STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

In the matter of

STATE OF CONNECTICUT,
OPM, DAS, UCONN

-AND-

LOCAL 355, COUNCIL 4
AFSCME, AFL-CIO
Case No. SPP-28,032

CONNECTICUT STATE BOARD OF LABOR RELATIONS

STATE OF CONNECTICUT,
OPM, DAS, UCONN

-AND-

PROTECTIVE SERVICES
EMPLOYEES COALITION, IUPA/IAFF, AFL-CIO
Case No. SPP-27,312

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

Attorney Ellen M. Carter
For the State

Attorney J. William Gagne, Jr.
For AFSCME

Attorney Barry Scheinberg
For PSEC

DECISION, DISMISSAL OF COMPLAINT, AND ORDER

On May 27, 2008 the Protective Services Employees Coalition, IUPA/IAFF, AFL-CIO(PSEC) filed a complaint, amended on September 18, 2009 (SPP-27,312), with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the State of Connecticut, Department of Administrative Services, Office of Labor Relations/OPM, and the
University of Connecticut (collectively, the State) had violated the State Employee Relations Act (SERA or the Act) by 1) refusing to bargain in good faith by negotiating a mandatory subject of bargaining with another union; 2) repudiating the applicable collective bargaining agreement; 3) denying PSEC the opportunity to solicit support or petition for a new job classification prior to assigning it to another union; 4) failing to comply with an arbitration award; and 5) acting with anti-union animus.

On July 23, 2009 Local 355, Council 4, AFSCME, AFL-CIO (AFSCME) filed a complaint (SPP-28,032) with the Labor Board alleging that the State had violated the Act by bargaining in bad faith by unilaterally changing the conditions of a written agreement between the parties.

The two complaints were consolidated on August 5, 2009. After the requisite preliminary steps had been taken, the matters came before the Labor Board for a hearing on September 11, 2009, December 9, 2009, and December 14, 2009. All parties appeared, were represented and allowed to present evidence, examine and cross-examine witnesses, and make argument. The parties filed post-hearing briefs and reply briefs, the last of which was received on April 13, 2010. Based on the entire record before us, we make the following findings of fact and conclusions of law and we issue the following Decision, Dismissal of Complaint, and Order.

FINDINGS OF FACT

1. The State is an employer within the meaning of the Act.

2. PSEC is an employee organization within the meaning of the Act and at all relevant times has been the certified bargaining representative for the Protective Services (NP-5) bargaining unit of state employees. (Ex. 4).

3. AFSCME is an employee organization within the meaning of the Act and at all relevant times has been the certified bargaining representative for the Administrative Clerical (NP-3) bargaining unit of state employees. (Ex. 5).

4. PSEC and the State are parties to a collective bargaining agreement applicable to the NP-5 bargaining unit with effective dates of July 1, 2004 through June 30, 2008 (Ex. 6) that contains the following relevant provisions:

   ARTICLE 1
   RECOGNITION

   Section One. The State of Connecticut herein recognizes the Protective Services Employees Coalition, IUPA/IAFF, AFL-CIO as the exclusive representatives of the State employees whose job titles were placed within the following certified unit by the Connecticut State Board of Labor Relations or by Agreement of the parties: The Unit of Protective Services Employees, Case No. SE-5953. The State furthermore acknowledges that for purposes under this Agreement the Employer is the State even though employees are assigned and take direction from an agency within which they work.
Section Two. (a) This Agreement shall pertain only to those employees whose job titles fall within the certification above cited. All employees except those specifically exempted under Section 5-270 (C.G.S.) or by mutual consent of the parties shall be covered by this Agreement.

...

Section Three. No job classification shall be removed from the bargaining unit during the term of this Agreement without the mutual consent of the parties, except by order of the State Board of Labor Relations.

ARTICLE 2
PROTECTIVE SERVICES BILL OF RIGHTS

Section One. Each employee shall be expected to render a full and fair days (sic) work in an atmosphere of mutual respect and dignity, and free from significant abusive and/or arbitrary conduct.

...

ARTICLE 20
COMPENSATION

...

Section Seven. Home Office Differential. On or about December 1 of each contract year, employees who are required, by the employing agency, to maintain space in their homes as an office and regularly use such space to conduct State business shall receive . . . $725 effective July 1, 2001.

...

Section Eight. Hazardous Duty Pay. (a) Employees in the Department of Environmental Protection who perform hazardous duty during the hours between dusk and dawn shall receive an additional twenty-five percent (25%) hazardous duty pay for all hours so worked. . . 

...

Section Seventeen. When the employer determines that an employee has been over paid, it shall notify the employee of this fact and the reasons therefore. The employer shall arrange to recover such overpayment from the employee over the same period of time in which the employee was overpaid unless the employer and employee agree to some other arrangements.
In the event the employee contests whether he/she was actually overpaid the employer shall not institute refund procedures until completion of the grievance/arbitration appeal process.

...
ARTICLE 37
CONTRACTING OUT

(a) During the life of this Agreement, no full-time permanent employee will be laid off as a direct consequence of the exercise by the State employer of its right to contract out.

