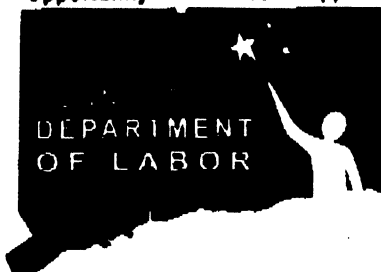


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Board of Labor Relations

38 Wolcott Hill Road
Wethersfield, CT 06109
Phone: 860.263.6860
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Agent: Katherine C. Foley
860.263.6860

General Counsel: Jaye Bailey
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July 24, 2007

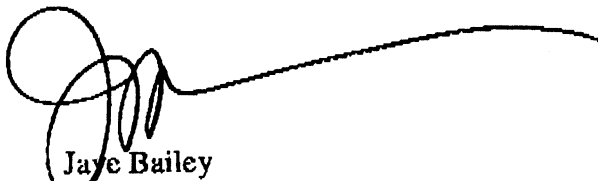
✓Robert J. Krzys, Attorney
557 Prospect Avenue
Hartford, CT 06105-2922

**RE: State of Connecticut, OLR, Department of Public Safety,
Division of State Police
-and-
Connecticut State Employees Association (CSEA)
Case No. SPP-26,634
Decision No. 4249**

Dear Attorney Krzys:

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

Sincerely,



Jaye Bailey
General Counsel

JB:lg

Enclosure

cc: Linda Yelmini, Director of Labor Relations (RRR)
Ellen M. Carter, Attorney, Principal Labor Relations Specialist (RRR)

Chairman: John W. Moore, Jr. **Board Members:** Patricia V. Low • Wendella Ault Battey
An Equal Opportunity/Affirmative Action Employer

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF
STATE OF CONNECTICUT, OLR,
DEPARTMENT OF PUBLIC SAFETY,
DIVISION OF STATE POLICE

DECISION NO. 4249

-AND-

JULY 24, 2007

CONNECTICUT STATE EMPLOYEES
ASSOCIATION (CSEA)

Case No. SPP-26,634

A P P E A R A N C E S

Attorney Ellen M. Carter
For the State

Attorney Robert J. Krzys
For the Union

DECISION AND ORDER

On April 25, 2007 the Connecticut State Employees Association (the Union or CSEA) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the State of Connecticut, OLR, Department of Public Safety, Division of State Police (the State) had violated §5-272 of the State Employee Relations Act (SERA or the Act) by refusing to bargain with it as the bargaining representative certified to represent the lieutenants and captains employed by the Department of Public Safety in *State of Connecticut, Office of Labor Relations*, Decision No. 4208 (2007).

After the requisite preliminary steps had been taken, the matter came before the Labor Board for a hearing. The parties submitted a full stipulation of facts and exhibits for the Labor Board's consideration. The parties included the entire record of proceedings from Case No. SE-25,905 which resulted in the decision in *State of Connecticut, supra*. Both parties filed briefs, the last of which was received by the Labor Board on June 13, 2007. Based on the entire record before us, we make the following findings of fact and conclusions of law and we issue the following order.

Accordingly, it is the position of the Union that the State is under an obligation to bargain and its failure to commence negotiations is a violation of the State Employees Relations Act.

The Union would ask you to immediately reconsider the position taken in your letter of March 12, 2007.

10. In early April 2007 Curtis verbally advised Krzys that the State would not negotiate with the Union in order to be able to exercise its right to appeal the Board's certification decision.

11. By letter dated April 20, 2007 (Ex. 7), Curtis responded to Krzys, stating:

As a follow-up of our various communications on the above subject, this letter is provided. Following a review of the Labor Board decision we have concluded that we shall not engage in negotiations.

This determination has been reached due to our belief that the Labor Board erred in its decision that the State Police Captains and Lieutenants are not managers under CGS Section 5-270 and are therefore entitled to collective bargaining rights.

12. The State has not negotiated with the Union.

13. The State Police Captains and Lieutenants, their job titles and length of service in the Department of Public Safety are contained in Exhibit 8. These employees are covered by the State's hazardous duty retirement plan and are eligible for retirement after twenty years of qualifying service, with retirement benefit based on a percentage of salary (reflecting length of service) and their average salary in their three highest paid years of credited service, not including certain overtime pay.

CONCLUSIONS OF LAW

1. It is a prohibited practice pursuant to the Act for the State to refuse to bargain with the certified exclusive bargaining representative of its employees.
2. The State violated the Act when it refused to bargain with the Union.

DISCUSSION

In this case, the State does not dispute that it has refused to bargain with the Union regarding the State Police Captains and Lieutenants. The State continues to maintain that the Labor Board erred in Decision No. 4208 in finding that the Captains and Lieutenants are not managerial employees pursuant to the Act. As such, the State continues to refuse to bargain with the Union concerning this bargaining unit.

