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May 7 , 2012

Harry B. Elliott, Jr., General Counsel
State Board of Labor Relations
38 Wolcott Hill Road
Wethersfield, CT 06109

Re: Reply Brief of State Employee Bargaining Agent Coalition (SEBAC) in the cases of:

SE-29394 (State of Connecticut and United Public Service Employees Union and CSEA/SEIU Local 2001);
SE-29,408 (State of Connecticut, Division of Criminal Justice and United Public Service Employees Union and Local 749, Council 4, AFSCME, AFL-CIO);
SE-29,409 (State of Connecticut, Judicial Branch and United Public Service Employees Union and AFT/AFT-CT, AFL-CIO, Professional Judicial Employees);
SE-29,410 (State of Connecticut, Judicial Branch and United Public Service Employees Union and IBPO, Local 731, Judicial Marshals);
SE-29439 (State of Connecticut, Judicial Branch and United Public Service Employees Union and Local 749, AFSCME, AFL-CIO)

Dear General Counsel Elliott:

Enclosed herewith is an original and four (4) copies of a reply brief filed on behalf of the State Employees Bargaining Agent Coalition(SEBAC) pursuant to the Board's Ruling on Motion to Intervene dated October 25, 2011.

The Ruling allowed for intervention by SEBAC with respect to the sole issue of the application, if any, of Attachment H of the Revised SEBAC 2011 Agreement to certain pending petitions before the Board. This brief is submitted with respect to the five Petitions referenced above.

A copy of this brief has been sent to all counsel of record in the consolidated proceeding involving all pending Petitions before the Board.

Sincerely

Robert J. Krzys
Cc: Counsel of record in consolidated proceeding on all petitions

STATE OF CONNECTICUT
CONNECTICUT STATE BOARD OF LABOR RELATIONS

In the matter of	:	
STATE OF CONNECTICUT; STATE OF CONNECTICUT DIVISION OF CRIMINAL JUSTICE; STATE OF CONNECTICUT JUDICIAL BRANCH Employer Respondents	:	Cases SE-29, 394; SE-29,408; SE-29,409; SE-29,410 SE-29, 411; SE-29,439
-and-	:	
NATIONAL CORRECTIONAL EMPLOYEES UNION; UNITED PUBLIC SERVICE EMPLOYEES UNION Petitioning Unions	:	
-and-	:	
LOCAL 749, COUNCIL 4, AFSCME, AFL-CIO; CSEA/SEIU, LOCAL 2001; AFT-CT, AFL-CIO, PROFESSIONAL JUDICIAL EMPLOYEES; LOCAL 731, IBPO, JUDICIAL MARSHALS Incumbent Unions	:	
-and-	:	
STATE EMPLOYE BARGAINING AGENT COALITION Intervenor	:	MAY 7, 2012

REPLY BRIEF of the State Employees Bargaining Agent Coalition(SEBAC) pursuant to Board's Granting of Its Motion to Intervene

I. INTRODUCTION.

The Labor Board previously granted the State Employees Bargaining Agent Coalition (SEBAC) permission to Intervene in the above-captioned matters. Specifically, the Board ruled that :

"SEBAC's Motion to Intervene is GRANTED subject to the following limitation: participation by SEBAC shall be limited to the sole issue of the application, if any, of Attachment H of the Revised SEBAC 2011 Agreement to the pending petitions." (Exhibit 66)

Consequently, SEBAC participated in those Formal Hearings that addressed those petitions pertaining to units that entered into successor agreements to their previous contracts that were due to expire on June 30,2012. Those bargaining units all ratified successor agreements effective July 1, 2011 and expiring June 30, 2016.

SEBAC did not participate in Case No. SE-29,381 involving the NP-4 unit Petition since the notice of hearing restricted that proceeding solely to whether there was an "arbitration bar" to the Petition in that case filed by the National Correctional Employees Union. Likewise, SEBAC did not participate in Case No. SE-29,411 involving the NP-8 unit since the issue in that case pertained solely to whether the Petitioner was eligible to file a Petition under SERA and did not involve Attachment H.

Attachment H is contained within Exhibit 23. Exhibit 23 is the Revised SEBAC 2011 Agreement presented to both the Senate and the House of the Connecticut General Assembly on August 22, 2011.

