CONNECTICUT DEPARTMENT OF LABOR

Partner of the American Job Center Network

BOARD OF LABOR RELATIONS

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January 7, 2020

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RE: State of Connecticut, Judicial Branch
-and-
Local 749 of Council 4, AFSCME, AFL-CIO

Case Nos. SPP-33,475 & SEPP-33,515
Decision No. 5106

Dear Counsel:

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

Sincerely,

Harry B. Elliott, Jr., General Counsel
CONNECTICUT STATE BOARD OF LABOR RELATIONS

HBE:kb
Enclosure

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF

STATE OF CONNECTICUT
JUDICIAL BRANCH

DECISION NO. 5106

-AND-

JANUARY 7, 2020

LOCAL 749 OF COUNCIL 4, AFSCME, AFL-CIO

Case No. SPP-33,475
SEPP-33,515

APPEARANCES:

Attorney Sean Hendricks
for the Union

Attorney Brian Clemow
for the State

DECISION AND ORDER

On December 4, 2018, Local 749, Council 4, AFSCME, AFL-CIO (the Union) filed a complaint (SPP-33,475) with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the State of Connecticut, Judicial Branch (State or Judicial Branch) violated the State Employee Relations Act (SERA or the Act) by making material misrepresentations during impact negotiations concerning the elimination of the Supreme Court police department. On January 7, 2019, the State filed a complaint (SEPP-33,515) with the Labor Board alleging that the Union violated the Act by making bad faith allegations in its prohibited practice complaint and by repudiating the agreement resulting from the parties' impact negotiations.

By notice dated April 25, 2019, the cases were consolidated and after the requisite preliminary steps had been taken, the matter came before the Labor Board for a hearing on July 24, 2019. Both parties were represented, allowed to introduce evidence, examine and cross-examine witnesses, and make argument. On September 16, 2019, the Union withdrew its complaint (Case No. SPP-33,475). Both parties filed post-hearing briefs on Case No. SEPP-33,515, the last of which was received on September 23, 2019.

FINDINGS OF FACT

1. The State is an employer pursuant to the Act.

2. At all material times, the American Federation of State, County, and Municipal Employees AFL-CIO (AFSCME) was a labor organization having subordinate bodies and affiliates, including Council 4 and AFSCME Local 749 (Local 749). Council 4 and Local 749 are employee organizations pursuant to the Act and Local 749 is a subordinate body of and affiliated with Council 4. At all material times, AFSCME, Council 4 and Local 749 have been the recognized bargaining representative for a bargaining unit of certain employees in the State of Connecticut Judicial Branch (Judicial Branch).

3. From 1995 to September 25, 2018, the Judicial Branch operated the Supreme Court Police Department (SCPD), which maintained security at the Supreme Court and State Library complex in Hartford and was the sole Judicial Branch worksite at which certified police officers performed police work. At all times relevant hereto, the positions of chief police officer and police officer at the SCPD were designated as special policemen by the commissioner of emergency services and public protection pursuant to Conn. Gen. Stat. § 29-18[1] and eligible for hazardous duty service retirement benefits pursuant to Conn. Gen. Stat. § 5-173[2].

4. At all times relevant hereto the positions of police officer and building and grounds patrol officer at the SCPD were in the bargaining unit represented by the Union and the position of chief police officer was a managerial position outside the unit.

5. On or about October 6, 2014, chief police officer Jeffrey Getz (Getz) transferred from the SCPD to Superior Court Judicial Marshal Services (SCJMS) where he performs emergency management duties. After the transfer and to-date, Getz retained his SCPD job title and hazardous duty service status. (Ex. 16).

6. At some point in 2018, the Judicial Branch chief court administrator made the decision to transfer the security function for the Supreme Court and State Library complex to SCJMS and close the SCPD effective September 25, 2018. SCPD staff at the time included chief police officer Santo Ficara (Ficara), police officers Charles DellaRocco (DellaRocco) and Ronald Renaud (Renaud), and building and grounds patrol officer Yusuf Nizami (Nizami).

