

each bargaining group had ratified their respective unit contracts, and the General Assembly had, pursuant to statute, ratified each contract. It would serve little purpose to repeat those arguments here. Nothing in UPSEU's brief provides any basis for challenging the conclusion that its petitions are untimely and ineffective.

UPSEU's arguments seem to be tied together by the recurrent suggestion that the State employees were part of a joint effort to deny the employees their "right to choose." There was no effort to "thwart" the will of the employees. What is stated in the brief of the Executive Branch is equally true for the Judicial Branch. (Executive Branch Brief at 1). Judicial is not trying to dictate the representation, nor does it have a preference for a particular union to represent its employees. Instead, the interest of the Judicial Branch is to maintain the stability of labor relations in the particular circumstances that were addressed by the negotiations that led to the contracts at issue. After protracted and difficult negotiations, the parties reached an agreement that addressed critical issues such as the State's budget deficit, the employees' job security and pay and benefits.

The process, and the issues involved, were hardly, as UPSEU seems to suggest, "hidden" from the employees – or, for that matter, from the entire public at large. Instead, the issues were in the forefront of public debate for months, as was the likelihood that the existing contracts would be extended for a significant period. Further, it was readily apparent to all that once the contracts were submitted to, and approved by, the Legislature, the statutory scheme conferred

on them the force of law. Had UPSEU or any other union sought to bring a challenge to the existing representation, it knew, at a minimum, that it would have to do so prior to that legislative action.

UPSEU attempts to distinguish of the Board's decision in State of Connecticut (Department of Corrections), Decision No. 3751 (2000) (UPSEU Brief at 31). The attempt fails. In that case the Board was asked to invalidate a decision by the legislature to reject an arbitration award. Here the Board is asked to invalidate the legislature's decision to ratify each of the unit contracts, including the three Judicial Contracts. The Board refused this invitation in State of Connecticut, on the grounds that it was without jurisdiction to do so. It should reach the same conclusion here.

Finally, UPSEU's arguments based on State of Connecticut (Department of Corrections), Decision No. 2652 (1988), must also be rejected. (UPSEU Brief at 20-21) In that case the Board applied, to a particular set of facts, its narrowly-crafted compelling reasons exception to the contract bar rule. Based on its own prior rulings in an earlier dispute between the same two unions, the Board applied the exception to avoid the possibility that differing contract bars and open window periods might apply to a discrete group of employees were they to choose to be transferred from one unit to another. No such anomaly exists in this case. Here the parties negotiated, with the full knowledge of UPSEU, among others, new agreements. Once they were ratified by the membership and the legislature, those agreements established new open window periods that were in effect before UPSEU filed its petitions.

2. Under The Circumstances Of This Case, The Premature Extension Doctrine Does Not Require An Election

UPSEU argues that the Board should order an election because the Incumbent Unions and the State “prematurely” extended the existing contracts. UPSEU’s arguments ignore one critical factor. The agreement to extend the existing collective bargaining contract was not merely the decision of the employer and the incumbent unions. Instead the agreement was approved, by operation of law, by the legislature. Not only was this approval by operation of law, but the resulting agreement takes on the force of law.

This distinction is one of the reasons UPSEU’s reliance on the Board’s decision in Wilton Public Schools, Decision No. 2104 (1981), is misplaced. In that case the Board did apply the premature extension rule to a case where the union and employer had “prematurely” extended the term of their agreement. That case did not, however, present the situation where the new contract term had already begun. Indeed, the Board in Wilton Public Schools specifically distinguished that situation from the case before it by explaining that “[t]he doctrine has no effect on an otherwise untimely petition.” Here, for all the reasons previously stated, the petitions are untimely because the Judicial Contracts took effect on August 22, 2011 and the petitions were not filed until August 31, 2011. Moreover, the Judicial Contracts, and all the unit contracts, were deemed approved by the Legislature.

Furthermore, as pointed out in the brief of the Department of Criminal Justice, the Board has never applied the premature extension doctrine to SERA. (Criminal Justice Brief at 10, n. 1) Indeed, in light of changes in the Board’s

procedures and regulations, especially with regard to the window period, it is questionable whether, or precisely how, the doctrine would be applied to any case. Nevertheless, the Judicial Branch agrees with, and adopts, the arguments of the Division of Criminal Justice that even if the Board were to somehow apply the doctrine to SERA, it should do so only after following its rule-making procedures and not, for the first time, in a case such as this.

3. There Are No Compelling Reasons For The Board To Deviate From Its Normal Application Of The Statutory Contract Bar

As UPSEU acknowledges, and as the Judicial Branch has already argued, the Board applies the “compelling reasons” exception narrowly. (UPSEU Brief at 23-24). There are no such compelling reasons here. Therefore it is not surprising that UPSEU has identified none.

UPSEU first asserts, in a variation of its denial of the right to vote argument, that (1) under the contracts now in place, the open window period will not occur until 2015, and (2) the State and the incumbent unions might “prematurely extend” again, thus foreclosing the window period “indefinitely.” (UPSEU Brief at 25-26). This argument ignores that the membership of each incumbent union properly voted to approve contracts that they knew very well would expire in 2016. It further ignores the fact that the legislature approved those contracts, and that it did so, as a matter of law, with full knowledge of both the expiration date, and therefore the open window period, of those contracts.

UPSEU then suggests it is somehow “perverse” and “disingenuous” to point out to the Board that part of the balancing process in these cases involves


a weighing of the burden that a change in bargaining representatives would place on the employer. (UPSEU Brief at 26-27). That burden, in this case, would be substantial. Just as UPSEU's rhetoric cannot obscure the expressed desire of a majority of the affected employees to work under the contract negotiated by their representatives, neither can that same rhetoric diminish the concerns of the Judicial Branch in maintaining the labor stability it negotiated for.

4. Conclusion

For all the foregoing reasons, and for those set forth in its original post-hearing brief, the Judicial Branch renews its request that the petitions filed in these cases be dismissed.

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