(b) The State employer will be deemed in compliance with this Article if:

1. The employee is offered a transfer to the same or similar position within the Protective Services Bargaining Unit within a reasonable distance which, in the employer’s judgment, he/she is qualified to perform, with no reduction in pay; . . .

5. AFSCME and the State are parties to a collective bargaining agreement applicable to the NP-3 bargaining unit with effective dates of July 1, 2006 through June 30, 2008 (Ex. 7) that contains the following relevant provision:

ARTICLE 1
RECOGNITION

Section One. The State recognizes AFSCME, AFL-CIO as the exclusive representative for the purposes of collective bargaining, of the employees in the Administrative Clerical bargaining unit certified by the State Board of Labor Relations, in Case No. SE-6621, Decision No. 2095A, issued December 31, 1981 as expanded by Certification Case No. SE-8129, Decision No. 2248, issued November 2, 1983, subject to such modifications or clarifications of the unit as the Board or a court may order or to which the parties may agree.

6. The PSEC bargaining unit contains the Buildings and Grounds Patrol Officer (B&G Patrol Officer) classification. There are approximately fifty B&G Patrol Officers in the bargaining unit. The official job description for this position states that its purpose is “providing basic security services designed to insure the control and safety of clients, employees and the visiting public” at a “state institution or facility, or at the State Regional Market…” (Ex. 16). In addition to patrolling, monitoring, parking and traffic enforcement, and security related duties, the “Examples of Duties” section includes “…performs dispatching and record keeping functions at a desk post…” as one of the duties of the position. The annual salary for a Step One B & G Officer effective June 22, 2007 was $34,697. (Exs. 6, 16).

7. Since 1990 the University of Connecticut (UCONN) has been a designated “public safety answering point” under state law and as such, persons serving as 9-1-1 dispatchers must be certified in accordance with state law.

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1 A “public safety answering point means a facility, operated on a twenty-four hour basis, assigned the responsibility of receiving 9-1-1 calls and, as appropriate, directly dispatching emergency response services, or transferring or relaying emergency 9-1-1 calls to other public safety agencies. A public safety answering point is the
8. As of 2004 all emergency dispatch work at UCONN was being performed by certified B & G Patrol Officers in the Public Safety department of the university. Nine B & G Patrol Officers at UCONN worked solely as dispatchers while one was uncertified and performed parking enforcement duties.

9. At all relevant times, the AFSCME bargaining unit has included the following dispatcher classifications: Telecommunications Operator, Head Telecommunications Operator, Telecommunications Dispatcher, Public Safety Dispatcher, and Environmental Protection Dispatcher. (Exs. 8, 9, 13, 14, 15).

10. In or about 2004 the B&G Patrol Officers performing dispatching functions at UCONN received the results of an Objective Job Evaluation performed on their position and approached their supervisor, Sergeant Peter Tanaka (Tanaka) to ask what they could do to get more pay. Tanaka said he would speak to Major Ronald Bilcher (Bilcher) regarding the matter.

11. On or about October 21, 2005 UCONN Human Resources Associate Renee Boggis (Boggis) sent a letter to DAS Statewide Human Resources Manager for Classification Evaluation Carla Martin (Martin) in which she explained the “justification to reclassify public safety dispatchers at the UCONN Public Safety Headquarters at Storrs from the current class title Building (sic) and Grounds Patrol Officer, class code 1248 to the class title Public Safety Dispatcher, class code 6390.” (Ex. 42). The letter read, in relevant part:

…

A small group of professional men and women are dispatchers for the UConn Police and Fire departments, working in the Public safety (sic) Communications Center during the same hours and days as their counterparts. The dispatchers are highly trained and are certified as telecommunicators…

Unfortunately, the dispatchers have fallen short of the more standard salary schedules afforded similarly trained dispatchers in the State. At UConn, the dispatchers still work under the class title Building (sic) and Grounds Patrol Officer, stemming from the origin

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first point of reception by a public safety agency of a 9-1-1 call and serves the jurisdictions in which it is located or other participating jurisdictions.


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Conn. Gen. Stat. § 28-30(2) defines “Telecommunicator” as “any person engaged in or employed as a telecommunications operator by any public safety agency or private safety agency, whose primary responsibility is the receipt or processing of calls for emergency assistance or the dispatching of emergency services provided by public safety agencies and who receives or disseminates information relative to emergency assistance by telephone or radio . . .” Conn. Gen. Stat. § 28-30(c) states . . . “no person may be employed as a telecommunicator by any public safety agency . . . unless he has been certified by the office upon successfully completing a telecommunicator training program and demonstrating proficiency in the performance of telecommunicator training program standards or successfully completing a written or oral examination developed by the office.”
of the workforce over 25 years ago. At that time, Building (sic) and Grounds Officers would answer telephones and dispatch police officers when there were insufficient numbers of police officers to perform as dispatchers. Today, the job of the dispatcher has become so technical that police officers can no longer be expected to maintain the certifications required nor the critical expertise to perform the job of the dispatcher. The police officer maintains his/her own set of certifications and expertise while the dispatcher maintains certifications necessary to the performance of the dispatcher function.