7. At all times relevant hereto, DellaRocco was president of Local 749.

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[1] Conn. Gen. Stat. § 29-18 states, in relevant part:

> The Commissioner of Emergency Services and Public Protection may appoint one or more persons nominated by the administrative authority of any state buildings or lands . . . to act as special policemen . . . Each such special policeman shall be sworn and may arrest . . .

[2] Conn. Gen. Stat. § 5-173(a) states, in relevant part:

> A state policeman in the active service . . . who has reached his forty-seventh birthday and completed at least twenty years of hazardous duty service for the state . . . shall be retired . . .

8. On or about September 6, 2018, Judicial Branch labor relations managers Vicki Marino (Marino) and Mark Ciarciello (Ciarciello) met with employees impacted by the closing of the SCPD. During one of those meetings, Marino informed DellaRocco that Ficara would be transferred to SCJMS and employed as a court planner, a position outside the bargaining unit at that time.

9. On September 7, 2018, Marino and Ciarciello met with DellaRocco, Council 4 staff representative John DeVito, and then[3] Council 4 service representative Wayne Marshall concerning the closing of the SCPD. The Union proposed maintaining its members' police officer titles and Ciarciello responded that the Judicial Branch would not maintain the titles because police officer certification required membership in a police department and the Supreme Court police department was being closed. In response to Ciarciello's explanation of the State's position, DellaRocco noted that Getz had been allowed to retain his SCPD job title and police officer certification notwithstanding his transfer to SCJMS.[4]

10. By letter to Nizami dated September 24, 2018, Judicial Branch human resources director Brian Hill (Hill) stated in relevant part:

> Effective September 25, 2018, you will be transferred to the [SCJMS] . . . Your job title, salary and bargaining unit status will remain the same . . .

By letter to DellaRocco and Renaud of even date, Hill stated, in relevant part:

> As you were informed on September 6, 2018, [your] position ... will be eliminated due to the transition of security functions for the Supreme Court/State Library building from the SCPD to SCJMS . . .
>
> You are hereby offered a Judicial Marshal position in accordance with . . . the collective bargaining agreement between [the Union] and the Judicial Branch. As a Judicial Marshal, you will be placed in a Judicial Marshal salary group, though you will retain comparable salary, perhaps by means of a supplement to your Judicial Marshal pay . . .
>
> If you want to accept the offer of the Judicial Marshal position, you must inform me in writing . . .

By letter to Ficara of even date, Hill stated in relevant part:

> Effective September 25, 2018, you will be transferred to the [SCJMS] ... Your salary will remain the same. Effective Friday, September 28, 2018, you will be reclassified to Court Planner I . . .

(Ex. 11).

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[3] Marshall has since retired.

[4] DellaRocco was aware of Getz's status because DellaRocco afforded Getz some of the periodic training necessary to maintain his police officer certification.

11. Shortly after Hill's letters issued, the Union filed petitions with the Labor Board seeking to include certain Judicial Branch positions within the bargaining unit, including the position of Court Planner I.

12. Renaud initially accepted the offer of a judicial marshal position but retired before reporting for duty to that position.

13. Ficara was transferred to SCJMS in September 2018, but maintained his job title due to the Union's objection to his reclassification as a Court Planner I. The Union subsequently consented to Ficara's reclassification and Ficara was reclassified as a Court Planner I on June 7, 2019.

