

STATE OF CONNECTICUT

THOMAS J. DAVIS, JR., ESQ.;  
TERRENCE M. O'NEILL, ESQ.;  
MADELINE MELCHIONNE, ESQ.;  
CARMEL MOTHERWAY, ESQ.; and  
ROBERT B. FISKE, III, ESQ.,  
Plaintiffs,

v.

CONNECTICUT STATE BOARD OF  
LABOR RELATIONS by and through its  
Chairman, PATRICIA V. LOW, and its  
members, WENDELLA AULT BATTEY,  
and BARBARA J. COLLINS,  
Defendants.

SUPERIOR COURT  
JUDICIAL DISTRICT OF NEW  
BRITAIN  
DECEMBER 30, 2016

C.A. No.

**ADMINISTRATIVE APPEAL**

**INTRODUCTION**

1. Plaintiffs, Thomas J. Davis, Jr., Esq., Terrence M. O'Neill, Esq., Madeline Melchionne, Esq., Carmel Motherway, Esq., and Robert B. Fiske, III, Esq. (hereafter, collectively, "Plaintiffs"), bring this action pursuant to Conn. Gen. Stat. § 4-183 *et seq.* to appeal and seek judicial review and reversal of a Decision and Denial of Requests for Declaratory Ruling and Certification ("Decision"), issued by the Connecticut State Board of Labor Relations ("Labor Board") on November 16, 2016 in the matter of Thomas J. Davis, Jr., et al. and AFT Connecticut, AFT, AFL-CIO, Case No. SDR-32,403.

**PARTIES**

2. Plaintiff, Thomas J. Davis, Jr., Esq. is an individual who petitioned the Labor Board for declaratory rulings pursuant to the Uniform Administrative Procedures Act ("APA"), Conn. Gen. Stat. § 4-176(a), and Section 5-273-39 of the Labor Board's

General Regulations applicable to State Employees (“Labor Board Regulations”).

Plaintiff Davis is also a proper party to file this action, as he has exhausted all administrative remedies available within the Labor Board, and he has been aggrieved by the Decision as required by Conn. Gen. Stat. § 4-183(a).

3. Plaintiff, Terrence M. O’Neill, Esq. is an individual who petitioned the Labor Board for declaratory rulings pursuant to the APA, Conn. Gen. Stat. § 4-176(a), and Labor Board Regulation § 5-273-39. Plaintiff O’Neill is also a proper party to file this action, as he has exhausted all administrative remedies available within the Labor Board, and he has been aggrieved by the Decision as required by Conn. Gen. Stat. § 4-183(a).

4. Plaintiff, Madeline Melchionne, Esq. is an individual who petitioned the Labor Board for declaratory rulings pursuant to the APA, Conn. Gen. Stat. § 4-176(a), and Labor Board Regulation § 5-273-39. Plaintiff Melchionne is also a proper party to file this action, as she has exhausted all administrative remedies available within the Labor Board, and she has been aggrieved by the Decision as required by Conn. Gen. Stat. § 4-183(a).

5. Plaintiff, Carmel Motherway, Esq. is an individual who petitioned the Labor Board for declaratory rulings pursuant to the APA, Conn. Gen. Stat. § 4-176(a), and Labor Board Regulation § 5-273-39. Plaintiff Motherway is also a proper party to file this action, as she has exhausted all administrative remedies available within the Labor Board, and she has been aggrieved by the Decision as required by Conn. Gen. Stat. § 4-183(a).

6. Plaintiff, Robert B. Fiske, III, Esq. is an individual who petitioned the

Labor Board for declaratory rulings pursuant to the APA, Conn. Gen. Stat. § 4-176(a), and Labor Board Regulation § 5-273-39. Plaintiff Fiske is also a proper party to file this action, as he has exhausted all administrative remedies available within the Labor Board, and he has been aggrieved by the Decision as required by Conn. Gen. Stat. § 4-183(a).

7. Defendant, Connecticut State Board of Labor Relations is an administrative agency of the State of Connecticut and is a proper party to defend this action under Connecticut law.

8. Defendant, Patricia V. Low is identified by the State as the Chairman of the Connecticut State Board of Labor Relations, and she is being sued in her official capacity.