Exhibit 23 also contained Attachment I which is a compendium of all the various individual bargaining units contracts that were the result of separate negotiations between the exclusive bargaining unit representatives of each particular unit and the respective employer under the State Employees Relations Act(SERA)

Exhibit 25 is the "Supersedence Appendix" prepared by the State Employer and submitted to the General Assembly in conjunction with the 2011 SEBAC agreement which, in Attachment I, contained all the individual unit agreements.

There is no statutory reference to the phrase "supersedence appendix". Section 5-278(b) only states that a request for approval include those statutes or regulations the Employer deems to be in conflict with the Agreement or arbitration award being submitted.

In its intial brief, the position of SEBAC as to the applicability of Attachment H to the pending Petitions was that it is a provision that effectively and conclusively defines the window period for the 2011-2016 contract to be August of 2015. It is the position of SEBAC that the petitions filed in August, 2011 which listed the applicable contract as a July 1, 2009-June 30,2012 contract, are petitions that should be dismissed because the 2011 SEBAC agreement contains a submission of all the extended unit agreements in Attachment I and Attachment H specifically places the window in August of 2015.

This submission and the very important recognition that the entire submission was approved by the Connecticut General Assembly informs the Board that the Legislature has acted to conclusively provide the only appropriate time for a filing of a Petition as to all of the approved 2011-2016 unit agreements is to be in August, 2015. Petitioner UPSEU will want the Board to find good cause solely because there has been a period of time between window periods if there petitions are dismissed. However, there is simply no authority to construe the statutory good cause language adopted by the legislature to suggest that the Legislature meant to endorse dissension causing, harmony destroying organizing campaigns from rival unions immediately following extremely open and informative ratification meetings followed by approved majority ratification votes.

Any argument by the petitioner or by any party to these proceedings to the contrary must be rejected. While SEBAC embraces the various arguments of the incumbent unions and all the various State Employers that the application of the existing contract bar rule also mandates the dismissal of these petitions, it is clear that the Legislature was explicitly notified that the parties had agreed to calculate the window at August, 2015 and that the Legislature approved that window period. Once it acted, there is a conclusive presumption that it acted within its power and no administrative agency can set that action aside. In point of fact, this very concept has

been explicitly recognized by this Board as to the actions of the Legislature with respect to the State Employees Relations Act. Before it acted, the Legislature provided a procedure that would be in effect if any SEBAC agreement were to be completed and presented to it after they adjourned. The Legislature, in that same procedure, always reserved its right to reconvene should they so decide. Importnatly, it is a fact that at no time prior to the ratification of the SEBAC agreement by the Connecticut general Assembly was there any pending Petition for Election in any of the SEBAC bargaining units.

The conspiracy arguments advanced by the petitioners are speculative and insulting and without foundation. The evidence showed that the agreements to the Legislature were agreements providing for stability in state service by providing for long term job security of union members and the preservation of essential public services through that agreement. It benefitted both the employer and the employees. It was clearly not done to promote the tenure of the incumbents. Nor was Attachment H a reaction to the circulation of intent cards by the Petitioners herein. The tenets of Attachment H were discussed long before there was any mention of UPSEU and their intent cards. The five year unit agreements were in place in May, 2011, long before any evidence of the solicitation of cards. In fact, the testimony showed that UPSEU only appeared after the first tentative agreement did not pass in May, 2011. There was no conspiracy by the State and SEBAC to preserve the incumbent status of certain unions. The State and SEBAC and the constituent incumbent unions were fighting mightily to preserve jobs while addressing a massive budget shortfall. All the members of the incumbent unions voted to approve the new contract. UPSEU's role was to try to profit from a minority faction in some of the unions who did not support the new contract. Incredibly, they admit they were not interested, it turns out, in bargaining any new contract for any of the units covered by their filing despite the clear stated intention in their own intent card. During the hearings, UPSEU never made an offer of Proof as the intent cards they submitted to the Board as to when the cards were solicited . Consequently, one will never know if these were cards signed after the completion of the SEBAC ratification process or before the process. This is a key since the timing

of the signing of the cards would go to whether they were signed to replace an incumbent or as a protest vote after the fact of ratification. The cards cannot be used as suggested by UPSEU. Post ratification cards occur at a time when a bar is established; UPSEU argues that the ratification of the contract means nothing and post ratification cards can be used to oust an incumbent. This creates a statutory incongruity. Any card signed after the ratification is void ab initio. UPSEU's delayed filing and lack of evidence as to the timing of their cards renders their petition defective.