14. DellaRocco declined the judicial marshal position and as a result, State Employee Bargaining Agent Coalition (SEBAC)[5] attorney Daniel Livingston (Livingston) discussed DellaRocco's status with Judicial Branch attorney Brian Clemow (Clemow) by telephone. Livingston and Clemow negotiated an agreement that was reduced to writing and signed on October 11, 2018 by DellaRocco on his own behalf and on behalf of Local 749, and by representatives of Council 4 and the Judicial Branch, and that states, in relevant part:

> This Agreement is made . . . in full and final settlement of the matters referenced below . . .
>
> 1. Promptly after the execution of this Agreement, the placement of [Della Rocco] in a Judicial Marshal position shall be rescinded, and he will instead be classified as a Supreme Court Police Officer (SCPO) and will be granted full time union business leave with pay and benefits until the results of the upcoming election of the President of Local 749 are announced, but not later than October 31, 2018.
>
> (a) If [DellaRocco] does not win said election, the remainder of this Agreement will become null and void, and the parties hereto will revert to the positions they held immediately prior to the execution of the Agreement.
>
> (b) If [DellaRocco] wins said election, he will be reassigned to a position in the Juvenile Detention Transportation Officer (JDTO)[6] classification . . .
>
> . . .
>
> 4. So long as he remains a JDTO as well as President of Local 749, but in any event no longer than October 25, 2019, the Branch shall grant [DellaRocco] full time union business leave with pay and benefits . . .
>
> . . .
>
> 7. Both [DellaRocco] and Local 749, for and on behalf of themselves and any union members affected by the closure of the SCPD, shall promptly withdraw any grievances, prohibited practice charges or other complaints filed as

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[5] SEBAC exists pursuant to Conn. Gen. Stat. § 5-278(f) which mandates coalition bargaining as to retirement and health benefits for all organized State employees.

[6] The position of Juvenile Detention Transportation Officer is considered eligible for hazardous duty service retirement benefits, *see footnote 2, supra.*

a result of any alleged or actual act or omission by the Branch prior to the date of this Agreement with respect to [DellaRocco] or any other SCPD employees, or as a result of the closure of the SCPD, and not to file any such grievances, charges or complaints in the future about acts or omissions prior to the date of this Agreement.

. . .

9. Local 749 and [DellaRocco] agree that this Agreement fully resolves all issues that were or could have been raised, and that they will not seek further redress for any such issues in any forum that is now or may later become available, including but not limited to the statutory or negotiated grievance procedure, arbitration requests, state prohibited practice complaints, or any other appeals in any form . . .

. . .

12. [DellaRocco] freely and voluntarily enters into this Agreement. His signature on the stipulation is an acknowledgement that he has read it and fully understands its content, meaning, intent and implications.

. . .

(Ex. 8).

15. The Union's complaint (Ex. 1) filed on December 4, 2018 states, in relevant part:

> Specifically, Respondent has failed to bargain in good faith when negotiating the elimination of the [SCPD]. The Judicial Branch was adamant that they could not keep any of the officers as certified police officers and keep them [sic] hazardous duty. [DellaRocco] was given no choice to take a position that was not a police Officers job. Subsequently it has come to the Unions attention that the [Judicial Branch] has kept two officers as certified police officers with hazardous duty.
>
> . . .

CONCLUSIONS OF LAW

1. A union violates its duty under the Act to bargain in good faith when it repudiates a collective bargaining agreement.

2. Repudiation occurs when a party seeks to defend its breach of a collective bargaining agreement action on some collateral ground that does not rely on an interpretation of the agreement.

3. A claim that a contract is void due to fraudulent inducement is a collateral ground for purposes of a repudiation analysis.

4. The Union violated the Act when it filed a prohibited practice complaint claiming fraudulent inducement when it knew the misrepresentations it alleged were false.

DISCUSSION

The State contends that the Union violated Section 5-272(b)(3)[7] of the Act when it filed a prohibited practice complaint alleging that DellaRocco had been fraudulently induced to enter into the October 1, 2018 agreement. Specifically, the State contends that the parties engaged in impact negotiations over the closing of the SCPD, that the resulting agreement resolved "all issues that were or could have been raised" and prohibited future prohibited practice complaints concerning such issues, and that the Union repudiated the agreement when it filed a complaint commencing Case No. SPP-33,475. In response, the Union claims that there was no repudiation because the Union believed in good faith that DellaRocco had been fraudulently induced to sign the agreement thereby rendering the agreement invalid.

