticut and Locals 387, 391 and 1565, of Council 4, AFSCME, AFL-CIO, Decision No. 3751, (2000). In State of Connecticut and Board of Trustees for the Connecticut State Colleges, the legislature amended the disability clause in the Teacher Retirement System to make it more restrictive than the clause that existed in the collective bargaining agreement. The Board ruled that the State Employee Relations Act does not forbid the General Assembly from making such a change by statute. State of Connecticut and Board of Trustees for the Connecticut State Colleges and Connecticut State College American Association of University Professors, Decision No. 2028 (1981). Likewise, in Wallace B. Robinson v. Commissioner of Motor Vehicles, a Department of Motor Vehicle regulation was in conflict with a State Statute regarding the procedure followed in a driving under the influence case. The Court cited that the provision of the statute must prevail over the regulation. Wallace B. Robinson v. Commissioner of Motor Vehicles, 197 Conn. Super. Lexis 1620 (1997). Thus, the General Assembly’s approval of the collective bargaining agreements and attachment H would prevail over any regulation of the Connecticut Board of Labor Relations regarding an open period or three-year rule.

UPSEU may argue that the election should be allowed under the exception of 5-275(a) allowing an election for good cause. This cannot supersede the Legislative mandate but more importantly, with regard to Local 749, there was no evidence presented of any cause for allowing an exception to the contract bar rule. UPSEU failed to put in any evidence at all, for example, that required the membership to vote on all of the contractual provisions that were submitted to

the Legislature for approval. UPSEU failed to introduce any evidence at all that would justify cause being demonstrated. The fact that Attachment H was not sent out to the membership does not violate any constitutional provisions of Local 749 or any other legal provision or requirements under SERA.

Lastly, the State of Connecticut and SEBAC, along with the Unions, worked hard to reach an agreement that saved the jobs of thousands of employees and provided significant financial savings to the State of Connecticut. It was a contract sought after, and approved by Governor Malloy. Indeed, it was Linda Yelmini, Director of Labor Relations, who stated that she initiated the discussion regarding Attachment H. (Tr. 2/9/12, p. 220) This contract along with Attachment H insures financial and labor stability to the State of Connecticut for the next five years. Not only has UPSEU shown no basis for cause, the argument against any cause being found far outweigh a finding of cause. Yelmini stated that she was aware of C.G.S. § 5-275 and felt no reluctance to closing the existing window period and establishing a new one. (Tr. 2/9/12, p. 177)

COUNCIL 4, AFSCME

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I hereby certify that a copy of the foregoing has been mailed to the following on this day:

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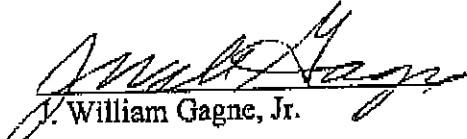
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Number of Pages (including this sheet): 20

MESSAGE: My brief follows

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