The actual functions of dispatchers at UConn are more accurately reflected by the duties as enumerated under the class title Public Safety Dispatcher

12. On or about December 6, 2005 the nine B&G Patrol Officers performing dispatching functions at UConn received a memorandum from Bilcher, copied to UConn Police Chief Robert Hudd (Hudd), Tanaka, Boggis, and two other HR employees, with the subject line “Request for consideration - Upgrade.” (Ex. 47). The memo read, in relevant part:

On 10/04/2005 I wrote to you and explained that your request for an upgrading has been referred to the Employment area of the Department of Human Resources for consideration and action. As part of the process, Human Resources personnel have asked that I forward to each of you an audit package for completion and return.

…

13. In response, the B&G Patrol Officers submitted the requested information, including a description of duties. (Ex. 48).

14. On or about February 22, 2006 Boggis sent a letter to Patricia Doyle at DAS “supporting the creation of a new job specification for the University of Connecticut Public Safety Dispatchers.” (Ex. 43). The letter read, in relevant part:

…

Due to recent resignations we currently have two dispatcher vacancies for which we are having great difficulty recruiting qualified applicants. We feel that this is in part due to the fact that we are still utilizing the B&G Patrol Officer job specification. The B&G Patrol Officer job specification does not accurately reflect the duties and accountability, experience and training, or the salary level of other dispatchers throughout the State.

The difficulty in recruiting and retaining qualified candidates at the B&G level has made it necessary for us to request the creation of a job specification specifically for the University’s dispatchers.

In addition, we are requesting that a temporary salary grade consistent with that of the Public Safety Dispatcher (class code 6390) be applied to the University of Connecticut Public Safety Dispatcher position while waiting to be reviewed by the Master Evaluation Committee.

…
15. At some point thereafter, Martin suggested to then DAS Commissioner Linda Yelmini (Yelmini) that a new classification of university dispatcher be developed. Yelmini agreed and instructed Martin to speak with then Acting Director of the Office of Labor Relations (OLR) Robert Curtis (Curtis) about the matter because Yelmini believed dispatching work belonged in the clerical (NP-3) bargaining unit represented by AFSCME.

16. Martin spoke to Curtis who indicated that PSEC should not lose any positions as a result of the creation of the new position in the AFSCME unit. Martin understood that certified dispatchers in the B & G Patrol Officer classification would have the option of moving into the new classification or remaining in the present classification in which case they would perform work other than dispatching. Martin also understood that Curtis would discuss the matter with PSEC.

17. On or about June 6, 2006 Bilcher sent a memorandum to the nine B&G Patrol Officers, copied to Hudd, Boggis, and two other HR employees, with the subject line “Upgrade Status.” (Ex. 49). The memo read in full:

   I have received an update from Human Resources on the status of the request to review the dispatcher position for an upgrade.

   Final documentation was submitted to the Department of Administrative Services on February 22, 2006. Among the final documents were the audit packets that you completed. As of the week of May 15, 2006, Human Resources personnel were informed that the DAS review is in progress, and that surveys had been sent to other state agencies that currently use the B&G title to compare responsibilities.

   Human Resources personnel reiterate that the process is lengthy and complex. They indicate that DAS needs to be allowed the time to study all differences in responsibility and hope that a positive response will be the eventual conclusion.

   Human Resources will contact me with other updates when available. When they do, I will let you know.

18. Ultimately, DAS developed a new classification, University of Connecticut Dispatcher. (Ex. 11). The official job description indicates that its purpose is as follows: “At the University of Connecticut this class is accountable for independently providing a communications link between law enforcement, emergency services and the general public.”

19. The State and AFSCME reached a Memorandum of Understanding regarding telecommunications classes on May 17, 2007 (the MOU). (Ex. 10). The body of the MOU read, in relevant part:

   MEMORANDUM OF UNDERSTANDING

   The Office of Labor Relations, hereinafter referred to as the “State”, the Department of Administrative Services, hereinafter referred to as “DAS” and the American Federation
of State, County and Municipal Employees AFL-CIO (Administrative and Clerical, NP-3, Bargaining Unit), hereinafter referred to as the “Union” have concluded negotiations over the subject of classification specifications and personnel slotting in telecommunications classes to be utilized within the State of Connecticut.

... 

3. The State, DAS and the Union acknowledge that future use of the specification – Telecommunications Operator shall be as an entry level class where there is no work experience required to qualify for the class.

4. Resultant of the action stated in item number 2 (above) DAS has established and developed two (2) new class specifications. These new specifications are titled (sic): Telecommunications Dispatcher and University of Connecticut Dispatcher.

5. The class specification of university (sic) of Connecticut Dispatcher will be compensated at salary group 17 (CL-17). The State and the Union accept this salary level as a negotiated salary level not subject to the Objective Job Evaluation System.

6. The State and DAS recognize and the Union acknowledges that the University of Connecticut Dispatcher encompasses the designation of a Public Safety Answering Point (PSAP). Furthermore, the State acknowledges that this class specification can and shall be expanded to cover other locations/facilities than UConn (Storrs) when such additional locations/facilities obtain PSAP designation.

7. The State has identified the need and has consequently established nine (9) positions for UConn (Storrs); these positions shall be designated as University of Connecticut Dispatcher. Said position shall be advertised and a recruiting effort shall be initiated forthwith.

... 

