



BOARD OF LABOR RELATIONS

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March 25, 2024

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**RE:** State of Connecticut Judicial Branch  
**-and-**  
Judicial Professional Employees Union  
4200b, AFT/CT, AFL-CIO

Case No. SPP-34,743/Decision No. 5315

Dear Counsel:

Enclosed please find the Decision and Order issued by the Connecticut State Board of Labor Relations in the above-captioned matter.

Sincerely,

CONNECTICUT STATE BOARD OF LABOR RELATIONS

/s/ Frank N. Cassetta

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Frank N. Cassetta, General Counsel  
FNC: jc

STATE OF CONNECTICUT  
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF

STATE OF CONNECTICUT JUDICIAL BRANCH

DECISION NO. 5315

-and-

MARCH 25, 2024

JUDICIAL PROFESSIONAL EMPLOYEES UNION  
4200b, AFT/CT, AFL-CIO

Case No. SPP-34,743

**A P P E A R A N C E S:**

Attorney Gabriel J. Jiran  
for the State

Attorney Marshal T. Segar  
for the Union

**DECISION AND ORDER**

On July 25, 2022, the Judicial Professional Employees Union 4200b, AFT/CT, AFL-CIO (the Union or JPEU) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board), alleging that the State of Connecticut Judicial Branch (the State or Judicial Branch) violated the State Employee Relations Act (SERA or the Act) by refusing to implement an interest arbitration award.

After the requisite preliminary steps had been taken, the parties entered into a partial stipulation of facts and exhibits. The matter came before the Labor Board for a hearing on January 30 and February 22, 2023. Both parties appeared, were represented by counsel, and were allowed to present evidence, examine and cross-examine witnesses, and make argument. The parties filed post-hearing briefs which were received on April 28, 2023, and reply briefs which were received on May 12, 2023. Based on the entire record before us, we make the following findings of fact and conclusions of law and we issue the following order.

## FINDINGS OF FACT

1. The State is an employer under the Act.
2. The Union is an employee organization under the Act and at all relevant times, prior to March 15, 2018, has represented certain bargaining units (BU 42 and BU 52) of permanent positions regularly working 20 or more hours per week within the State of Connecticut Judicial Branch.
3. The State and the Union were parties to a collective bargaining agreement for BU 42 and BU 52, with effective dates of June 1, 2016 through June 30, 2022, which provided, in relevant part:

### ARTICLE 17. Compensation

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For contract year 2021-2022, increases in base annual salary effective July 1, 2021 shall be negotiated between the parties. Such negotiations shall commence no later than January 2, 2021. Such negotiations shall be limited to general wage increase only, unless the parties mutually agree to open discussions to include other sections of this agreement. Annual increments and top step lump sum payments will be paid in accordance with existing practice.

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(Ex. 4).

4. In 2018, a group of unrepresented employees consisting of Connecticut supreme court and appellate court permanent law clerks, the chief motions staff attorney at the appellate court, and the counsel to the chief judge of the appellate court petitioned the Labor Board to have the Union certified as their exclusive bargaining agent.
5. At all times relevant hereto, the Judicial Branch maintained an Administrative Policies and Procedures Manual. Policy 302 stated, in relevant part:

Generally, employees appointed to a permanent position ... will receive a salary increase of one step for each year of continuous satisfactory performance up to the maximum step in their pay group.... Annual increments may be withheld or postponed by action of the Supreme Court for employees excluded from collective bargaining.

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(Ex. 21).

6. Prior to March 15, 2018, the Connecticut Supreme Court annually voted to withhold annual increments from permanent law clerks.
7. On or about March 15, 2018, the Judicial Branch entered into an agreement voluntarily recognizing the Union as the bargaining agent for a separate bargaining unit of permanent law clerks which was given the designation BU 58. (Ex. 16).
8. The Union and the State executed a separate collective bargaining agreement for BU 58, effective January 1, 2019 through June 30, 2022, which provided, in relevant part:

**ARTICLE 5.**  
**Entire Agreement**

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**Section 2.** With respect to any conditions of employment not addressed in this Agreement, Judicial Branch policies and practices, as the same may be amended from time to time, shall apply to members of the bargaining unit, in the same manner as they apply to excluded employees...