They told this Board they were content to keep the 2011-2016 contract and the SEBAC agreement as to pensions and health care that expires June 30,2022. They only object to the Attachment H provision as to the window period.

This argument is decidedly inconsistent and extremely self-serving. UPSEU cannot ask this Board to enforce and leave in place all the new unit agreements and all the provisions of the SEBAC agreement but to delete the window period provision of Attachment H. The entire 2011 Agreement was ratified by the Legislature and all of it is enforceable. UPSEU cannot cherry pick the agreement.

Before turning to a discussion of the points raised in the initial brief of Petitioner UPSEU, SEBAC would like to set forth the operative facts established at the hearing.

I. FACTS.

1. SEBAC is a coalition committee which bargains as to retirement and health benefits for all organized Connecticut state employees. SEBAC exists pursuant a specific provision of the SERA, namely, Section 5-278(f).
2. SEBAC has previously negotiated several agreements with the State Employers covering pensions and health care.
3. SEBAC entered discussions with the State in early 2011 in an attempt to assist in resolving a budget deficit of approximately $7 billion dollars and in an attempt to preserve the jobs of several thousand state employees who were targeted for layoff .

4. Attorney Daniel Livingston was the Chief Negotiator for the SEBAC coalition. He negotiated the SEBAC agreement which included modifications to the then current 1997-2017 SEBAC agreement. The discussions with the State led to an extension of the SEBAC agreement until June 30, 2022 along with various modifications to the existing terms of the 1997-2017 agreement as to pensions and health care. The Revised 2011 SEBAC agreement also provided a framework which the State and the individual bargaining units could use to separately attempt to reach successor unit specific agreements as to wages, hours and working conditions. (see Exhibit 23; Tr. 232)
5. The bargaining units at issue in this proceeding are covered by the provisions of Attachment H since each bargaining unit reached an agreement with their respective state employer as to successor agreements. Those successor agreements have a duration of July 1, 2011 through June 30, 2016.
6. All the unit contracts were ratified by the respective bargaining unit's membership; presented to the Connecticut General Assembly on August 22, 2011 along with the Revised 2011 SEBAC agreement and all were approved along with the Revised 2011 SEBAC agreement effective August 22, 2011.(see Exhibits 27,28 for the submission date; see Exhibit 29 for legislative enactment providing for approval of the Revised SEBAC 2011 agreement including the ratified individual collective bargaining agreements once filed with the Connecticut general Assembly.
7. The General Assembly did not call itself back into session within five(5) days after the submission of the agreements on August 22,2011, and therefore, by operation of law, the agreements were approved as of the filing date which was August 22,2011. (see Exhibit 29)
8. The SEBAC agreement contains the following provision:

   IV. JOB SECURITY

   A. Job Security for Office of Labor Relations-Covered units. The following job security provisions shall apply to all OLR Covered Units which agree or have contracts or modified contracts in accordance with the 2011 Agreement Framework including the

provisions for wages and other changes which are summarized in Attachment A. (Exhibit 23, at 9)

9. The provisions for wages and other changes summarized in Attachment A apply through June 30, 2016. (Id., at p 15)
10. Attachment H states as follows:

"The State agrees not to file or pursue any legal action against SEBAC, its representatives, or its employees as a result of this agreement. Any such pending claims by the State are hereby withdrawn and its representatives agree to take any and all steps necessary to effectuate their withdrawal. SEBAC agrees not to file or pursue any legal action against the State of Connecticut, its representatives, its employees in any forum as a result of this agreement. Any such pending claims by SEBAC are hereby withdrawn and its representatives agree to take any and all steps necessary to effectuate their withdrawal. In the event any individual member of one of the constituent unions files an action against the State of Connecticut, its representative or employees, SEBAC and each of the constituent unions agrees not to aid or assist in the advancement of such claim.

Effective on or after July 1, 2011, the contract bar for purposes of any constituent union of SEBAC accepting a contract extension or renewal in accordance with Appendix A of this agreement shall be computed solely from the expiration date of any extension or renewal."