13. This Agreement is acknowledged by the State, DAS and the Union as a negotiated agreement which established the classification structure for the herein listed class specifications. Furthermore, it is agreed that this Agreement cannot be used by either the State or the Union as a standard in any other class specification or job evaluation dispute.

20. The annual salary for a Step One University of Connecticut Dispatcher effective June 22, 2007 under the MOU was $42,476.00. (Exs. 7,10).

21. PSEC was not noticed or otherwise informed regarding the creation of the University of Connecticut Dispatcher position, the placement of said position in the AFSCME bargaining unit, or the negotiation and execution of the MOU.
22. On or about May 22, 2007 DAS Human Resources Specialist Kathleen Pierce wrote a letter to Sal Luciano, Executive Director of AFSCME, that read, in relevant part:

   This is to notify you that the Department of Administrative Services is establishing the classifications of University of Connecticut Dispatcher and Telecommunications Dispatcher per the stipulated agreement signed May 17, 2007.

   (Ex. 26).

23. In September 2007 UCONN issued a job posting indicating that “[t]he Division of Public Safety, Police Department at the Storrs Campus of the University of Connecticut is currently seeking applicants for nine (9) University of Connecticut Dispatcher positions (NP-3, AFSCME Bargaining Unit). These positions are open to current UConn B&G Patrol Officers within the Division of Public Safety.” (Ex. 17).

24. The UCONN Dispatcher position was several pay grades higher than the B&G Patrol Officer position.

25. At about the time the job posting was issued, Bilcher spoke with some of the UConn B&G Patrol Officers performing dispatching functions and told them that if they were interested in the pay increase they should submit a letter of interest for the new position.

26. All nine UConn B&G Patrol Officers performing dispatching functions applied for and were appointed to the nine University of Connecticut Dispatcher positions. Their work assignments did not change, but their union and salary did. (Exs. 18 – 18h).

27. On October 29, 2007 PSEC filed a grievance that stated “[t]he University of Connecticut Department of Public Safety along with the State Department of Administrative Services and the Office of Labor relations (sic) removed several bargaining unit members from the NP-5 Bargaining Unit upon reclassifying the members’ job titles. The Union was not consulted or even notified of this action.” (Ex. 19). The remedy requested was to “[i]mmediately restore all NP-5 members to the Protective Services Employees Coalition, along with their newly created job title ‘Public Safety Dispatcher (Class Code 6390)’ to the NP-5 Union. Make all members and the Union whole in every way. Restore lost dues monies to the Union and take no actions against the Union of (sic) any of its members for the filing of this grievance.”

28. On or about November 8, 2007 the President of PSEC, William Boucher (Boucher), received the Personnel Actions Report for PSEC members for October 2007 from UCONN Labor Relations Assistant Victoria Governale. (Ex. 29). The document indicated that the nine individuals employed as B&G Patrol Officers at UConn had a “collective bargaining unit change” to AFSCME. This document was the first official notification PSEC received from UCONN that nine members of its bargaining unit were now in another position and another bargaining unit.

29. An arbitration award (Award I) issued in the PSEC grievance on January 13, 2009. (Ex. 20). The Award I framed the issue as “[d]id the State violate Articles 1, Section 1 and Section
Two (a); Article 2, Section One, and Article 34, Section Three; and/or Article 43? If so, what shall be the remedy as per the NP-5 Contract?” Award I concluded:

The Arbitrator finds that the State violated Article 34, Section Three of the parties’ Agreement by transferring the dispatching work performed by B & G Patrol Officers to the new dispatching positions at the University of Connecticut. Hence the instant grievance is sustained as to the violation of Article 34, Section Three of the NP-5 Agreement.

There is no violation found by the Arbitrator of Article 1, Section One and/or Section Two (A) (sic); and/or Article 2, Section One; and/or Article 43 of the Agreement.

As for the appropriate remedy for the contractual violation found herein, the Arbitrator directs the State to return the work lost by the PSEC bargaining unit when the dispatching functions were transferred from the B & G Patrol Officer position to the new dispatching positions and to make the Union ‘whole’ for Union dues lost from the time said work was transferred (but no earlier than 30 days prior to the filing of the instant grievance) until such time as the dispatching work is restored to the PSEC bargaining unit.

30. In a letter dated January 22, 2009 OPM Labor Relations Specialist Cathleen Simpson informed Jay Hickey, UCONN Labor Relations Specialist, of the actions the State would be taking in order to comply with Award I. (Ex. 21). The letter read:

. . . The implementation of this Award requires the following action:

- The abolishment of the University of Connecticut Dispatcher (UCD) classification by the Department of Administrative Services .

- Notice to AFSCME to return to PSEC all Union dues collected for all employees in the position of UCD from September 29, 2007.

- Each employee currently in the position of UCD shall be returned to or placed in the position of Building (sic) and Grounds Patrol Officer (B&G) effective the date s/he began working as an UCD. The UCONN (sic) should consider the employees who were previously B&Gs and now are in the position of UCDs as if they never left their former position of B&G. Any employees who have been hired as a University of Connecticut Dispatcher with no prior employment as a B&G should be considered a B&G effective the date s/he commenced employment.

- As these employees are considered as either starting or never leaving in the B&G position, they should be made whole by recalculating compensation and related items under the NP-5 contract and recovery of any overpayment.