9. Defendants, Wendella Ault Battey and Barbara J. Collins are identified by the State as members of the Connecticut State Board of Labor Relations, and they are each being sued in their official capacities.

#### VENUE AND JURISDICTION

10. Venue in this matter properly rests within the judicial district of New Britain pursuant to Conn Gen. Stat. § 4-183(c).

11. Jurisdiction is proper in this Court pursuant to Conn Gen. Stat. § 4-183.

#### FACTS

12. On or about August 29, 2016, AFT Connecticut, AFT, AFL-CIO (“Union”) filed a document with the Labor Board seeking to certify itself as the exclusive bargaining representative for “Assistant Attorneys General including departments’ heads.” The Labor Board docketed the filing as State of Connecticut Office of Attorney General and AFT Connecticut, AFT, AFL-CIO, Case No. SE-32,388.

13. In its August 29, 2016 filing, the Union proposed representing a bargaining unit that consisted of every Assistant Attorney General employed by the Connecticut Office of Attorney General regardless of class, which totaled approximately 196 attorneys.

14. The Labor Board scheduled an informal conference in Case No. SE-32,388 for September 13, 2016.

15. On September 13, 2016 – prior to the informal conference in Case No. SE-32,388 – Plaintiffs filed a Petition for Declaratory Ruling with the Labor Board (“Petition”), through which they sought declaratory rulings from the Labor Board regarding, *inter alia*, their statutory right to a secret ballot election in Case No. SE-32,388; their statutory right to be excluded from any collective bargaining unit due to their status as “managerial” employees under Conn. Gen. Stat. § 5-270(g); and Plaintiff O’Neill’s statutory right to be excluded from any collective bargaining unit due to his status as a “supervisory” employee under Conn. Gen. Stat. § 5-270(f).

16. Plaintiffs alleged detailed facts regarding their status as managerial and/or supervisory employees within their Petition, and they attached to their Petition their detailed job specifications for the various classifications of Assistant Attorneys General. *See* Petition for Declaratory Ruling at ¶¶ 1-5 & Exhibits A-D attached thereto. If unrebutted, these facts clearly establish that each Plaintiff, along with all other Assistant Attorneys General within their same classifications, meet the statutory definition of a managerial employee under Conn. Gen. Stat. § 5-270(g) and that Plaintiff O’Neill and others also meets the statutory definition of a supervisory employee under Conn. Gen. Stat. § 5-270(f).

17. Through their Petition, Plaintiffs also requested a hearing – if the Labor Board deemed that such a hearing was necessary – to make the “managerial” and “supervisory” employee determinations under Conn. Gen. Stat. § 5-270(f) and (g).

18. Despite the pendency of Plaintiffs’ Petition, the Labor Board conducted the informal conference in Case No. SE-32,388 as scheduled on September 13, 2016. Although Plaintiff Davis attended that informal conference as a public observer, the only parties to that proceeding were the Union and the State of Connecticut on behalf of the Office of Attorney General.

19. At that informal conference, representative(s) of the State and representative(s) of the Union reached an Agreement for Consent Election that (a) provided for an election by mail ballot between October 4, 2016 and October 18, 2016 and (b) defined the scope of the proposed bargaining unit in Case No. SE-32,388 to include “[a]ll Assistant Attorneys General excluding Attorney General 4/Dept. Heads, one Assistant Attorney General specializing in labor relation matters, one special counsel specializing in legislative affairs, Associate Attorney Generals [sic], Attorney General, Deputy Attorney General.” As a result, each Plaintiff in this action except for Plaintiff O’Neill was included within the proposed bargaining unit.

20. Upon information and belief, aside from the limited exclusion of the specified positions within the Agreement for Consent Election, the representative(s) of the State have not objected to, challenged, or otherwise attempted to exclude any other Assistant Attorneys General from the proposed bargaining unit, including, but not limited to, Plaintiff Davis, Plaintiff Melchionne, Plaintiff Motherway and Plaintiff Fiske.

21. On October 4, 2016, mail-in voting began for the proposed bargaining unit

as set forth in the Agreement for Consent Election.