11. The substance of Attachment H including the explicit reference to a window period in 2015 for the successor agreements of 2011 to 2016, was discussed between the parties as early as March, 2011, before the first tentative agreement was reached and voted on. (Tr. 254,257) The Attachment H discussions were well before any intent cards were solicited by UPSEU. The concept of Attachment H was not new and traced language previously used in other state employee unit contracts in the past involving units with Barry Scheinberg as their counsel. (Tr. 258, 282) The inclusion of Attachment H was to make absolutely sure there was no confusion about the fact that when

the union members approved the successor agreements of 2011 to 2016, they were approving their union representative for the term of the contract. (Tr. 262)

12. The discussions with the State and the unions took place because the State was facing a $7 billion deficit and the State wanted concessions to address the budget shortfall. (Tr. 283) Failure to reach an agreement would have resulted in massive layoffs of state employees, perhaps 7,000 to 9,000 and this was widely reported in the press. (Tr. 284)
13. Linda Yelmini, the Director of Labor Relations for the State, attended all of the discussions as a representative of the State. She viewed Attachment H as a reiteration of existing law providing for a window period in the August preceding the expiration date of the successor July 1, 2011 to June 30, 2016 agreements. To her, it was a "belt and suspenders" approach in that it confirmed existing law and regulation and made clear the window for these contracts would be in August, 2015. (Tr. 201) The concept of Attachment H was agreed to in February or March of 2011 but not reduced to written form until after the unit ratifications. It was in written form when the SEBAC coalition voted on the revised 2011SEBAC agreement on August 18, 2011. (see Exhibit 24, the SEBAC Certification of Ratification)

II. ARGUMENT.

In its initial brief, UPSEU lists its arguments as to why Attachment H should not applied to this case and cannot be the basis for the dismissal of UPSEU's various petitions.

Starting at page 28, UPSEU first contends that Attachment H does not "remove jurisdiction" from this Board to order an election. It points to section 5-275 of SERA which provides that "no election can be ordered during the term of collective bargaining contract except for good cause."

This argument is unclear. Is UPSEU arguing that there is good cause to order an election during the term of the 2011-2016 agreement? One

would assume that is the argument which is followed up by the claim that Attachment H does not restrict the Board's right in that regard.

The fact of the matter is that UPSEU cannot argue good cause under 5-275 under these petitions. They filed a petition in an existing 2011 window based on the prior three year agreements which ran from 2009-2012.

There can be no claim in this regard because this petition is not filed based on a good cause exception within an existing collective bargaining contract. It is filed in a window period of an expired contract at a time (August 31, 2011) when UPSEU knew the 2009-2012 contract had expired and at a time where the membership of all the relevant units had ratified by majority vote a new, July 1, 2011- to June 30, 2016 agreement. Accordingly, the claim that this petition involves section 5-275 is misplaced. That is the good cause exception to ordering elections to the term of an existing collective bargaining agreement provision. The UPSEU petition has to do with timeliness and does not involve section 5-275.

SEBAC stresses that it does not contend that Attachment H divests the Board of jurisdiction to order an election. SEBAC does contend that the Attachment specifically identifies **when that election may take place** and that date is August, 2011.

UPSEU then turns its arguments to Attachment H itself arguing it is not to be given effect because it was not submitted in accordance with section 5-278(b). It is UPSEU's position that Attachment H conflicted with law(5-275) and regulation(5-273-10) and that since neither that statute nor that regulation were listed by the State Employer at the time of the submission to the legislature pursuant to Section 5-278(b), those regulations prevail. Once they prevail an election must be ordered according to UPSEU.

Thus, UPSEU's argument assumes there was a duty to list the law and regulation they cite. That assumption is incorrect.

Section 5-278(b) states the State Employer is to submit the agreement to the General Assembly(the text of the Agreement as negotiated; Exhibit 23) along with a request for funds necessary to implement(they did; Exhibit 26) and with a request for approval of any provisions of the agreement which are in conflict with any statute or regulation of any state agency.(they did; Exhibit 26)

UPSEU takes the position that Attachment H is in conflict with the statutory provisions of Section 5-275, the statute allowing for a good cause exception and is in conflict with the Regulation of 5-273-10. This is incorrect.