31. On or about January 26, 2009 the Director of the Department of Human Resources at UCONN, Aliza Wilder (Wilder), wrote a letter to each of the nine University of Connecticut Dispatchers that read:
Pursuant to the Arbitration Award in the Protective Services Employees Coalition IUPA/IAFF, AFL-CIO [NP-5, Union Code 07.219] vs. the State of Connecticut and the University of Connecticut [OLR #09-3521], your current position is considered to be a Building (sic) and Grounds Patrol Officer. The State of Connecticut recently lost a grievance filed by the Protective Services Union. The arbitrator has directed the State to return to the dispatching function back to the Building (sic) and Grounds job classification, therefore we have been directed to restore you to your B&G title, effective May 25, 2007. The State is in the process of recalculating compensation and related items under the NP-5 collective bargaining agreement. Once this recalculation is completed, you will be apprised of the results and date of implementation.

(Exs. 27 -27i).

32. A tenth individual had been hired on April 25, 2008 as a University of Connecticut Dispatcher. That individual had not previously served in the B&G Patrol Officer position.

33. All ten University of Connecticut Dispatchers were assigned to B&G Patrol Officer positions retroactive to October 11, 2007.

34. PSEC filed a grievance with DAS on February 10, 2009 that stated “DAS has determined that the Buildings & Grounds Patrol Officers performing dispatching duties at UCONN are job duties substantial enough to affect (sic) changing their compensation grade to a higher level, but refuse to pay proper compensation as retaliation for filing a bargaining unit work grievance.” (Ex. 22). The remedy requested was “1) The B&G Officers performing dispatching functions at UConn be compensate (sic) commensurate to the level of the duties they are performing as previously determined by DAS. 2) An end of the arbitrary anti-Union actions by DAS, OLR & UConn toward employees & PSEC.”

35. PSEC filed another grievance that was received by OLR on February 26, 2009 that stated “[t]he Agency has arbitrarily determined, decreed or declared that the B&Gs (sic) doing dispatch duties were overpaid and notified these employees in a letter dated 1-26-09 that the Agency is looking to recover said pay.” (Ex. 23). Under “Specific Remedy Requested” it stated “[t]he employees are contesting that they were overpaid and are requesting that the refund procedures not be instituted until the completion of the grievance arbitration appeal process.” The grievance was denied at Step Two on March 24, 2009 and the Union filed for arbitration.

36. On May 6, 2009 Wilder sent a letter to the nine employees who had returned to B&G Patrol Officer positions from University of Connecticut Dispatcher positions which states in relevant part:

This is a follow up to my January 26, 2009 letter . . . The Payroll Department has completed the process of recalculating compensation and related items under the NP-5 collective bargaining agreement. As a result of our calculations, it has been determined that you have been overpaid the gross amount of…In accordance with article 20 section 17 of your collective bargaining agreement, we are required to recover such overpayment
over the same period of time in which you were overpaid unless some other arrangements can be agreed upon. The union has appealed this action, therefore we will not institute any refund procedures until the completion of your appeal.

(Exs. 38 -38h).

37. On September 11, 2009 the State paid PSEC $7,262.62 for union dues/fees for the period from October 11, 2007 through January 29, 2009. The State also provided PSEC with a calculation chart showing the amounts by which PSEC exceed AFSCME dues/fees for each of the ten affected employees. (Ex. 34).

38. In response to the State’s dues/fees payment, Boucher sent the following letter to Yelmini, now the Director of OLR, on or about September 11, 2009:

Based upon the conversation between Ms. Carter and Mr. Scheinberg, I am willing to accept and process the dues check from the University of Connecticut that was transmitted to us this morning. I am agreeing to do so, with an express agreement that our acceptance of said check will not be considered as agreement that:

1. There are not additional monies owed, primarily because of the provisions of CGS 5-276b(b), or
2. That the actual amount of the check has been audited and established.

We recognize that Ms. Carter has represented that this amount is all that is owed by the State to us, and we have agreed that the Board will be the final arbiter of that claim.

If this note does not represent your understanding of the status of this matter, then please advise me, and we shall return the check. Thank you for your attention to this matter.

(emphasis in original) (Ex. 35).

39. On or about October 29, 2009 OLR Principal Labor Relations Specialist Ellen Carter (Carter) sent the following letter to Boucher:

This is in response to your letter to Linda Yelmini about my conversation with Union Attorney Barry Scheinberg regarding the dues payment check that I provided to him on September 11, 2009. I also provided him with a chart showing the calculation of the dues amounts for each employee for the period covered by the grievance.

Atty. Scheinberg stated that the Union would have to check the calculations and I indicated that the Union should let me know if there seemed to be any problem in the calculations. Since the dues amount is a standard amount for each employee, I expect that you have since completed the review of the calculations and have found no problem. With regard to the issue of interest, I indicated that cashing the check would not preclude the union from arguing about interest but there was no discussion about or any agreement that “the Board would be the final arbiter of that claim”. (sic) I should mention, however,
that the grievance concerned the loss of 9 bargaining unit position (*sic*) but that the
payment made by UConn was for 10 employees, since they included the additional
dispenser position.

