STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF

STATE OF CONNECTICUT
OFFICE OF POLICY & MANAGEMENT
& LABOR RELATIONS

DECISION NO. 4610

-AND-

JULY 16, 2012

ADMINISTRATIVE & RESIDUAL
EMPLOYEES UNION

Case No. SPP-28,376

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

Attorney Ellen M. Carter
for the State

Attorney James C. Ferguson
for the Union

DECISION AND DISMISSAL OF COMPLAINT

On February 5, 2010, the Administrative & Residual Employees Union (the Union) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the State of Connecticut (the State) violated Sections 5-271 and 5-272 of the State Employee Relations Act (SERA or the Act) by failing to fully comply with an arbitration award.

After the requisite preliminary administrative steps had been taken, the matter came before the Labor Board for a hearing on July 14, 2011. All parties appeared, were represented and were allowed to introduce evidence, examine and cross-examine witnesses, and make argument. All parties filed post-hearing briefs, the last of which was filed on November 11, 2011. Based on the entire record before us, we make the following findings of fact and conclusions of law and we dismiss the complaint.

FINDINGS OF FACT

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

2. The Union is an employee organization within the meaning of the Act and at all relevant times has represented the P-5 bargaining unit.

3. On April 26, 2006 Arbitrator Jeffrey M. Selchick (the Arbitrator) issued an arbitration award (Ex. 3) addressing a dispute between the Union and the State that stated, in relevant part:

> . . .
>
> 2. The State violated Article 13 of the P-5 Contract when it determined in 2003 that an economic necessity existed for layoffs of employees in the "industry-funded Agencies) [sic] i.e., Department of Banking, Department of Public Utility Control, Office of Consumer Council and the Workers' Compensation Commission.
>
> As Remedy, Grievants in the industry-funded Agencies should be forthwith reinstated to their positions that were occupied at the time of the layoffs and made whole for all lost pay and benefits. . . This Arbitrator will expressly retain jurisdiction of this proceeding for the sole purpose of resolving any and all disputes that may arise concerning the implementation of the Remedy provided herein.
>
> 3. The grievances are sustained only to the extent indicated. In all other respects, the instant grievances are denied.

4. On September 7, 2006 Selchick issued a "CLARIFICATION OF REMEDY" (Ex. 4) which stated, in relevant part:

> . . . [On] or about July 5, 2006, the parties advised that there was a dispute regarding the implementation of the Remedy provided in . . . [the] . . . Award. Specifically, the parties disagreed as to the impact of the April 26, 2006 Award as to layoffs in industry-funded Agencies caused by the elimination of classifications in said Agencies.
>
> At the request of the Arbitrator, the parties presented their positions on the Remedy dispute in writing . . .
> . . .

CLARIFICATION OF REMEDY

> . . . The Remedy set forth in the April 26, 2006 Opinion and Award must . . . be applied to <u>all</u> employees in the industry-funded Agencies who were laid off. The State's latitude in restoring employees to the workforce is limited to restoring employees to their original position or to a position that would be "deemed comparable" in all significant respects.
>
> The Arbitrator will continue to retain jurisdiction solely for the purpose of addressing any question arising over the implementation of remedy. (emphasis in original).

5. On or about October 5, 2006 Attorney Thomas Clifford (Clifford), acting on behalf of the State, filed an application to vacate the Clarification of Remedy award in Superior Court pursuant to General Statutes §52-418[1] and the case was assigned docket number CV-06-4025979. On or about November 16, 2006 Attorney James Ferguson (Ferguson) on behalf of the Union filed a counter-application to confirm the Clarification of Remedy award in the case pursuant to General Statutes §52-417.[2] (Ex.11).

6. The parties submitted briefs in support of their respective positions to the Superior Court judge assigned to the case and at that judge's suggestion, the parties concurrently engaged in mediation presided over by Superior Court Judge Trial Referee Jerry Wagner (Judge Wagner).