22. On October 13, 2016, the Labor Board held an informal conference to discuss Plaintiffs' Petition in Case No. SDR-32,403, through which Plaintiffs sought their declaratory rulings described above. Counsel for Plaintiffs, counsel for the Union, and counsel for the State all attended the informal conference. Several individual Plaintiffs and representative(s) from the Union also attended the informal conference.

23. At the informal conference, Plaintiffs, through counsel, informed the Labor Board's representative that the facts alleged in the Petition, if unrebutted, warranted a finding that Plaintiffs were managerial and/or supervisory employees under Conn. Gen. Stat. § 5-270(f) and (g). In the alternative, Plaintiffs, through counsel, requested a hearing and briefing on the merits of their Petition.

24. Representatives from the Union and the State offered no factual allegations to rebut or discredit the allegations contained within the Petition at the informal conference. Instead, they raised procedural arguments challenging (a) Plaintiffs' standing to request declaratory rulings from the Labor Board and (b) the Labor Board's jurisdiction to issue declaratory rulings.

25. The Labor Board's representative at the informal conference denied Plaintiffs' request for a hearing or briefing on the merits of their requests for declaratory rulings and, instead, insisted upon briefing to determine the threshold issues of (a) Plaintiffs' "standing" to file their Petition and (b) the Labor Board's "jurisdiction" to issue the requested declaratory rulings. The parties, however, were unable to reach any agreements regarding the framing of these threshold issues, the timing of the initial briefing, or any other matters at the informal conference.

26. On October 14, 2016, the Labor Board's General Counsel, Harry Elliott, sent an email to, among others, counsel for Plaintiffs, counsel for the Union and counsel for the State, which stated:

“Dear Attorneys Egan, Doyle, Cavazza, and Beizer<sup>1</sup>]:

I am writing with respect to those cases (SE-32,388; SDR-32,403; SDR-32,437) now pending before the Connecticut State Board of Labor Relations (the Labor Board) involving a proposed bargaining unit of Connecticut attorneys general.

Please be on notice that the Labor Board has established a schedule for the parties to submit briefs on the following issue(s):

ISSUES:

Given the pendency of Case No. SE-32,388,

(1) are the issues raised in Case Nos. SDR-32,403 and SDR-32,437 proper subjects for declaratory rulings pursuant to Sec. 5-273-39 of the Labor Board's regulations and if so,

(2) do the petitioners in Case Nos. SDR-32,403 and SDR-32,437 have standing to raise such issues?

Primary briefs are due on or before October 26, 2016 and reply briefs, if any, are due on or before November 4, 2016.

Briefs are to be filed in accordance with the Labor Board's electronic filing policy (attached).

For the limited purpose of briefing these issues, the record shall consist of the petition and consent election agreement in Case No. SE-32,388, and the petitions in Case Nos. SDR-32,403 and SDR-32,437 (copies attached.)

Very truly yours,

Harry Elliott

Harry B. Elliott, Jr.

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<sup>1</sup> Attorney Matthew B. Beizer filed a separate Petition for Declaratory Ruling on or about October 3, 2016. The Labor Board docketed that matter as Case No. SDR-32,437.

General Counsel  
Connecticut State Board of Labor Relations  
38 Wolcott Hill Road  
Wethersfield, Ct. 06109  
p 860 263 6879  
f 860 263 6875”

(emphasis in original email).

27. On October 26, 2016, pursuant to General Counsel Elliott’s October 14, 2016 email, Plaintiffs filed and served their Primary Brief on Proper Subjects for Declaratory Rulings and Standing. On the same date, the Union and the State each filed and served their primary briefs on the two issues posed by the Labor Board.

28. On November 4, 2016, pursuant to General Counsel Elliott’s October 14, 2016 email, Plaintiffs filed and served their Reply Brief on Proper Subjects for Declaratory Rulings and Standing. On the same date, the Union and the State each filed and served their reply briefs on the two issues posed by the Labor Board.

29. On November 16, 2016, the Labor Board issued Decision No. 4930, which it labeled “Decision and Denial of Requests for Declaratory Ruling and Certification.” Pursuant to the caption of that Decision, the Labor Board purported to issue the Decision in Case No. SE-32,388, Case No. SDR-32,403 and Case No. SDR-32,437.