If there are any questions about this matter, you can reach me at…

(Ex. 36).

40. On October 25, 2010 an arbitration award (Award II) issued in the grievance filed by
PSEC over the salary reductions and the State’s attempts to recoup alleged overpayments to the
nine dispatching UConn B&G Patrol Officers upon their return to the PSEC bargaining unit. (Ex.
52). The arbitrator found that she was without jurisdiction to address the salary reductions of
the nine returning B & G Patrol Officers, stating in relevant part:

With respect to Article 20, Section Nineteen I find that it is beyond my
jurisdiction to make any judgment as to the appropriate salary for the nine (9)
returning B &Gs. The State negotiated a salary with AFSCME to which the
employees were entitled while working that AFSCME position. However,
salaries are something that must be negotiated between the particular parties not
dictated by an arbitrator.

The arbitrator also found no overpayment had been made to the nine B&G Patrol Officers and
directed the State to cease seeking reimbursement, stating in relevant part:

…it appears that the State is trying to get something through arbitration that it regrets it
agreed to pay through negotiations. It cannot so easily get out from under a commitment
it made to nine (9) B&Gs. There is nothing in the Selchick award that suggests that the
employees were not entitled to the salaries paid them while [UConn Dispatchers] in
AFSCME.

I find, therefore, that the salary attaches to the job. The State and AFSCME determined
the salary for the [UConn Dispatchers] position in accordance with certain criteria.
Whoever fulfilled the tasks of the job whether a new UCONN hire or a transfer from
B&G, the employees fulfilled the responsibilities of the job as advertized (*sic*). They
expect and deserve to be paid what they were promised. The State may not now garnish
their PSEC wages in order to recover what it calls an ‘overpayment.’

41. The ten vacated UConn Dispatcher positions covered by the MOU between the State and
AFSCME have not been filled since the incumbents were reassigned to B&G Patrol Officer
positions in the PSEC bargaining unit.

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3 The parties jointly requested the arbitration award be accepted into the record despite being submitted well after
the close of the hearing in this matter. Connecticut Regulations Section 5-273-66 affords us broad discretion in
granting motions to reopen if the evidence is material, the motion is timely made, and there were reasonable grounds
for the failure to adduce such evidence at the hearing. We find this arbitration award meets all three requirements
and therefore accept it into the record as Exhibit 52.
CONCLUSIONS OF LAW

1. The State violated the Act when it failed to bargain in good faith with PSEC.

2. The State violated the Act when it repudiated the collective bargaining agreement between it and PSEC.

3. The State violated the Act when it failed to comply with an arbitration award in a timely manner.

4. The State did not violate the Act when it declined to refill positions contemplated by the MOU.

5. The State did not act with anti-union animus in violation of the Act.

DISCUSSION

Here, PSEC alleges the State has refused to bargain in good faith by creating the University of Connecticut Dispatcher classification and negotiating the wages of the position and placement with AFSCME and without involving PSEC. PSEC also argues that the State has repudiated the applicable collective bargaining agreement by transferring the work of its dispatching B&G Patrol Officers to AFSCME’s UConn Dispatchers. PSEC alleges the State failed to comply with Award I when it did not timely pay the lost dues/fees owed to PSEC. Finally, PSEC argues that the State has acted with anti-union animus throughout. AFSCME alleges the State has bargained in bad faith by not adhering to the MOU and by leaving its University of Connecticut Dispatcher positions unfilled after removing the incumbents and reassigning them to the B&G Patrol Officer classification.

The State argues that it has the right to create a new job classification and place it in the most appropriate bargaining unit for the position. Further, the State denies that it has acted in bad faith, repudiated the applicable collective bargaining agreement, or failed to comply with the arbitration award at issue. The State also argues that it has acted in good faith and full compliance with the agreement it made with AFSCME.

Job reclassification is ordinarily a mandatory subject of collective bargaining. “No matter who has the initial function of job classification, it is still at the core of the employer-employee relationship and is the very prototype of mandatory subjects of bargaining.” City of Milford, Decision No. 1803, p. 5 (1979). See also, City of Danbury, Decision No. 4000 (2004) (holding process for position reclassification to be mandatory subject); Town of North Branford, Decision No. 2242 (1983); Town of Greenwich, Decision No. 2154 (1982). The State Personnel Act, Conn. Gen. Stat. § 5-193 et seq, does not change this basic principle in the context of this case. “[R]emoval of job duties from the bargaining unit constitutes a mandatory topic of collective bargaining.” State of Connecticut, Decision No. 2663 p. 33 (1988). “The removal of a position or classification to another bargaining unit ... is a question of representation which, in the absence of an agreement between the parties, is within the primary jurisdiction of the Labor Board.” Id.
It is clear that the work of most of the B & G Patrol Officers at UCONN evolved over time into specialized emergency dispatching which gave rise to complaints of low pay and the need for reclassification. The options available to the State included ignoring the complaints, engaging in mid-term bargaining with PSEC, or “instituting a class reevaluation” pursuant to Article 21 of the collective bargaining agreement. Rather than engage in any of these alternatives, however, the State unilaterally transferred the emergency dispatch duties from the PSEC bargaining unit to the AFSCME bargaining unit and negotiated the impacts of this action exclusively with AFSCME. We find that this violates the State’s obligations under the Act.