7. On September 28, 2007 and after five meetings with Judge Wagner, the parties executed a Settlement Agreement (Ex. 5) that stated, in relevant part:

> The State of Connecticut, Office of Labor Relations (hereinafter referred to as "OLR") and the Administrative and Residual Employees Union (hereinafter referred to as "A&R") hereby agree as follows:
>
> . . .
>
> 2. The State Filed a Motion to Vacate the September 7, 2006 Clarification of Remedy Award.
>
> 3. Judge Wagner was assigned to mediate the parties' dispute. It is in the context of Mediation before Judge Wagner that the parties reach this Settlement Agreement.

[1] Section 52-418 states, in relevant part: ". . . (a) Upon the application of any party to an arbitration, the superior court . . . shall make an order vacating the award if it finds any of the following defects: . . ."

[2] Section 52-417 states, in relevant part: ". . . any party to the arbitration may make application to the superior court . . . for an order confirming the award. The court or judge shall grant such an order confirming the award unless the award is vacated, modified or corrected as prescribed in sections 52-418 and 52-419."

4. The parties agree that the following employees who were bumped or laid off from their positions as a result of class eliminations within industry funded agencies will receive the following agreed upon remedy . . .

5. The parties further agree that the following employees who were laid off from their positions within industry funded agencies will receive the following make whole remedy . . .

6. The parties agree that the above named individuals represent the totality of current and former A&R members who have a remedy under the Award . . . The A&R agrees that it will not file, pursue or support any individual or institutional grievances or claim on behalf of any current or former member or employee who may assert that he or she has rights under said Award or has otherwise been harmed by this Settlement Agreement.

7. Consistent with Conn. Gen. Stat. Section 52-418, the Settlement Agreement shall have the effect of Vacating the Clarification of Remedy Award issued by Arbitrator Selchick on September 7, 2006 . . . Nothing in this Agreement shall have the effect of altering the Award of Arbitrator Selchick . . .

. . .

9. In consideration of this agreement, A&R and its current and former members hereby agree not to file or pursue any grievance or legal action against the State of Connecticut, its representatives, its employees or A&R in any forum as a result of this Agreement.

8. On September 28, 2007 the State and the Union filed withdrawals of their respective applications to vacate and to confirm pending in Superior Court Case No. CV06-4025979 and on October 1, 2007 Judge Wagner signed the Settlement Agreement.

9. On or about December 10, 2007 Ferguson sent Clifford a letter (Ex. 6) which stated, in relevant part:

Dear Tom:

As a follow up to our recent phone conversation, the following are the problems which A&R believes exist regarding the implementation of the settlement agreement.

. . .

This is a summation of the various problems A&R has had with regard to

> the implementation of the award. If you need further information or explanation, please contact me. It may be that we need our principals to sort this out. Otherwise, I hope the various differences can be reconciled and corrections made . . .

Attached to the letter was correspondence from five members of the Union's bargaining unit disputing the terms of the September 30, 2007 Settlement Agreement.

10. On or about December 19, 2007 Christine M. Cieplinski (Cieplinski), a Principal Labor Relations Specialist with the State's Office of Policy and Management (OPM) sent Clifford a letter stating, in relevant part:

> Dear Tom:
>
> This letter is in response to the December 10, 2007 correspondence from Attorney Ferguson regarding the above-referenced matter. You requested that I set forth the State's position with respect to the various points raised within Attorney Ferguson's letter. Accordingly, the State responds as follows: . . .
>
> The State's overall view of the Agreement was that it was a road map to resolve and facilitate the implementation of events that happened in 2003. The State believes that it has implemented the Agreement in good faith to date . . .

Clifford forwarded Cieplinski's letter to Ferguson on or about December 26, 2007. (Ex. 7).

11. On January 7, 2008, Union Vice President Michael Winkler (Winkler) sent Ferguson a letter (Ex. 10) stating, in relevant part:

> Ms. Cieplinski claims she does not understand this issue . . .
> I believe Ms. Cieplinski has chosen not to understand.
>
> Please schedule a meeting with Attorney Clifford to discuss this matter . . .
>
> If you cannot schedule a meeting during the month of January 2008 (the meeting does not have to be in January, only the scheduling has to be completed this month) please request a meeting with the Judge. If the State schedules a meeting, then postpones or cancels, please request a meeting with the Judge.