As pointed out earlier, UPSEU is making a claim there is a window in August, 2011. That is the Petition they filed. They did not file a good cause petition. Moreover, the Employer had no reason to anticipate that some Union would file a petition after its submission making a good cause claim under Section 5-275. There was no conflict at the time of the legislative submission between 5-275 and Attachment H. The State is not supposed to be clairvoyant when it submits the materials to the Legislature. There was no need to list 5-275 because there was no reason to. There was no pending petition when the State made its submission and section 5-278(b) only speaks to provisions of an agreement which are in conflict and there was no such conflict.

Accordingly, the cases cited by UPSEU are not on point. They only stand for the holding that the submission put the Legislature on notice of conflicts. There was no conflict between Attachment H and Section 5-275.

Similarly, there was no conflict between H and regulation 5-273-10. That regulation provides for a window near the expiration date of the contract. The contracts in question are the 2011-2016 contracts, the contract UPSEU wants to take over. Attachment H sets the same window period as the regulation. There is no conflict and the parties agreed there was none. To the State it was an iteration of exiting law and regulation. To the Unions, it was to clarify existing law and regulation. There was

absolutely no obligation that can impressed upon the State of Connecticut in this case that would have required it to list that Regulation.

What the parties did do is specifically notice the Legislature of the length of the contract and what the contract bar period would be for those contracts which was August, 2015 (see Attachment H) Call it belt and suspenders as did Ms. Yelmini or call it a direct notice to the legislature of when the contract bar rule was to be applied, Attachment H is a valid agreement between the parties, expressly agreed to by the parties, not subject to any doubt as to its meaning , and an agreement properly submitted and approved by the General Assembly. Indeed, needs to be stressed is that Section 5-278(e) expressly provides that:

"Where is a conflict between any agreement... approved by the General Assembly in accordance with the provisions of sections 5-270 to 5-280, inclusive, on matters appropriate to collective bargaining, as defined in said sections, and any general statute or special act, or regulations adopted by any state agency, **the terms of such agreement shall prevail."**

Attachment H cannot be attacked as improperly submitted. The claim that the notice to the General Assembly was in error because the submission failed to notice the General Assembly of Section 5-275 or Regulation 5-273-10 is misplaced because at the time of the Employer's submission it could not presume some Union would be claiming a good cause exception in the future. It does not conflict with the Regulation because it is consistent with the Regulation. Both Attachment H and the Regulation put the contract bar rule and the so-called window period in the same place and that place and time is August, 2015.

Lastly , UPSEU argues Attachment H was "unilaterally" ratified and therefore void. This claims rests on the fact that Attachment H was voted on by the SEBAC unions and not the membership of the individual bargaining units when they approved their unit agreements.

Attachment H was not "unilaterally" ratified. SEBAC ratified it; the State bargaining component ratified it; and the General Assembly ratified it.

UPSEU's point appears to be that H itself had to go to the membership and only those items that went to the membership can be considered valid. In fact, UPSEU makes this very point in its brief at page 39, in footnote 12. There, UPSEU tells us "it is important to note that UPSEU is not asserting the position that the entire SEBAC agreement should be rendered a nullity. It asserts simply the terms that were not included in the TA2 should be rendered a nullity."

Well, if everything that the membership voted on is a reality, not a nullity, let us turn to what was ratified. It included a five year term. This cannot be called a "premature extension" as argues UPSEU since that it a phrase that comes from the Bridgeport line of cases where there was no legitimate reason for the extension. As noted by many of the other parties to this case and by all the Employers, this was an arms length substantive negotiation that led to a historic agreement that saved jobs and balanced the State's budget. To link such an event to the premature extension doctrine under the Bridgeport line of cases is to ask the Board to turn away from the overwhelming evidence of the true context of the negotiations and the reason for the five year agreements. Looking at the unit contracts that were ratified, they informed the employees of the term, five years. They all had recognition Clauses, informing the employees that the incumbents in this case would be their representative. They included wages and powerful job security provisions which last until June 30, 2015. By UPSEU's own admission, these are all valid contract provisions. UPSEU cannot seriously argue that the absence of Attachment H in the individual units agreements renders it void. The duration clause of five years sets up the window period and the contract bar under state law and regulation. Attachment H merely confirmed the five year term of the contracts and allowed for the calculation of the

contract bar. The State, as Employer, and the SEBAC unions, went one step further and specifically noticed the General Assembly. There is no case law that provides that a tentative agreement has to include the effect of the agreement on state law or explain what the agreement means in terms of state law as to a window period. The members need to know what has been negotiated as to the wages, hours and terms and conditions of their employment. These ratification processes made those topics abundantly clear. As Mr. Vitale testified, in P-4, there was never any doubt among any members at any of the explanatory meetings that they were voting on a new, five year agreement.

