On November 21, 1980, Local 269, Council #4, American Federation of State, County and Municipal Employees, AFL-CIO (the Union) filed with the Connecticut State Board of Labor Relations (the Board) a complaint alleging that the State of Connecticut (the State) had engaged and was engaging in practices prohibited by Section 5-272(a)(4) of the Act Concerning Collective Bargaining for State Employees (the Act) in that the State refused to hear a grievance filed by the Union on behalf of a bargaining unit member.

After the requisite preliminary steps had been duly taken the matter came before the Board for a hearing on June 22, 1981. The parties appeared at the hearing, were represented, and were fully heard. The Union filed a written brief.

On the basis of the whole record before us, we make the following findings of fact, conclusions of law and order.

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 material times has been the exclusive bargaining representative for the Social and Human Services Bargaining Unit (P-2) consisting in part of Employment Security Interviewers and Employment Security Aides employed by the State's Department of Labor.

3. On September 16, 1980, Constance Lockwood, an Employment Security Aide and a member of the bargaining unit, filed a grievance through the Union alleging that she had been performing the duties of an Employment Security Interviewer in violation of Article XXXI, Section 5, of the collective bargaining agreement in effect between the parties (the Contract). The grievance was signed by Lockwood and Union steward Patricia Cogswell.

4. The Contract provides for a four step grievance procedure culminating in arbitration.
5. The Contract contains a grievance procedure, which at Article XV, Section 3, provides as follows:

Section Three. A Union representative, with or without the aggrieved employee, may submit a grievance and the Union may in appropriate cases submit an "institutional" or "general" grievance in its own behalf. When individual employee(s) or in case of a class grievance, a group of employees elect(s) to submit a grievance without Union representation, the Union representative or steward shall be notified of the pending grievance, shall be provided a copy thereof, and shall have the right to be present at any discussion of the grievance, except that if the employee does not wish to have the steward present, the steward shall not attend the meeting but shall be provided with a copy of the written response to the grievance. The steward shall be entitled to receive from the employer upon request all documents furnished to the grievant pertinent to the disposition of the grievance and to file statements of position. Any adjustment of a grievance filed by an employee(s) without representation shall not be inconsistent with the terms of this Agreement.

6. Lockwood's grievance was denied by the State at both the first and second steps of the grievance procedure.

7. The grievance was appealed to the third step and on October 15, 1980, Sandra Biloon, Director of Personnel and Labor Relations for the State, notified the Union that a Step III hearing for Lockwood was scheduled for November 7, 1980 at 10:00 a.m.

8. Sometime prior to the November 7, 1980 hearing date, Cogswell was informed by Eleanor Smarz, Lockwood's supervisor, that Lockwood had written a note expressing her desire to withdraw the grievance.

9. Cogswell spoke to Lockwood who admitted she had written a note to withdraw the grievance. In this conversation, Lockwood told Cogswell, "I have been very nervous and I can't sleep at night."

10. Cogswell then contacted George DeMartino, the Union staff representative, and apprised him of Lockwood's desire to withdraw the grievance. Cogswell and DeMartino decided that, despite Lockwood's newly developed view on the matter, they would appear on November 7, 1980 at the Third Step hearing and present Lockwood's case.

11. On November 7, 1980, Cogswell and DeMartino appeared at the State's Office of Labor Relations to present the grievance. Frank Bochniewicz, Acting Personnel Director for the Office of Labor Relations, was present to present management's side of the grievance. Theodore Sulla, Labor Relations Specialist for the State, was present to hear the grievance, the presentations, and rule on the grievance.

12. At the outset of the Step Three hearing, Bochniewicz presented Lockwood's note expressing her desire to withdraw the grievance and argued that the grievance hearing should therefore not go forward.

13. Sulla agreed, over the Union's objections, that the hearing should not go forward. He based his decision in substantial part upon Lockwood's desire to withdraw the grievance as evidenced by her note to that effect. His decision was also based upon the fact that Lockwood was not present to testify and had not filled out a job duties questionnaire and therefore, in his opinion, "he would have no facts to evaluate whether or not there is a reclassification warranted."

Conclusions of Law

1. A grievance filed through an exclusive bargaining representative may not be withdrawn by the individual grievant without the consent of the bargaining agent. The employer's refusal to hear and decide such a grievance on its merits, over the objections of the bargaining agent, is prohibited by Section 5-272(a)(4) of the Act.

2. The failure and refusal of the State to hear the grievance of Constance Lockwood and its failure and refusal to issue a decision on the merits of the grievance constitutes a violation of Section 5-272(a)(4) of the Act.
Discussion

This case presents the question of whether an employer may refuse to hear a union grievance when the employee who originally filed the grievance has expressed her intention to withdraw it, but the union still wishes to have the grievance heard. The Union claims that the employer's refusal to hear a grievance under these circumstances constitutes a violation of Section 5-272(a)(4) of the Act which provides:

Employers or their representatives or agents are prohibited from... refusal to bargain collectively in good faith with an employer organization which has been designated in accordance with the provisions of said sections as the exclusive representative of employees in an appropriate unit, including, but not limited to, refusing to discuss grievances with such exclusive representatives.