30. The Labor Board’s Decision contained two threshold holdings. First, the Labor Board held that “the issues raised in Case Nos. SDR-32,403 and SDR-32,437 are not proper subjects for declaratory rulings given the pendency of Case No. SE-32,388.” Decision at 3. Second, the Labor Board held that Plaintiffs were “without standing” to bring their Petition. Id. The Labor Board then went a step further and “decline[d] to issue declaratory rulings in Case Nos. SDR-32,403 and SDR-32,437.” Id.

**Count I**  
**Administrative Appeal**  
**(Conn. Gen. Stat. § 4-183 *et seq.*)**

31. Plaintiffs restate and incorporate herein the allegations of paragraphs 1 through 30.

32. Case No. SDR-32,403 is a contested case before the Labor Board. *See* Conn. Gen. Stat. § 4-180.

33. Plaintiffs have exhausted all available administrative remedies within the Labor Board regarding Case No. SDR-32,403. *See* Conn. Gen. Stat. § 4-183(a) (“The filing of a petition for reconsideration is not a prerequisite to the filing of such an appeal.”).

34. Plaintiffs are aggrieved by the Labor Board’s Decision. Indeed, the Labor Board has deprived each Plaintiff of his or her statutory right to obtain declaratory rulings under the APA. *See* Conn. Gen. Stat. § 4-176(a) (“Any person may petition an agency . . . for a declaratory ruling as to the validity of any regulation, or the applicability to the specified circumstances of a provision of the general statutes, a regulation, or a final decision on a matter within the jurisdiction of the agency.”). The Labor Board did so based on Plaintiffs’ purported lack of standing, which is directly contrary to settled Connecticut law. *See* Conn. Indep. Util. Workers, Local 12924 v. Dep’t of Pub. Util.

Control, 312 Conn. 265, 277 (Conn. 2014) (“§ 4-176 (a) confers broad rights on any member of the public to file a petition for a declaratory ruling without the need to establish any specific, personal and legal interest in the matter.”) (emphasis added).

35. Plaintiffs Davis, Melchionne, Motherway and Fiske have been further aggrieved through their forced inclusion in a collective bargaining unit as managerial

employees, despite the clear statutory prohibition against the unionization of managers. *See* Conn. Gen. Stat. § 5-270(b) and (g). Ironically, as Assistant Attorneys General, Plaintiffs are statutorily charged with the duty to enforce and uphold all of the laws in this State, including Conn. Gen. Stat. § 5-270(b) and (g), which the Labor Board, the State and the Union have concertedly disregarded.

36. Plaintiffs – individually and collectively – are entitled to judicial review of the Decision pursuant to Connecticut law.

37. The Decision should be reversed because it is:

- (a) in violation of constitutional or statutory provisions,
- (b) in excess of the statutory authority of the Labor Board,
- (c) made upon unlawful procedure,
- (d) affected by other error of law,
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, and/or
- (f) arbitrary or capricious or characterized by an abuse of discretion, or a clearly unwarranted exercise of discretion.

38. The Decision has prejudiced the substantial rights of Plaintiffs and is improper under the standard articulated in Conn. Gen. Stat. § 4-183(j).

39. In holding that the issues raised in the Petition are not proper subjects for declaratory rulings, the Labor Board ruled that only the State and the Union have the right to enforce and/or seek a determination regarding the applicability of Conn. Gen. Stat. § 5-270(b), (f) and (g). Therefore, pursuant to the Labor Board’s Decision, because the State and the Union did not seek to have the Labor Board address these issues and

instead reached a politically motivated Agreement for Consent Election that blatantly contravenes the law, Plaintiffs are foreclosed as a matter of law from requesting declaratory rulings under the APA and/or the Labor Board's Regulations. This, however, is contrary to the clear and unambiguous language of the APA, *see* Conn. Gen. Stat. § 4-176(a), and it undermines the APA's settled purpose and expansive scope. *See Dept. of Pub. Util. Control*, 312 Conn. at 277.