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**ARTICLE 12.**  
**Compensation**

**Section 1.**

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(d) For contract year 2019-2020, effective June 21, 2019 and paid beginning with the check dated July 19, 2019 the base salary for bargaining unit employees shall be increased by three and one-half percent (3.5%). Annual increments and top step lump sum payments will be paid effective January 1, 2020.

(e) For contract year 2020-2021, effective June 21, 2020 and paid beginning with the check dated July 17, 2020 the base salary for bargaining unit employees shall be increased by three and one-half percent (3.5%). Annual increments and top step lump sum payments will be paid effective January 1, 2021.

(f) For contract year 2021-2022, increases in base annual salary effective July 1, 2021 shall be negotiated between the parties. Such negotiations shall commence no later than January 1, 2021. Such negotiations shall be limited to general wage increases only, unless the parties otherwise mutually agree.<sup>[1]</sup>

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<sup>1</sup> From at least January 2019 through December 2021, BU 58 members received the same financial benefits that members of the other JPEU bargaining units received, including annual increments.

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(Ex. 5) (Footnote added).

9. In February 2021, the State and the Union reopened negotiations pertaining to BUs 42, 52, and 58 in accordance with Articles 12 and 17 of their collective bargaining agreements.

10. On June 18, 2021, members of BU 58 received personnel activity reports from the Judicial Branch indicating that their next annual increment would be paid in January 2022. (Ex. 25).

11. On or about August 21, 2021, the parties reached impasse and initiated interest arbitration before arbitrator Jeffrey M. Selchick pursuant to Connecticut General Statutes § 5-276a.<sup>2</sup> Arbitrator Selchick held hearings on September 15 and 16, 2021 and the parties were permitted to examine and cross-examine witnesses, introduce exhibits, and make argument. (Exs. 7, 8).

12. On or about October 12, 2021, the parties submitted their last best offers to arbitrator Selchick.

The State's last best offer stated:

For contract year 2021-2022, effective and retroactive to June 18, 2021, the base annual salary for bargaining unit employees shall be increased by two percent (2.0%).

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The Union's last best offer stated:

#### PROPOSED LANGUAGE

ARTICLE 17 (BU 42/52), ARTICLE 12 (BU 58), ¶ (f)

#### Compensation

For contract year 2021-2022, effective July 1, 2021 (or the effective pay date for the period covering 7/1/2021, whichever is earlier) and paid with pay period covering 7/1/2021, the base annual salary for bargaining unit employees shall be increased by THREE (3) percent. Annual increments and top step lump sum payments will be paid in accordance with existing practice.\*

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<sup>2</sup> Conn. Gen. Stat. § 5-276a states, in relevant part:

(c) If, after . . . negotiations by the parties to an existing collective bargaining agreement to revise such agreement concerning any matter affecting . . . conditions of employment . . . the parties are unable to reach an agreement, both parties or either of them may initiate arbitration. . .

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\*AI/Lump Sum language appears in BU 42/52 CBA

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(Exhibit 15)(Emphasis and asterisks in original).

13. In January 2022, the State paid annual increments and top step lump sum payments to BU 42 and BU 52 members but withheld annual increments from members of BU 58. Members of BU 58 were the only JPEU members who did not receive annual increments.

14. On January 27, 2022, Arbitrator Selchick awarded the Union's last best offer, without including the underlined and asterisked portions, stating:

For contract year 2021-2022, effective July 1, 2021 (or the effective pay date for the period covering 7/1/2021, whichever is earlier) and paid with pay period covering 7/1/2021 the base annual salary for bargaining unit employees shall be increased by THREE (3) percent. Annual increments and top step lump sum payments will be paid in accordance with existing practice.

(Ex. 6).