One last issue, the applicability of the three year rule to the Petitions in these cases is governed by Attachment H. When Attachment H was submitted and approved by the General Assembly, the dicta of applying the three year rule to the SERA did not exist. It appeared for the first time in Decision No. 4571 of December 14, 2011 in SE-29,381. H was submitted in August ,2001 and approved in August, 2011. H controls the window for these contracts as it was approved by the General Assembly for these contracts. The applicability of a three year to any other state employee contracts and negotiations over successor agreements to existing contracts must be left to another day. It should not play a role in these decisions.

SEBAC lists a summary of its position as follows:

A. ATTACHMENT H IS CLEAR AND UNAMBIGUOUS.

The provision of Attachment H as to contract bar rule is not subject to any debate. The two chief negotiators who represented all parties to the agreement testified that it means what it says which is that every 2011-2016 contract has a contract bar to be computed from the expiration date of June 30, 2016. Applying the SERA regulation, this means the window period for all of these contracts will be August, 2015. There is no room to misinterpret what Attachment H means.

Consequently, there is no reason to question its meaning. It is beyond doubt that the only interpretation of the language is that it defines the window period to be in August, 2015 for all the unit contracts at issue.

B. ATTACHMENT H WAS A PART OF THE SUBMISSION TO THE LEGISLATURE AND IT WAS A PROPER SUBMISSION.

All state employee contracts must be submitted to the Connecticut General Assembly pursuant to the provisions of the State Employee Relations Act. The statute requires the agreement to be submitted along with a request for funds necessary to fully implement the agreement and along with a request for approval of any provisions of the agreement which are in conflict with any state statute or any regulation of any state agency. The filing is to be done by the bargaining representative of the employer. (see C.G.S. Section 5-278(b)

This submission is a prelude to the approval process which is also contained in the provisions of the SERA.

The approval process for the Revised SEBAC 2011 agreement and the unit agreements was specifically set forth in Section 11(a) of the July 1, 2011 Public Acts, Spec. Sess., June 2011, No. 11-1 which was effective July 1, 2011.(Exhibit 29)

That process provided that if the General Assembly did not call itself back into session within five days of the submission an agreement between the State and the State Employee Bargaining Agent Coalition, such agreement shall be deemed approved by the General Assembly as of the date of submission which in this case was August 22, 2011.

The costing documents were prepared by the Employer's representative as was the document listing the provisions of the SEBAC agreement and the provisions of the individual unit agreements which the employer listed as being in conflict any statute or regulation of any state agency. (see Exhibit 25)

Nothing exists in the record to disturb the fact that the SEBAC agreements and the individual unit agreements were properly submitted to the General Assembly.

C. WHEN THE LEGISLATURE ACTS UPON A STATE EMPLOYEE CONTRACT IT IS FULLY EMPOWERED TO ENACT PROVISIONS OF ANY CONTRACT PRESENTED TO IT AND THAT ENACTMENT IS AND MUST BE ENFORCED.

Since the Connecticut General Assembly is the only body that can create collective bargaining rights for state employees, it has also been held that it can modify those rights when it acts upon a contract. That is the purpose of the submission and approval process set forth in the SERA.