40. In holding that Plaintiffs are “without standing” to bring their Petition, the Labor Board improperly conflated Plaintiffs' Petition for Declaratory Rulings – which “any person” may bring pursuant to the APA – with the Union's pending certification petition – a process that is statutorily confined to a Union, the Employer, the Labor Board and a statutorily specified rival union. *See* Conn. Gen. Stat. § 5-275(a). In doing so, the Labor Board expressly ruled that “the right to exclude ‘managerial’ employees as defined in Section 5-270(g) of the Act inures solely to the State and to the Union.” Decision at 3. This is clearly erroneous, however, as it effectively forecloses Plaintiffs (along with any other person) from ever asserting their right to request declaratory rulings on the application of Conn. Gen. Stat. § 5-270(b) and (g) to their “specified circumstances.” Conn. Gen. Stat. § 4-176(a).

41. In holding that Plaintiffs have no “standing” to even assert requests for declaratory rulings, the Labor Board has forced Plaintiffs Davis, Melchionne, Motherway and Fiske to make the Hobson's choice posed by the State at the informal conference of either (a) quitting their jobs or (b) refusing to join the union and paying the “agency” fee set forth in Conn. Gen. Stat. § 5-280(a). However, that statutorily prescribed “agency fee” must be “equal to the regular dues, fees and assessments that a member is charged,”

Conn. Gen. Stat. § 5-280(a), which violates black letter labor law and deprives Plaintiffs of their constitutionally protected freedoms of speech and association. *See Comm c'ns Workers of Am. v. Beck*, 487 U.S. 735, 762-63 (1988) (authorizes the exaction of only those fees and dues necessary to “performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues”); *see, e.g., NLRB v. Newspaper & Mail Deliverers' Union of N.Y. & Vicinity*, 644 Fed. Appx. 16, 19, 2016 U.S. App. LEXIS 5184, \*5 (2d Cir. 2016) (union failed to provide notice that “employees who are not full members do not have to pay the entire amount of dues that full members pay”).

42. The Labor Board’s decision to summarily “decline to issue declaratory rulings” requested by Plaintiffs and to thereby improperly include managerial and supervisory employees within the proposed bargaining unit substantially impacted the voting in the representation election, which, upon information and belief, ended up favoring the Union by a margin of 101 votes for the Union to 64 votes against the Union.

43. Plaintiffs request the opportunity to be heard on and to fully brief all their specific points of appeal under Conn. Gen. Stat. § 4-183(j), and they reserve their right to assert additional arguments in support of their appeal through such hearing and briefing.

WHEREFORE, Plaintiffs, respectfully request that this Honorable Court:

- 1) Reverse the Labor Board's Decision in Case No. SDR-32,403;
- 2) Enter the following declaratory judgments in favor of Plaintiff(s):
  - a) That Plaintiff Thomas J. Davis Jr., Esq. is a managerial employee within the meaning of Conn. Gen. Stat. § 5-270(g).
  - b) That Plaintiff Terrence M. O'Neill, Esq. is a managerial employee within the meaning of Conn. Gen. Stat. § 5-270(g) and a supervisory employee within the meaning of Conn. Gen. Stat. § 5-270(f).
  - c) That Plaintiff Madeline Melchionne, Esq. is a managerial employee within the meaning of Conn. Gen. Stat. § 5-270(g) and a supervisory employee within the meaning of Conn. Gen. Stat. § 5-270(f).
  - d) That Plaintiff Carmel Motherway, Esq. is a managerial employee within the meaning of Conn. Gen. Stat. § 5-270(g).
  - e) That Plaintiff Robert B. Fiske, III, Esq. is a managerial employee within the meaning of Conn. Gen. Stat. § 5-270(g).
  - f) That all Assistant Attorneys General employed by the Office of Attorney General are managerial employees within the meaning of Conn. Gen. Stat. § 5-270(g).
  - g) That all Assistant Attorneys General classified as AAG-3's employed by the Office of Attorney General are managerial employees within the meaning of Conn. Gen. Stat. § 5-270(g).
  - h) That all Assistant Attorneys General classified as AAG-4's employed by the Office of Attorney General are managerial employees within the meaning of Conn. Gen. Stat. § 5-270(g).