Repudiation of a collective bargaining agreement is a violation of the statutory duty to bargain in good faith and our standard for assessment of such claims imposes a heavy burden of proof.

> 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 . . . Repudiation of a collective bargaining agreement is something beyond mere breach . . . 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.

City of New Haven, Decision No. 4936 p. 5 (2016); *see also* ***Town of Vernon***, Decision No. 5080 (2019); ***Town of Darien***, Decision No. 5051(2019); ***City of New Haven,*** Decision No. 5042 (2018); ***City of Danbury***, Decision No. 5013 (2018); ***State of Connecticut, OPM,*** Decision No. 4960 (2017); ***City of Hartford***, Decision No. 4736

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[7] Conn. Gen. Stat. § 5-272(b)(3) states, in relevant part:

> Employee organizations or their agents are prohibited from ... (3) refusing to bargain collectively in good faith, with an employer . . .

Conn. Gen. Stat. § 5-272(c) states, in relevant part:

> [T]o bargain collectively is the performance of the mutual obligation of the employer . . . and the representative of the employees to meet . . . and bargain in good faith with respect to wages, hours and other conditions of employment . . . but such obligation shall not compel either party to agree to a proposal or require the making of a concession.

(2014); ***City of Bridgeport***, Decision No. 4478 (2010); ***Ansonia Board of Education***, Decision No. 3613 (1998); ***Hartford Board of Education***, Decision No. 2141 (1982).

We first address which form of repudiation is involved. On its face, the October 11 agreement "fully resolves" all issues concerning the closing of the SCPD and prohibits "further redress for any such issues in any forum", including "state prohibited practice complaints." The Union does not dispute the State's construction of this language but contends that the agreement was invalidated by the State's alleged representation to DellaRocco that the closing of the SCPD would eliminate all certified police officer positions in the Judicial Branch. This representation, the Union argues, induced DellaRocco to sign the agreement but was false, given the continuing status of Getz and Ficara as police officers. A claim that the contractual provision at issue is not valid is a collateral defense under the third type of alleged repudiation described above. ***New London Housing Authority***, Decision No. 3717 (1999), appeal dismissed, Superior Court, judicial district of New London, No. CV 556452S (2001). As such, unless we find that DellaRocco was fraudulently induced, a breach will amount to repudiation of the agreement. "If the respondent's defense does not excuse its actions, we will find repudiation if the respondent's action was contrary to its clear contractual obligation." ***City of Norwalk***, Decision No. 3537 p. 5 (1997); *see also* ***City of New Haven***, Decision No. 5042 (2018); ***Hamden Board of Education***, Decision No. 3426 (1996); ***Norwich Board of Education***, Decision No. 2508 (1986).

"Fraud in the inducement of a contract ordinarily renders the contract . . . voidable at the option of the defrauded party..." ***A. Sangivanni & Sons v. F.M. Floryan & Co.***, 158 Conn. 467, 472 (1969). " *See* ***Texaco, Inc. v. Golart***, 206 Conn. 454, 459 n. 5 (1988).

> The essential elements of an action in common law fraud ... are that: (1) a false representation was made as a statement of fact; (2) it was untrue and known to be untrue by the party making it; (3) it was made to induce the other party to act upon it; and (4) the other party did so act upon that false representation to his injury.... [T]he party to whom the false representation was made [must claim] to have relied on that representation and to have suffered harm as a result of the reliance." (Internal quotation marks omitted.)

Simms v. Seaman, 308 Conn. 523, 548 (2013) (*quoting* ***Sturm v. Harb Development, LLC***, 298 Conn. 124, 142 (2010)). Reasonable reliance is an essential element of a claim of negligent misrepresentation or fraudulent inducement. ***Nazami v. Patrons Mutual Insurance Co.***, 280 Conn. 619, 626, 628 (2008).