Case law in Connecticut absolutely confirms this proposition. Starting with State Management Ass'n of Connecticut v. O'Neill, 204 Conn. 746 (1987) and continuing to State of Connecticut (DAS), Dec.No. 3427(1996) of this Board as affirmed in Connecticut State Employees Assn. v. State of Connecticut, et al., Judicial District of Hartford-New Britain at New Britain, Dkt. No. HHD-CV-96-0056307(July 18, 1997) and culminating in Dec. No. 4550 of this Board in September, 2011, the ultimate nature of the power of the State Legislature to approve a contract and to modify any statute or regulation pertaining to the State Employees relations Act has been explicitly upheld. Speaking most directly to this point was the Board's decision in No. 4550, State of Connecticut and CSEA wherein the Board reiterated that the Legislature is free to declare what would otherwise be illegal subjects of bargaining as illegal subjects of bargaining by passing legislation to that effect. Reaching such a decision the Board stated:

"This is consistent with our recognition that the legislature is fully empowered to modify the statutory schemes we administer and it does not violate those schemes merely by exercising this power."(Dec. No. 4550 at 4)

In this case, the legislature was presented with clear language, the meaning of which was confirmed by the two drafters, that for these five year unit agreements, the window period was to be calculated from the June 30,2016 expiration date. When the agreements were approved, this has to be held to be the applicable

window period for these agreements. To do otherwise would be to ignore the actions of the legislature.

A ruling giving force to Attachment H does not mean that for other subsequent state employee contracts there can be no claim of a good cause exception to ordering an election if there are compelling grounds. It does not mean that for some other contract or some other bargaining fact pattern that involves an interest arbitration proceeding after the expiration of a contract, that the Board cannot examine the evidence and rule on petitions in those cases.

However, what Attachment H does mean is that for these unit agreements, the window is, and has to be, set from the expiration date of June 30,2016 which, by existing regulation of the Board, sets the window in August, 2015.

Any other finding would be without basis in law and would ignore settled and clear case law. Moreover, it would ignore the specific policy of the State Employees Relations Act which is that it is the legislature which is empowered to approve agreements and to modify statutes and regulations. In this case it did so, specifically and expressly approving a provision of the Agreement submitted to it setting the window for these 2011-2016 contracts in August, 2015.

Any arguments to the contrary are without any force or effect.

D. THE UNIT CONTRACTS ARE NOT BEING CHALLENGED;THE SEBAC AGREEMENT IS NOT BEING CHALLENGED;THE APPROVAL PROCESS IS NOT BEING CHALLENGED.

It is extremely important to recognize that the petitioner, UPSEU, does not challenge the validity of the unit contracts. In fact, it desires to keep them in effect and merely administer them. Having taken that position, they are asking the Board to enforce all the unit agreements and to enforce the SEBAC agreement except for the Recognition clauses which reference the incumbents and the duration clauses which by virtue of the contract bar rule and especially because of Attachment H set the window in August, 2015. This is a ludicrous argument.

The legislature approved all the unit agreements and the SEBAC agreement. They did not accept part and reject part. No petitioner can accept the contracts as written and approved and then seek an exemption from the legislative approval from this Board.

Therefore, all the testimony about when H was first discussed, who drafted it, or when it was finally written is irrelevant to the applicability of Attachment H. Attachment H is approved by the legislature. It is clear. There is no room for interpretation. The underlying legal authority of legislature to approve it is beyond attack.

Having acceded to the validity of Attachment H and its approval by the legislature, there is no basis to conclude the petitions filed in the last few days of August, 2011, after the unit ratifications and after legislative approval on August 22, 2011, should or can be the basis for the direction of an election. They should be dismissed.

E. THE PETITIONER'S PRESENTED NO EVIDENCE AS TO WHY IT FILED ITS PETITION SO LATE ESPECIALLY AFTER THE EMPLOYEES RATIFIED THE AGREEMENTS AND AFTER THE LEGISLATURE APPROVED THEM; IT IS ILLOGICAL TO CLAIM A LACK OF FREE CHOICE WHEN THE PETITION WAS FILED AFTER THE VOTING ON THE UNIT CONTRACTS.

The Petitioner filed a petition after the unit votes were taken. The unit votes were done after a review of the contract as a whole including the Recognition and Duration clauses.

Petitioner UPSEU seems to be arguing that the ratification process had to contain an explicit reference to when the next window period would be. That is not a serious claim. What is necessary is that the contract ratification process apprise the members of what their contract will be as to wages, hours and working conditions and as to its duration and who will be their representative among other things. It is in no way a process where existing statutes or regulations have to be put in front of the

members as UPSEU seems to claim. Nevertheless, it is important to reiterate that the contract adopted by the members and approved by the legislature is not being challenged. UPSEU does not attack the contract. It just wants to benefit from a contract it did not negotiate.