15. On February 10, 2022, then-director of human resources Brian Hill, submitted the arbitration award to the Connecticut General Assembly for approval. (Ex. 20).

16. The State did not file a motion with the Superior Court to vacate or otherwise modify the arbitration award and there is no evidence in the record that the General Assembly rejected the arbitration award.<sup>3</sup>

17. In April 2022, the State paid all members of JPEU, including BU 58, the three percent increase awarded by the arbitrator. However, the State did not pay annual increments to BU 58.

### CONCLUSIONS OF LAW

1. The failure to implement an interest arbitration award constitutes a refusal to bargain in good faith and a practice prohibited under the Act.

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<sup>3</sup> Gen. Stat. Sec. 5-276(a)(6) provides, in relevant part:

(6) The award of the arbitrator shall be final and binding upon the employer and the designated employee organization unless rejected by the legislature as provided in § 5-278, except that a motion to vacate or modify the arbitrator's decision concerning any issue in such award may be filed in the superior court for the judicial district of Hartford within thirty days following receipt of such award...

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2. The State failed to implement an interest arbitration award when it refused to pay annual increments to BU 58 members for contract year 2021-2022.

### DISCUSSION

In this case, the Union contends that the State violated §§ 5-272(a)(2) and (4)<sup>4</sup> of the Act by failing to implement annual increments for BU 58 members awarded by arbitrator Selchick.

The State responds that the arbitrator did not award annual increments to BU 58. Rather, the State contends that the reopener negotiations for BU 58 were limited to general wage increases and the references to annual increments and lump sum payments in the award apply solely to BU 42 and BU 52. The State further argues that the arbitrator did not award the Union's complete last best offer. Based on the entire record before us, we find that the State has violated the Act.

The refusal to implement a valid interest arbitration award amounts to a refusal to bargain in good faith in violation of Section 5-272(a)(4) of the Act. *State of Connecticut OLR*, Decision No. 2947 (1991). Since “[a]n interest arbitration award ... is a successor agreement fashioned by an arbitrator..., a refusal to implement such an award is tantamount to a refusal to implement some or all of the collective bargaining agreement itself.”<sup>5</sup> *State of Connecticut OLR*, supra, p. 8. “[W]e have addressed alleged refusal or failure to implement collective bargaining agreements by assessing the respondent's compliance with its statutory duty to bargain in good faith,

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<sup>4</sup> Connecticut General Status 5-272 provides, in relevant part:

- (a) Employers or their representatives or agents are prohibited from . . . (2) dominating or interfering with the formation, existence or administration of any employee organization . . . ; (4) refusal to bargain collectively in good faith with an employee organization which has been designed in accordance with the provisions of said sections as the exclusive representative of employees in an appropriate unit, including, but not limited to, refusing to discuss grievances with such exclusive representative...

Section 5-272(a)(2) is concerned with circumstances where an employer inserts itself into the structure or operation of what purports to be a labor organization, thereby creating a so-called “company union.” *State of Connecticut*, Decision No. 4394 (2016); see also *Town of Windham*, Decision No. 4859 (2016); *Town of Cheshire*, Decision No. 4809 (2015); *New Fairfield Board of Education*, Decision No. 3327 (1995). Since the record is devoid of evidence or argument material to such issue, we dismiss the Union's claim under that section.

<sup>5</sup> In *City of Waterbury*, Decision No. 5009 (2018), we also recognized that interest arbitration awards are fundamentally different than grievance arbitration awards:

Unlike the adjudicatory role of a grievance arbitrator, “[i]n a very real sense, the function of an interest arbitrator is to legislate for the parties.” ... An interest arbitration award is literally a collective bargaining agreement and we find no rational basis for affording a complainant alleging a breach a different burden depending on whether the agreement resulted from negotiations or interest arbitration...

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Id., p. 5. (Internal citations omitted).

primarily by means of a repudiation analysis.<sup>6</sup> *City of Waterbury*, Decision No. 5009 p. 6 (2018); see also *State of Connecticut Department of Corrections*, Decision No. 5128 (2020).