The State contends that it could not avail itself of the class reevaluation procedure in Article 21 of the Agreement because several B & G Patrol Officers at UCONN did not work as certified dispatchers. We note that there is nothing in the State’s classification system or the collectively bargained reevaluation procedure that prohibited notice to or negotiations with PSEC concerning this problem. The record reflects that the B & G Patrol Officer dispatchers sought only higher pay which was ultimately afforded though negotiations with AFSCME, the representative of another bargaining unit.

The State argues that it has the right to establish a new classification and to determine which bargaining unit is the most appropriate for that classification. The work at issue, however, was not new nor did the State’s actions effect a substantive change as to the persons performing existing work. As such, there was no reasonable basis for bypassing the existing exclusive representative.

Whether a party has met its obligation to bargain in good faith is most often a subjective determination reached following a careful examination of the totality of the circumstances. State of Connecticut, Decision No. 3521 (1997); Bloomfield Board of Education, Decision No. 3336 (1995). Wages are unquestionably a mandatory subject of bargaining under the Act. West Hartford Education Association v. DeCourcy, 162 Conn. 566 (1972). The failure to bargain in good faith over wages or other terms or conditions of employment clearly violates the letter and the spirit of the Act. Bristol Housing Authority, Decision No. 3272 (1995). We conclude based on this record that the State failed to meet its obligation under the Act to bargain in good faith. Here, the State negotiated with another union to establish a new classification in that union’s bargaining unit to perform the same functions as the dispatching B&G Patrol Officers at a higher salary. The State did so with the full knowledge that the dispatching B&G Patrol Officers had been actively – and unsuccessfully – seeking a higher salary for their positions. Shortly thereafter it gave the nine B&G Patrol Officers an exclusive first opportunity to apply for the nine new vacancies for which they were clearly perfectly qualified. The State does not claim, nor do we

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4 SERA expressly contemplates mid-term negotiations and/or interest arbitration . . . “by the parties to an existing collective bargaining agreement to revise such agreement concerning any matter affecting wages, hours and other conditions of employment . . .” Conn. Gen Stat. § 5-276a(c).

5 We note that the collective bargaining agreement between PSEC and the State provides for additional compensation regardless of classification for certain employees in the form of “home office differential” and “hazardous duty pay.” (Ex. 6).

6 The same persons performed the same work before and after the purported exercise of the State’s rights. The record before us is wholly consistent with Arbitrator Holden’s finding in Award II that “[t]heir work assignments did not change from one day until the next, but their union and salary did.” (Ex. 52).
find, this chain of events to be coincidental. Given this background, we find both the State’s failure to inform PSEC of its intentions and its failure to involve PSEC in the discussions leading to the MOU to be in dereliction of the State’s statutory duty to bargain in good faith over wages and other terms and conditions of employment.

PSEC further alleges that the State repudiated Article 34 Section 3 of the collective bargaining agreement when it transferred the work of its dispatching B&G Patrol Officers to the new University of Connecticut Dispatcher classification in the AFSCME bargaining unit. We note at the outset that this transfer of work was squarely addressed in PSEC’s favor in the arbitration resulting in Award I. However, as we have repeatedly held, repudiation is something beyond a mere breach of contract (Town of Plainville, Decision No. 1790 (1979)) and must meet stricter criteria amounting to one of three sets of circumstances. NEHCEU, District 1199 (Alicia Chacho), Decision No. 4389 (2009); Danbury Police Union, Decision No. 2935 (1991). The first is where the respondent party takes an action based upon an interpretation of the contract and that interpretation is asserted in subjective bad faith. The second is where the respondent party takes an action based upon an interpretation of the contract and that interpretation is wholly frivolous or implausible. The third type does not involve assertion of an interpretation of the contract but instead the respondent either admits or does not challenge the complainant’s interpretation and seeks to defend its actions on some collateral ground which does not rest upon an interpretation of the contract. Plainfield Board of Education, Decision No. 4014 (2004); Hamden Board of Education, Decision No. 3426 (1996); Norwich Board of Education, Decision No. 2508 (1986).

The State defends its actions by arguing that its interpretation of the contract was serious and plausible and was the correct interpretation in light of the bargaining unit certifications and the long history of dispatching work and dispatching employees being recognized as part of the AFSCME bargaining unit. The State further contends that having B&G Patrol Officers performing dispatching functions was a misuse of the position and that the work at issue is not PSEC bargaining unit work covered by Article 34 of the collective bargaining agreement between it and PSEC. We cannot agree. The unrefuted evidence presented indicated that while numerous dispatch-related titles are indeed in the AFSCME bargaining unit, dispatching work at UCONN has historically been performed by the B&G Patrol Officers in the PSEC bargaining unit. Moreover, we note that the job description of the B&G Patrol Officer contains dispatching as one of its functions, and so was appropriately performed by such individuals at UCONN.