F. THESE NEGOTIATIONS AND THESE AGREEMENTS ARE IN EFFECT AND ARE SAVINGS MILLIONS OF DOLLARS IN THE STATE BUDGET AND BECAUSE OF THEIR APPROVAL BY THE LEGISLATURE,THEY ARE FUNDAMENTAL TO THE STATE BUDGET; ATTACHMENT H SECURES THEIR CONTINUATION AND IS ENTITLED TO ENFORCEMENT.

The costing provisions submitted to the legislature and the legislature's reliance upon the discussions to balance the state budget are important. They show that the budget and the savings are predicated and contingent upon the contracts as drafted including the reference to these incumbents in the various Recognition clauses. Indeed, it is the enforcement of these contracts and their duration clauses that gives rise to labor stability for the employer, the employees and the budget. The agreements guarantee jobs for the first four years and wages for the last three of the five years. The SEBAC agreement calls for on-going discussions and labor management meetings to implement parts of the agreement in the future. This was a contract between specific parties.

Having been approved by the legislature, these contracts are unassailable on the grounds urged by the Petitioner UPSEU.

G. THE REQUEST TO THE GENERAL ASSEMBLY PROPERLY COMPLIED WITH SECTION 5-278(b) ; THE REQUEST DID NOT NEED TO LIST SECTION 5-275 NOR 5-273-10 AS THEY ARE NOT IN CONFLICT; SECTION 5-278(e) COMPELS THE APPLICATION OF THE CONTRACT BAR RULE AND THE WINDOW PERIOD CLEARLY DESCRIBED IN ATTACHMENT H.

As argued in this Reply Brief, when UPSEU focuses on the line of cases as to the requirements of Section 5-278(b) and its claim that a certain statute and regulation were left out, it has not raised a valid argument.

Only conflicting provisions were to be listed and that statute and that regulation were not in conflict with H. This argument tries to conjure up a conflict where none exists. It does not matter what Senator Markley thinks. He admitted he received his information from informal sources and that was the basis for his opinion. Moreover, he admitted he never took the time to read the submission. Lastly, the ultimate decision in deciding this case does not rest on his opinion. It rests on an application of existing law and regulation to these facts.

III. CONCLUSION.

SEBAC is a coalition committee which rose to the occasion and saved jobs and contributed mightily to a fiscal crisis in this State. It did so by fighting for its members in the most difficult of circumstances. While parts of the pension plans and the health insurance program were modified, there remains a sound set of benefits which, as a result of this agreement, will be better funded.

Moreover, SEBAC unions provided a framework for individual units to achieve valuable job security and pay raises over time. The units at issue in this case took advantage of that framework and locked up job security, wages, and stability for five years. They ratified with full knowledge of who their representative would be. They did so with full knowledge of the duration.

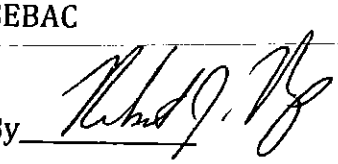
Attachment H may be to some simply a reiteration of existing law and regulation in August of 2011. However, its existence, its clear provisions and the fact it has been approved by the legislature pursuant to a valid process of approval, puts all arguments as to its applicability to rest. Attachment H sets a window of August, 2015 for these unit contracts. It controls the processing of the instant petitions. The petitions filed by UPSEU in those units with existing duration terms of July 1, 2011 to June 30, 2016 must be dismissed.

Adoption of the UPSEU position would thwart employee free choice of their representative and it would promote labor instability.

Their position would require the Board to abandon these two cornerstones of the Act.

SEBAC respectfully asks the Board enter an order dismissing the Petitions of UPSEU for the reasons set forth herein.

SEBAC

By 

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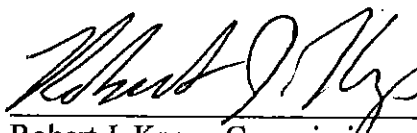
CERTIFICATION

This is to certify that a copy of the foregoing reply brief was mailed postage prepaid on May 7 , 2012 to the addresses of all counsel of record in this matter. The list of counsel and their addresses are attached.



Robert J. Krzys, Commissioner of the
Superior Court

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