12. At some point between January 7, 2008 and December 3, 2009, Winkler scheduled a date through OPM secretary Sandra Ivory (Ivory) for the Union and the State to meet with the Arbitrator to address the concerns raised in Ferguson's December 7,

2007 letter to Clifford. The State subsequently notified the Union that it would not attend the scheduled meeting.

13. On December 3, 2009 Winkler sent Cieplinski a letter (Ex. 8) stating, in relevant part:

> Dear Ms. Cieplinski,
>
> We are requesting your cooperation your cooperation in arranging a conference with Arbitrator Selchick to review the implementation of his award in the layoff grievance. . . .
>
> The State's court action delayed consideration of the implementation of the Selchick award for years. Then you unilaterally cancelled the meeting which was scheduled with Arbitrator Selchick to consider this matter. Failure to schedule a meeting date for Arbitrator Selchick to review our union's objections will result in a prohibited practice being filed with the State of Connecticut's Board of Labor Relations.

CONCLUSIONS OF LAW

1. A State employer's refusal to comply with a valid arbitration award is a failure to bargain in good faith and a violation of Section 5-272(4) of the Act.

2. The Labor Board will not assert jurisdiction over a complaint alleging bad faith refusal to comply with an arbitration award when the award at issue is the subject of a settlement agreement resolving statutory proceedings in Superior Court to vacate, confirm or modify the award.

DISCUSSION

In this case the Union contends that the State has failed to fully comply with a provision in an arbitration award in which the arbitrator expressly retained jurisdiction to resolve disputes concerning the remedy awarded. The parties do not dispute that the Union claims the State has not fully complied with award, that the State contends it has complied, or that the State has declined to meet with the Arbitrator to resolve the Union's claims. The Union argues that this conduct violates the State's obligation to bargain in good faith, a prohibited practice under Sections 5-272(a)(1) and (4) of the Act.[3]

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[3] Sections 5-272(a)(1) and (4) provide, in relevant part:

> (a) Employers or their representatives or agents are prohibited from: (1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 5-271 . . . (4) refusing to bargain collectively in good faith with an employee organization which has been designated . . . as the exclusive representative of employees in an appropriate unit. . . .

Section 5-271(f) provides, in relevant part:

The State denies that it has violated the award and claims that in resolution of judicial proceedings arising from the award, the parties entered into a detailed settlement agreement which removes this dispute from the jurisdiction of both the arbitrator and the Labor Board. In the alternative, the State claims that the Union has failed to establish a violation either of the award or the settlement agreement. The State also contends that the Union's delay in filing a complaint with the Labor Board amounts to a waiver of its rights under the Act.[4]

Since 1979 in ***State of Connecticut DEP (Gary Thomas),*** Decision No. 1766 (1979), the Labor Board has held that the State's failure to comply with a grievance arbitration award or settlement constitutes a failure to bargain in good faith in violation of §5-272(a)(4) of the Act. ***State of Connecticut, Department of Correction***, Decision No. 4475 (2010); ***Department of Public Safety, State of Connecticut***, Decision No. 2664 (1988), ***State of Connecticut, Department of Human Resources***, Decision No. 2524 (1986); ***State of Connecticut, Judicial Branch***, Decision No. 2428 (1985). We use an objective standard and we do not consider whether the respondent acted in good faith or whether its interpretation of the award is a plausible one. If we find there has not been compliance, we will find a violation of the Act. ***State of Connecticut, Department of Correction,*** *supra*; ***State of Connecticut, Department of Administrative Services***, Decision No. 3514 (1997). In short, our role is limited to meeting our statutory responsibility to insure that the outcome of the grievance procedure is respected. ***Connecticut Employees Union Independent (NP-2 Unit)***, Decision No. 3446 (1996).

We also recognize, however, that such noncompliance claims must be assessed in the context of subsequent agreements, if any, between the parties.