We need not establish whether the State intentionally made material misrepresentations in order to obtain DellaRocco's assent to the agreement because we find that the Union was aware at all times of the status of Getz and Ficara as certified police officers. DellaRocco assisted Getz maintain his police recertification on a continuing basis and admitted he was aware of Getz' status at the September 7 meeting with Marino and Ciarciello. DellaRocco was president of Local 749 at all relevant times and in the context of this case, we have no difficulty attributing his knowledge to the Union. Similarly, DellaRocco knew that the State intended to transfer Ficara to SCJMS as a court planner and would have done so prior to June 2019 but for the Union's

objection to Ficara's reclassification into that position. In short, since DellaRocco was aware at all times of the actual status of Getz and Ficara, we find that neither he nor the Union *relied* on the misrepresentations the Union alleges when the parties signed the agreement on October 11, 2018. Absent reasonable reliance, the fraudulent inducement defense fails and neither the Union nor DellaRocco is entitled to declare the October 11 agreement null and void.

Since the Union has not established its fraudulent inducement defense, we assess whether the Union's prohibited practice complaint in Case No. SPP-33,475 was contrary to its clear contractual obligations under the October 11 agreement and find that it was. As previously noted, the agreement prohibits filing a prohibited practice complaint for redress concerning the SCPD closure and the Union pursued such a complaint to a formal hearing before the Labor Board. As such, we find the Union repudiated the October 11 agreement.

In addition to a finding of repudiation, the State seeks a cease and desist order and an award of its costs and attorney's fees.

> 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); ***Killingly Board of Education***, Decision No. 2118 (1982). If a party only presents defenses that are not reasonably debatable, the other party has been caused to incur expenses for no valid reason. We must carefully examine each of a respondent's defenses to determine whether there is any substance to them. If there is, an award of attorney's fees, costs and interest is not warranted. ***Norwalk Third Taxing District***, Decision No. 3676 (1999) at p. 6-7.

City of Hartford, Decision No. 4549 p. 5 (2011), *see also* ***Town of Vernon***, Decision No. 5080 (2019); ***City of New Haven***, Decision No. 4974 (2017); ***Town of East Hartford***, Decision No. 4907 (2016); ***City of Hartford,*** Decision No. 4736 (2014); ***Norwalk Board of Education***, Decision No. 3506 (1997).

The Union contends that it filed its prohibited practice complaint in good faith and that it would be patently unfair to hold it responsible for pursuing a case that turned out to be weak. We would agree had these circumstances existed. We find, however, that at all relevant times, the Union *knew* the alleged misinformation it purportedly received and relied on was false. A repudiation complainant bears a heavy burden of proof and that burden has been met in this case. Given the record before us, the Union's claim that the October 11 agreement was the result of fraudulent inducement and therefore void presents no debatable issue and caused the State to incur expenses for no valid reason. We note, however, that the Union ultimately withdrew its complaint and so we limit the State's award of attorney's fees.

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 Local 749 of Council 4, AFSCME, AFL-CIO

I. Cease and desist from failing to comply with its obligations set forth in the October 11, 2018 stipulated agreement, including the obligation to refrain from filing additional charges or complaints against the State of Connecticut Judicial Branch related to Charles DellaRocco and the closing of the Supreme Court Police Department.

II. Take the following affirmative action, which we find will effectuate the purposes of the Act:

A. Pay to the State of Connecticut, Judicial Branch its reasonable fees and costs, limited to attorney's fees and costs associated with attending the July 24, 2019 hearing, submitting a post-hearing brief, and obtaining a hearing transcript.

B. 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.

C. 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 Local 749 of Council 4, AFSCME, AFL-CIO to comply herewith.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Wendella Ault Battey
Wendella Ault Battey
Acting Chairman

Barbara J. Collins
Barbara J. Collins
Board Member

Susan Meredith
Susan Meredith
Alternate Board Member

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 7th day of January, 2020 to the following:

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Shipman & Goodwin, LLP
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Hartford, CT 06103-1919

RRR

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CONNECTICUT STATE BOARD OF LABOR RELATIONS