“The repudiation of contract doctrine arises from the principle that the duty to bargain in good faith is not limited to the negotiations of a formal contract, but also includes the obligation to carry out the terms of the formal contract in good faith . . .” *State of Connecticut Department of Corrections*, supra, pp. 7-8.

The Labor Board has found that repudiation of a collective bargaining agreement may occur in three circumstances: 1) where the respondent has taken an action based upon an interpretation of the contract and that interpretation is asserted in subjective bad faith by the respondent; 2) where the respondent has taken an action based upon an interpretation of the contract and that interpretation is wholly frivolous or implausible; and 3) does not involve an interpretation of the contract by the respondent nor does the respondent challenge the complainant’s interpretation of the contract, but rather it seeks to defend its action on some collateral ground which does not rely on an interpretation of the contract, e.g., financial hardship or administrative difficulties.

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*Milford Board of Education*, Decision No. 5295 p. 12 (2023) (Emphasis added).

Established principles of contract law govern interpretation of collective bargaining agreements.” *Norwalk Federation of Teachers Local 1723 (Diane McCammon)*, Decision No. 4892 p. 11 (2016) (citing *Honulik v. Town of Greenwich*, 293 Conn. 698, 710 (2009) and *Poole v. Waterbury*, 266 Conn. 68, 87-88 (2003)). In the first instance, we look to the language used, “giving the contract’s words their ordinary meaning... Only if the language in the contract is truly capable of more than one reasonable interpretation will we look to evidence beyond the contract language for guidance...” Id. at p. 12 (quoting *S.H. Electric, Inc. v. Town of Bethel*, 312 Conn. 843, 853 (2014)) (Citations omitted). The language at issue here was the culmination of collective reopener negotiations over wages for JPEU units 42, 52, and 58 in contract year 2021-2022 and states, in relevant part:

effective July 1, 2021 (or the effective pay date for the period covering 7/1/2021, whichever is earlier) and paid with pay period covering 7/1/2021 the base annual

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<sup>6</sup> We have also stated that, “to prove that a party has failed to implement an interest arbitration award, the complaining party has the burden of proving by a preponderance of the evidence that some aspect of the award has been flagrantly breached.” *State of Connecticut OLR*, Decision No. 2947 p. 9 (1991). However, “whether we characterize the respondent’s conduct as repudiation or as a bad faith withdrawal ... the conduct is unlawful and the remedy is the same.” *Town of Wallingford*, Decision No. 4721 pp. 5-6 (2014) (quoting *Leader Communications, Inc.*, 359 NLRB No. 90 (2013)).



salary for bargaining unit employees shall be increased by THREE (3) percent. Annual increments and top step lump sum payments will be paid in accordance with existing practice.

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(Ex. 6).

Viewing the provision as a whole and giving the words their ordinary meaning, we find that the State's obligation is clear and unambiguous. Top step lump sum payments and annual increments are components of the three percent increase to the base annual salary and apply to the entire JPEU unit. The percentage increase is payable beginning with the first pay period of the 2021-2022 contract year, while the top step lump sum payments and annual increments take effect in accordance with existing practice. *Id.* With regard to BU 58, "existing practice" means that the State should have implemented annual increments on January 1, 2022.