We find that the State has committed a prohibited practice by its failure to bargain with the Union as the certified bargaining representative of this unit. We affirm the decision we made in the original certification. The only issue remaining is what Order we will issue for this violation. The Union argues that an order to bargain during pendency of the appeal, with a monetary penalty for the failure to do so, is justified by the circumstances. The State contends that it should not be penalized for pursuing its right to appeal the Labor Board's decision. We find that a traditional order to bargain is sufficient in this case.

It is by now well-settled that an employer cannot, under ordinary circumstances, directly appeal a decision of the Labor Board concerning certification of a bargaining unit. Unless an appeal from an administrative agency is authorized by statute, courts do not have jurisdiction to entertain such an appeal. The right to appeal lies only from a "final order" of the Labor Board in a matter concerning an "unfair labor practice." Conn. Gen. Stat. §§ 5-274(d), 31-107 thru 31-109, *Town of Windsor v. Windsor Police Department Employees Association, Inc.*, 154 Conn. 530 (1967). The Labor Board's certification of a bargaining representative is not a final order in a matter concerning an unfair labor practice and therefore cannot be directly appealed.

In *Windsor, infra*, the Supreme Court noted:

The omission in the [National Labor Relations Act] of a provision for direct appeal from certification proceedings has been held to be an intentional effort by Congress to postpone the delay necessary to judicial intervention in the administrative process until a representation election has been held and the employer has been required to do something predicated on the results of the election. *Boire v. Greyhound Corporation*, 376 U.S. 473, 84 S.Ct. 894 (1964).

When the [Connecticut State Board of Labor Relations] has issued a final order against a municipality predicated on a prior determination of an appropriate bargaining unit and an unfair labor practice, the Superior Court has clear jurisdiction to review the board's decision if the municipality is aggrieved and then appeals or if the board petitions for enforcement of its order.¹

It is clear in this case that the State has followed the established procedure here and is seeking to have our certification reviewed in Superior Court by virtue of an appeal of the instant decision. We do not believe that the State has unduly delayed its decision regarding this course of action. The original certification required review by the Office of the Attorney General before a final decision could be made regarding the appropriate appeal procedure. As such, we do not see the passage of two months to be grounds for an extraordinary penalty in this case. We do take note that the evidence indicates that a number of bargaining unit members are nearing retirement eligibility and that a lengthy

¹ Although the Supreme Court was discussing the Municipal Employee Relations Act (MERA) in the *Windsor* case, the reasoning is fully applicable to the SERA.

court appeal could deprive those members of the right to renegotiate their benefits. However, the legislative scheme contemplates this avenue of appeal as a safeguard to the State. We do not view this representation case to be more unusual than others under SERA or MERA. As such, we will issue an order to bargain in keeping with our original certification decision and allow the appeal process to unfold.

ORDER

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

ORDERED that the State of Connecticut:

1. Cease and desist from failing to bargain with the Union concerning the bargaining unit described in *State of Connecticut*, Decision No. 4208 (2007).
2. Take the following affirmative action which we find will effectuate the purposes of the Act:
 - A. Bargain immediately with the Union concerning the bargaining unit described in Decision No. 4208.
 - B. Post immediately and leave posted for a period of sixty (60) consecutive days from the date of the posting, in a conspicuous place where the members of the bargaining unit customarily assemble, a copy of this Decision and Order in its entirety.
 - C. Notify the Connecticut State Board of Labor Relations at its office at 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, OLR, Department of Public Safety, Division of State Police to comply herewith.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

John W. Moore, Jr.
John W. Moore, Jr.
Chairman

Patricia V. Low
Patricia V. Low
Board Member

Wendella A. Battey
Wendella A. Battey
Board Member

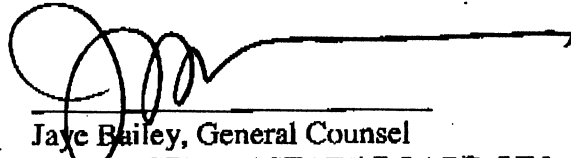
CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 24th day of July, 2007 to the following:

Robert J. Krzys, Attorney
557 Prospect Avenue
Hartford, CT 06105-2922 RRR

Linda Yelmini, Director of Labor Relations
Office of Policy, Management, and Labor Relations RRR
450 Capitol Avenue, MS#53OLR
Hartford, CT 06106-1308

Ellen M. Carter, Attorney
Principal Labor Relations Specialist
Office of Policy, Management and Labor Relations RRR
450 Capitol Avenue, MS#53OLR
Hartford, CT 06106-1308



Jaye Bailey, General Counsel
CONNECTICUT STATE BOARD OF LABOR RELATIONS