- i) That all AAG-4 Department Heads employed by the Office of Attorney General are supervisory employees within the meaning of Conn. Gen. Stat. § 5-270(f).
- 3) In the alternative, remand the Petition and order the Labor Board to conduct a hearing so that it can be presented with and assess the evidentiary facts necessary to determine whether Plaintiffs and other Assistant Attorneys General are managerial or supervisory employees within the meaning of Conn. Gen. Stat. § 5-270(f) and (g).
- 4) Vacate the results of the representation election in Case No. SE-32,388.
- 5) Vacate the certification of the Union as the collective bargaining representative of the bargaining unit proposed in the Agreement for Consent Election and adopted through the Decision.
- 6) Order the Labor Board to conduct a secret ballot election for an appropriate bargaining unit that properly excludes all managerial and supervisory employees.
- 7) Award Plaintiffs their reasonable attorneys' costs and fees under Conn. Gen. Stat. § 4-184a and as otherwise appropriate; and
- 8) Award such other relief as this Honorable Court deems just and proper.

Plaintiffs,

THOMAS J. DAVIS, JR., ESQ.; TERRENCE M. O'NEILL, ESQ.; MADELINE MELCHIONNE, ESQ.; CARMEL MOTHERWAY, ESQ.; AND ROBERT B. FISKE, III, ESQ.,

By their Attorneys,

/s/ Timothy C. Cavazza  
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(401) 270-4500  
(401) 270-3760 (fax)

**CERTIFICATION**

I hereby certify that on the 30th day of December, 2016, I served a copy of this document by certified mail, return receipt requested, to the following:

Connecticut State Board of Labor Relations  
c/o Katherine C. Foley, Agent/Director  
38 Wolcott Hill Road  
Wethersfield, CT  
06109

Patricia V. Low  
c/o Katherine C. Foley, Agent/Director  
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Wendella Ault Battey  
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AFT Connecticut, AFT, AFL-  
CIO c/o Brian A. Doyle, Esq.  
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35 Marshall Road  
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Matthew B. Beizer  
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/s/ Timothy C. Cavazza \_\_\_\_\_

STATE OF CONNECTICUT  
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF

DECISION NO. 4930

STATE OF CONNECTICUT  
OFFICE OF ATTORNEY GENERAL

NOVEMBER 16, 2016

-AND-

AFT CONNECTICUT, AFT, AFL-CIO  
Case No. SE-32,388

THOMAS J. DAVIS, JR. ET AL

-AND-

AFT CONNECTICUT, AFT, AFL-CIO  
Case No. SDR-32,403

ATTORNEY MATTHEW B. BEIZER

-AND-

AFT CONNECTICUT, AFT, AFL-CIO  
Case No. SDR-32,437

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

Attorney Lisa Grasso Egan  
Attorney Adam Garelick  
for the State

Attorney Brian A. Doyle  
for the Union

Attorney Timothy C. Cavazza  
for Thomas J. Davis, Jr., et al

Matthew B. Beizer  
Pro Se

**DECISION AND DENIAL OF REQUESTS FOR DECLARATORY RULING AND CERTIFICATION**

On August 29, 2016, AFT Connecticut, AFT, AFL-CIO (the Union) filed a petition (Case No. SE-32,388) with the Connecticut State Board of Labor Relations (the Labor Board) pursuant to the State Employee Relations Act (SERA or the Act) seeking certification as the exclusive representative of a proposed bargaining unit of employees consisting of all assistant attorneys general employed by the State of Connecticut, Office of the Attorney General (the State). On September 13, 2016, representatives of the State and the Union signed an Agreement for Consent Election that changed the description of the proposed bargaining unit<sup>1</sup> and provided for election by mail ballot between October 4 and October 18, 2016.

On September 13, 2016, Thomas J. Davis, Jr. (Davis), Terrance M. O’Neill, Madeline Melchionne, Carmel Motherway, and Robert B. Fiske III filed a petition<sup>2</sup> (Case No. SDR-32,403) for declaratory ruling seeking a determination that all or some of the employees at issue are managerial within the meaning of Conn. Gen. Stat. § 5-270(b)<sup>3</sup> and should be excluded from the proposed bargaining unit in Case No. SE-32,388. On October 3, 2016, Matthew B. Beizer filed a petition (Case No. SDR-32,437) for a declaratory ruling seeking a determination that he is a managerial employee and should be excluded from the proposed bargaining unit in Case No. SE-32,388.