The Union contends that the State's decision to withhold annual increments from BU 58 was in subjective bad faith. We agree. "Conclusions regarding actual or subjective bad faith must be based on an examination of all the evidence, including circumstantial evidence existing when a party's claim flies in the face of clear contract language." *Danbury Housing Authority*, Decision No. 5289 p. 15 (2023). Given the absence of any language setting BU 58 apart, we find that the State's claim that they were not also entitled to annual increments in contract year 2021-2022 indeed flies in the face of the language of the award. Even if we were to assume that BU 58's entitlement to an annual increment was ambiguous, we think the bargaining history from the negotiations and the interest arbitration leads to the same conclusion. Specifically, Katherine O'Connell was part of the Union's negotiating team for the reopened negotiations and she testified that all parties understood that annual increments were a component of those negotiations for all of the units, including BU 58. During the arbitration, the State produced then-executive director of administrative services for the Judicial Branch, Elizabeth Graham, who similarly testified that annual increments would be paid to JPEU in 2021-2022. The State also argued that the Union's proposed three percent general wage increase would be too costly on top of annual increments and top step lump sum payments. In support of that argument, the State submitted a class code report indicating that all of the class codes in the Union, including those in BU 58 would be receiving either top step lump sum payments or annual increments in 2022.<sup>7</sup> (Ex. 38). Lastly, in its post-arbitration hearing brief, the State characterized annual increments as "built-in" to the proposed wage increases for 2021-2022.<sup>8</sup> (Ex. 9). In our view, the State's conduct throughout the negotiations and arbitration belies its later assertions that annual increments were not a component of the general wage reopener negotiations. Having found subjective bad faith, we turn to remedy.

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<sup>7</sup> O'Connell testified that JPEU consisted of 1289 employees. The class code report indicated that 490 would receive top step lump sum payments and 799 would receive annual increments.

<sup>8</sup> The State also asserts that the Union did not raise annual increments during the arbitration. However, given the State's own representations we do not find that argument to be persuasive.

In addition to annual increments, the Union seeks its reasonable attorneys' fees and costs. The Act affords us the authority and discretion to award a prevailing party's reasonable attorney's fees and costs where we conclude that a proffered defense presents no debatable issue and is wholly frivolous. *City of Bridgeport*, Decision No. 4478 (2010); see also *Hartford Federation of Teachers (J. Grande)*, Decision No. 5291 (2023); *City of New Haven*, Decision No. 4974 (2017); *Town of East Hartford*, Decision No. 4907 (2016); *City of Hartford*, Decision No. 4736 (2014); *City of Hartford*, Decision No. 4549 (2011); *Norwalk Third Taxing District*, Decision No. 3676 (1999); *Killingly Board of Education*, Decision No. 2118 (1982). For the same reasons set forth above, we find that the State's defenses for refusing to pay BU 58 annual increments for 2021-2022 are frivolous and not reasonably debatable. Therefore, we find that reasonable attorneys' fees and costs are appropriate.

### **ORDER**

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by the State Employee Relations Act, it is hereby

**ORDERED** that the State of Connecticut shall:

- I. Cease and desist from refusing to implement the interest arbitration award issued by arbitrator Jeffrey Selchick on January 27, 2022.
- II. Take the following affirmative steps which the Board finds will effectuate the purposes of the Act:
  - A. Make the members of BU 58 whole for the failure to implement annual increments for contract year 2021-2022.
  - B. Pay the Union its reasonable attorneys' fees and costs for pursuing SPP-34,743 before this Board.
  - C. Post immediately and leave posted for a period of sixty (60) consecutive days from the date of posting, in a conspicuous place where the employees of the bargaining unit customarily assemble, a copy of this Decision and Order in its entirety.
  - D. Notify the Connecticut State Board of Labor Relations at its office in the Labor Department, 38 Wolcott Hill Road, Wethersfield, Connecticut, within thirty (30) days of the receipt of this Decision and Order of the steps taken by the State of Connecticut to comply herewith.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Barbara J. Collins  
Barbara J. Collins  
Board Member

Katherine C. Foley  
Katherine C. Foley  
Board Member

Thomas P. Clifford, III  
Thomas P. Clifford, III  
Alternate Board Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing was mailed, postage prepaid, this 25<sup>th</sup> day of March, 2024 to the following:

Attorney Gabriel J. Jiran  
Shipman & Goodwin                      RRR  
One Constitution Plaza  
Hartford, CT 06106

Attorney Marshal T. Segar  
Marshall Law LLC                      RRR  
50 Columbus Boulevard, 3<sup>rd</sup> Floor  
Hartford, CT 06106

/s/ Frank N. Cassetta

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Frank N. Cassetta, General Counsel  
CONNECTICUT STATE BOARD OF LABOR RELATIONS