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April 18, 2012

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

Re: 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 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 EMPLOYEE BARGAINING
AGENT COALITION
Intervenor

APRIL 18, 2012

**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)

II. 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)

III. ARGUMENT.

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 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.

IV. CONCLUSION.

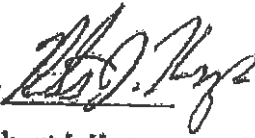
SEBAC is a coalition committee which rose to the occasion and saved jobs and contributed mightily to a fiscal crisis in this State. It did so by fighting for its members in the most difficult of circumstances. While parts of the pension plans and the health insurance program were modified, there remains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

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

SEBAC

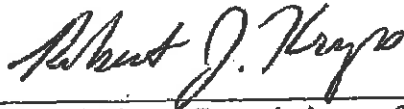
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CERTIFICATION

This is to certify that a copy of the foregoing brief was mailed postage prepaid on April 18, 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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