Pursuant to the Agreement for Consent Election, an election by secret ballot was conducted by mail ballot between October 4, 2016 and October 18, 2016 to determine whether employees holding positions in the proposed bargaining unit desired to be represented for the purposes of collective bargaining by the Union. The tally of ballots was as follows:

Number of Ballots Cast .....	168
Number of Ballots Counted.....	165
Number of Votes <b>IN FAVOR of representation</b> .....	101
Number of Votes <b>NOT IN FAVOR of representation</b> .....	64
Number of Blank Ballots.....	0

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<sup>1</sup> The State and the Union agreed that the proposed unit would consist of “[a]ll Assistant Attorneys General excluding Attorney General 4/Dept. Heads, one Assistant Attorney General specializing in labor relation matters, one special counsel specializing in legislative affairs, Associate Attorney Generals, Attorney General, Deputy Attorney General”.

<sup>2</sup> Davis hand-delivered the petition to Labor Board Agent, Katherine C. Foley, prior to the informal conference Foley conducted that day in Case No. SE-32,388 and Davis attended the conference as an observer. At some point during the conference, the State and the Union signed the Agreement for Consent Election.

<sup>3</sup> Conn. Gen. Stat. § 5-270(b) states, in relevant part:

“Employee means any employee of a [ State] employer . . . except . . . managerial employees . . .

Number of Void Ballots .....	3
Number of Challenged Ballots .....	0

Copies of the Report Upon Secret Ballot were duly served upon the State and the Union. No exceptions to the report or objections to the election were filed with the Labor Board.

On October 26, 2016, the parties to Case Nos. SE-32,388, DSR-32,403, and SDR-32,437 submitted briefs on the following issues<sup>4</sup>:

Give the pendency of Case No. SE-32,388,

- (1) are the issues raised in Case Nos. SDR-32,403 and SDR-32,437 proper subjects for declaratory rulings pursuant to Sec. 5-273-39 of the Labor Board’s regulations and if so,
- (2) do the petitioners in Case Nos. SDR-32,403 and SDR-32,437 have standing to raise such issues?

On November 4, 2016 the parties submitted reply briefs.

Based on the record before us, we decline to issue the requested declaratory rulings and we certify the Union as the collective bargaining representative of the proposed unit.

### DISCUSSION

After reviewing the submissions and the arguments of the parties, we find that exclusion of positions from a proposed bargaining unit is not properly addressed through declaratory rulings sought by individual employees during the pendency of a representation petition under Section 5-275(a) of the Act. Unit determination issues are necessarily addressed by the Labor Board and the parties in representation petition proceedings and we construe SERA as limiting the parties in such cases to the employer and the petitioning employee organizations(s). In reaching this conclusion we note that the legislature amended Conn. Gen. Stat. § 5-275(c) to expressly restrict our authority to clarify or to modify existing units to “those times when a petition . . . is filed by *either an employee organization or an employer.*” Public Acts 1991, No. 91-255, § 1. As such, we find that the issues raised in Case Nos. SDR-32,403 and SDR-32,437 are not proper subjects for declaratory rulings given the pendency of Case No. SE-32,388. Furthermore, we also find that the right to exclude “managerial” employees as defined in Section 5-270(g) of the Act inures solely to the State and to the Union in this context and that the individual employee petitioners are without standing to exercise this right on behalf of those parties.

We decline to issue declaratory rulings in Case Nos. SDR-32,403 and SDR-32,437.

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<sup>4</sup> By email to all counsel and Beizer on October 14, 2016, the Labor Board gave notice that it had established a schedule for the parties to submit briefs on these issues.

Therefore, 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,

**CERTIFIED**, that American Federation of Teachers Connecticut, AFT, AFL-CIO has been selected as the representative for the purposes of collective bargaining by the majority of all Assistant Attorneys General excluding Attorney General 4/Dept. Heads, one Assistant Attorney General specializing in labor relations matters, one special counsel specializing in legislature affairs, Associate Attorneys General, the Attorney General, and the Deputy Attorney General and that said AFT Connecticut, AFT, AFL-CIO is the exclusive representative of all said employees for the purposes of collective bargaining with respect to wages, hours and other conditions of employment..

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Patricia V. Low  
Patricia V. Low  
Chairman

Wendella Ault Battey  
Wendella Ault Battey  
Board Member

Barbara J. Collins  
Barbara J. Collins  
Board Member