> An arbitration award contains the terms of settlement of a dispute between the parties to a collective bargaining agreement. If the parties cannot agree on the implementation of the award . . . there may be further negotiations on the implementation. If the parties then come to a new agreement on the issues involved in the original dispute, that new agreement supersedes and discharges the terms of the prior agreement, the arbitration award.

City of New Haven, Decision No. 2846 p. 5 (1990). In ***City of New Haven***, *supra*, we dismissed a union's claim of noncompliance with an awarded remedy because, in resolution of judicial proceedings to enforce the award, the parties entered into a settlement agreement which modified the remedy.

> (f) The employer and such employee organization as has been designated as exclusive representative of employees in an appropriate unit . . . shall have the duty to bargain collectively.

[4] Since we agree with the State that it did not violate the Act by declining to participate in further arbitration proceedings we need not address this latter issue of waiver.

The Union argues that because the October 1 Settlement Agreement states that "[n]othing in this agreement shall have the effect of altering the award . . . dated April 26, 2006" the original remedy remained intact. We disagree.

> "[I]n construing contracts, we give effect to all the language included therein, as the law of contract interpretation .. . militates against interpreting a contract in a way that renders a provision superfluous." ***Honulik v. Greenwich***, 293 Conn. 698, 711 (2009); *see also* ***Connecticut National Bank v. Rehab Associates,*** 300 Conn. 314, 323 (2011).

The Settlement Agreement enumerates specific relief to "named individuals [who] represent the totality . . . who have a remedy under the Award" and the Union agreed "it will not file, pursue or support any claim on behalf of any current or former . . . employee who may assert . . . rights under said Award . . ." We find that these provisions evidence a mutual intent to resolve all outstanding remedial issues arising under the award by stating in detail what remains to be done. The language relied on by the Union, read in the context of the preceding sentence,[5] merely recognizes the validity of the award upon issuance and preserves its existence for future reference.[6]

Given the sequence of events, any current disputes concerning implementation of the April 26, 2006 award necessarily entail interpretation and/or enforcement of the Settlement Agreement. We do not find the State's refusal to submit such issues to the Arbitrator to be in violation of the Act. Not only does the Union admit in its brief that it does not seek such action from the Arbitrator, the parties' agreement to vacate the Arbitrator's clarification of his own award militates against such a process. More important, we have declined to exercise our jurisdiction over claimed violations of arbitration awards where the parties have submitted the issue of enforcement to the judicial process. In ***New Haven Board of Education***, Decision No. 1426 (1976) we declined to exercise our jurisdiction over claimed violations of arbitration awards where the Union had previously obtained an order confirming the awards and the issue of enforcement had been submitted to the judicial process. Similarly, in ***City of New Haven***, *supra,* the parties entered into a settlement resolving a dispute over the employer's compliance with a confirmed arbitration award. Since the settlement was entered as a court order, we found that it superceded and discharged the arbitration and we dismissed the complaint.

We decline to exercise jurisdiction over the Settlement Agreement negotiated under Judge Wagner. The Settlement Agreement resolved claims then pending in Superior Court which were in addition to claims arising under the collectively bargained grievance procedure. Although the Settlement Agreement was never entered as a court order, it was mediated by a judge trial referee and is presumably enforceable in court.

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[5] "[T]he settlement agreement shall have the effect of vacating the clarification of remedy award issued . . . on September 7, 2006 . . ."

[6] Even if the award is without collateral estoppel effect under ***Town of Stratford v. IAFF***, 248 Conn. 108 (1999), its status as a valid arbitration award may impact future collective bargaining between the parties.

The remedy the Union seeks would require the Arbitrator to enforce the terms of a Settlement Agreement, including the parties' agreement to vacate the Arbitrator's prior clarification determination. To the extent that a dispute exists, it is a dispute concerning compliance with an agreement outside our jurisdiction and so we dismiss the Union's complaint.

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 complaint filed herein be, and the same hereby is, **DISMISSED**.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Wendella Ault Battey
Wendella Ault Battey
Chairman

Patricia V. Low
Patricia V. Low
Board Member

Barbara J. Collins
Barbara J. Collins
Board Member

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 16th day of July, 2012 to the following:

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