It is familiar law that the exclusive bargaining representative is vested with statutory authority and considerable discretion to determine whether a grievance will be processed. * Vaca v. Sipes, 386 U.S. 171 (1967); City of Hartford (Police) (Clarence Hyde), Decision No. 1085 (1972); City of New Britain (Fire) (Henry Kosinski), Decision No. 1131 (1973). The cited cases concern the situation where the employee wished to have his grievance processed, but the union, having made a good faith determination that the grievance was without merit, refused to process it. The present case presents a reverse situation. We believe that the purposes of the Act require that the exclusive bargaining representative have control over the decision to process or not process the grievance in either situation.

The statutory scheme of the Act is that wages, hours and conditions of employment will be determined through collective bargaining where the employees of an appropriate unit have decided through the representation procedures of the Act that they wish to have an exclusive bargaining representative. Once an exclusive bargaining representative has been selected, the employer commits a prohibited practice by bypassing the exclusive representative and bargaining with an individual employee. J. L. Case Co. v. NLRB, 321 U.S. 332 (1944); Board of Education of the City of Hartford, Decision No. 1376 (1977), aff'd in Hartford Board of Education v. Connecticut State Board of Labor Relations, 144 Conn. (Superior Court, Hartford) 514, 144 A.2d 1085 (1978). The processing of grievances is as much a part of the collective bargaining process as negotiations for a new collective bargaining contract. United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); Curtis Wight Corp., Wight Aeron. Div. v. NLRB, 347 F.2d 61 (CA 3 1965); Morris (ABA) The Developing Labor Law 319 (1971). These rules of law are incorporated by clear and express language in Section 5-272(a)(4) of the Act. We think Section 5-272(a)(4) reflects a realistic understanding that an individual employee may be more subject to real or imagined pressures to withdraw a grievance than is the union. The rule also recognizes that the disposition of union grievances often sets precedents which may influence the rights of other employees in the future and thus the withdrawal of a grievance is of importance to the broader constituency represented by the union.

The State rejects this interpretation of the Act. It argues that Section 5-271(d) controls the present case. This argument is clearly incorrect. Section 5-271(d) is an exception which is applicable only where an individual employee chooses to file his grievance on his own rather than through his exclusive bargaining representative. The effect is to give the employee the right to file his grievance himself, thus bypassing the exclusive representative. By its text, the State would have the rule swallowed whole by what is clearly intended to be a limited exception.

* We do not mean to imply here that Lockwood believed her grievance to be without merit. There is nothing in the record to support such an inference. The record shows only that Lockwood had become nervous and had difficulty sleeping for some reason apparently connected with her grievance.

** Section 5-271(d) states: "An individual employee at any time may present a grievance to his employer and have the grievance adjusted, without intervention of an employee organization, provided the adjustment shall not be inconsistent with the terms of the collective bargaining agreement then in effect. The employee organization designated as the exclusive representative shall be given prior notice of the grievance and shall be notified of the settlement."
The State has also argued that the true reason Sulla refused to hear the grievance was a lack of evidence by the Union to support its case (i.e., the grievant was not present to testify and a usually required questionnaire on job duties was not presented). Surely a lack of evidence by the Union to support its claim would constitute a legitimate basis for the State to deny the grievance on its merits, but it provides no justification for refusing to permit the Union to present its case. The evidence demonstrates that Sulla's refusal to hear the grievance was based at least in substantial part upon Bochniewicz's representation and argument that Lockwood had requested withdrawal of the grievance. In accepting that argument and thereby refusing to hear the grievance, the State violated Section 5-272(a)(4) of the Act.

ORDER,

By virtue of and pursuant to the powers vested in the Connecticut State Board of Labor Relations by the Act Concerning Collective Bargaining for State Employees, it is hereby

ORDERED, that the State of Connecticut

I. Cease and desist from its failure and refusal to hear and decide the grievance of Constance Lockwood and from its failure and refusal to issue a decision on the merits of said grievance after a hearing.

II. Take the following affirmative action which the Board finds will effectuate the purposes of the Act:

(a) Upon demand by the Union, hear and decide the grievance of Constance Lockwood;

(b) Post immediately in conspicuous places where members of the P-2 bargaining unit customarily assemble to read notices, and leave posted for a period of sixty (60) consecutive days from the date of posting, a copy of this Decision and Order in its entirety; and

(c) Notify the Connecticut State Board of Labor Relations office in the Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut, within thirty (30) days of the receipt of this Decision and Order of the steps taken by the State of Connecticut to comply therewith.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

By, ____________________________

s/ Kenneth A. Stroble

Kenneth A. Stroble

s/ Patricia V. Low

Patricia V. Low