We find the State’s contractual excuse for its unilateral transfer of the same work to the same persons so implausible as to constitute a repudiation of the clear contractual prohibition against subcontracting bargaining unit work contained in Article 34. We also find that the State’s position amounts to a collateral defense within the meaning of our third test for repudiation. The State’s claim that it is entitled to transfer this work to newly created positions in other bargaining units does not rest upon an interpretation of Article 34 but rather the State’s rights under the State Personnel Act, Conn. Gen. Stat. § 5-193 et seq. We find this defense to the alleged repudiation without merit given the record before us.
PSEC also alleges that the State violated the Act by failing to pay back dues/fees it owed under the terms of the Award in a timely manner. Connecticut General Statutes Section 5-276b(b) states:

Whenever a monetary settlement is awarded pursuant to a state employee grievance arbitration proceeding, and payment is not made in accordance with the terms of such settlement within thirty days of the date such award was issued, the party liable for such payment shall be required to pay interest, at the rate of five per cent per annum, on such overdue payment, calculated from the date the award was issued.

The Award was issued January 13, 2009. The State paid PSEC its back dues/fees as specified by the Award on September 11, 2009, well beyond the thirty days contemplated by the statute. Therefore we find the awarding of interest in accordance with the terms of the statute to be warranted.

On the basis of the record before us we reject PSEC’s claim of anti-union animus. We are troubled by the State’s extensive actions responding to employee concerns wholly without notice to or involvement with the employees’ designated collective bargaining agent. We do find, however, that the persons acting on behalf of the State genuinely believed in the State’s power to act in derogation of PSEC’s rights under the Act. We also find that the State’s failure to afford PSEC proper notice of its actions was an oversight largely due to the pending retirement of the then Acting Director of Labor Relations. As such, we do not find animus as to PSEC on the basis of the evidence.

We turn now to AFSCME’s complaint. AFSCME alleges that the State bargained in bad faith by failing to comply with the terms of the MOU reached by the parties concerning the creation of the UConn Dispatcher position and the placement of said position in AFSCME’s bargaining unit. The State counters that it fully complied with the MOU but that it had no choice but to remove the employees from said positions and return them to the B&G Patrol Officer classification once Award I issued. We agree with the State and note that the remedy AFSCME seeks would violate both the Award and PSEC’s status as exclusive bargaining agent for B & G Patrol Officers performing dispatch work. We note that while AFSCME did not have an obligation to PSEC under the Act in this context, AFSCME clearly was aware of and acted in concert with, the State’s actions during these events and we find no basis for AFSCME to benefit thereby. We also note that we do not have jurisdiction over simple contract violation claims and AFSCME has not alleged any of those circumstances which afford us jurisdiction to remedy a violation of a collectively bargained agreement. See City of Groton, Decision No. 1134.

Turning to the issue of remedy we acknowledge our obligation to “take such . . . affirmative action as will effectuate the policies of [the Act] . . .” Conn. Gen. Stat. § 5-274(6). We are faced with a situation in which the culpable employer was willing to pay employees a higher salary for the same work provided they were in a different bargaining unit with a different title. A return to the status quo ante has been effected through the grievance arbitration process with the result that the impacted employees have received a pay decrease which we find to harm PSEC’s credibility and standing in the eyes of the bargaining unit it represents. Under the circumstance before us the State benefits by its violation in the form of paying less for the same
work and PSEC loses by having enforced its rights under a valid collective bargaining agreement.

Arbitrator Holden found that she “was without jurisdiction to make any judgment as to the appropriate salary for the nine (9) returning B & Gs”. (Ex. 52). We are not so encumbered as we are charged with effectuating the policies of the Act. In this instance we find that these policies require restoration of the higher salary to the persons returning to the B & G Officer positions until such time as PSEC and the State have negotiated compensation for performance of dispatch duties in accordance with the Act.

As noted above, we also find that PSEC is entitled to statutory interest on those dues/fees it was allowed under Award I for that time the obligation was unpaid after thirty days from the issuance of said award.

**ORDER**

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

**ORDERED** that the Complaint in Case No. SPP-28,032 be and the same hereby is, dismissed, and regarding Case No. SPP-27,312, it is further

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

I. Cease and desist from failing to bargain with PSEC concerning additional compensation, if any, for B & G Patrol Officers performing dispatching duties.

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

A. Pay those persons who returned to B & G Patrol Officer positions from University of Connecticut Dispatcher at salary group 17 (CL-17) from the date of such return unless or until PSEC and the State have negotiated compensation otherwise.

B. Pay PSEC five (5) percent interest on the back dues/fees it was owed in accordance with the Award for the period January 13, 2009 - September 11, 2009.

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, Dismissal of Complaint, 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 receipt of this Decision and Order of the steps taken by the State of Connecticut 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 12th day of July, 2011 to the following:

Attorney Barry M. Scheinberg  
50 Columbus Boulevard  
Hartford, CT  06106

Attorney Ellen M. Carter  
Office of Policy and Management  
450 Capitol Avenue, MS#530LR  
Hartford, CT  06106

Attorney J. William Gagne, Jr.  
Gagne & Associates  
970 Farmington Avenue, Suite 207  
West Hartford, CT  06107

Linda Yelmini, Director, OPM  
Office of Policy and Management  
450 Capitol Avenue, MS#530LR  
Hartford, CT  06106

Attorney Susan Creamer  
Council 4, AFSCME  
444 East Main Street  
New Britain, CT  06051

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