On September 21, 2005 CSEA, SEIU, Local 2001 (the Union) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board), amended on April 11, 2007 alleging that the State of Connecticut (the State) had violated § 5-272 of the State Employee Relations Act (SERA or the Act) by negotiating directly with employees concerning seniority benefits.

After the requisite preliminary steps had been taken, the matter came before the Labor Board for a hearing on April 12, 2007. Both parties appeared, were represented and allowed to present evidence, examine and cross-examine witnesses and make argument. The parties submitted a partial stipulation of facts. The parties filed post-hearing briefs the last of which was received on June 4, 2007. 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 pursuant to the Act.

2. The Union is an employee organization pursuant to the Act and at all material times has represented a bargaining unit of Correction Supervisors known as the NP-4 unit.

3. The State and the Union are parties to a collective bargaining agreement with effective dates of July 1, 2005 through June 30, 2008. (Ex. 7). The prior collective bargaining agreement between the parties had effective dates of December 3, 2001 through June 30, 2005. (Ex. 6). Both the current and predecessor collective bargaining agreements contain provisions that address the impact of seniority on certain benefits such as bid shift selection, transfer rights and vacation selection. Both the 2001 - 2005 and the 2005 - 2008 collective bargaining agreements state:

ARTICLE 15 – SENIORITY
Section 1. Seniority will be considered for all purposes other than those defined in Section Two as total service in an employee current classification. A tie in seniority under this section would be determined based on total state service and if still tied by lowest employee number.
Section 2. For purposes of computing layoff, longevity and leave accruals, seniority shall be defined as total state service in addition to any credited war service.

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4. In the fall of 2003, Wanda Dunmore (Dunmore) was a Correction Officer in the Department of Correction (DOC) and a member of the Correction NP-4 unit.

5. Dunmore applied and was interviewed for promotion to Correction Lieutenant but was not selected for the promotion to that title on October 17, 2003. Dunmore was notified of the decision by letter dated October 24, 2003. (Ex. 8).

6. Dunmore filed a complaint with the Commission on Human Rights & Opportunities (CHRO) alleging that the promotion denial was due to race and gender discrimination on December 10, 2003. (Ex. 9).

7. There were two Correction Officers promoted to Lieutenant positions in the Central Office and the Training Academy on January 9, 2004 and February 2, 2004, respectively.

8. Pursuant to the CHRO procedures, a conciliation conference was held on March 1, 2004 with Dunmore and representatives of DOC. (Ex. 10).
9. Effective March 5, 2004 Dunmore and about 15 other Correction Officers were promoted to Correctional Lieutenant. (Ex. 11).

10. In May 2004, an agreement resolving the CHRO complaint was reached between DOC and Dunmore, which granted her promotion to Lieutenant retroactive to February 13, 2004. (Ex. 12 – 14). Dunmore had worked as an “acting Lieutenant” from February 13, 2004 until March 4, 2004 but had not been paid as a Lieutenant during that time.

11. By memo dated June 4, 2004 (Ex. 14) Union President Cathy Osten (Osten) was notified of Dunmore’s settlement agreement and the new promotion date.

12. Dunmore completed her working test period as Lieutenant and attained permanent status on August 12, 2004. (Ex. 15).

13. The change in Dunmore’s promotion date placed her ahead of the Lieutenants promoted in January and February 2004 for purposes of seniority.

**CONCLUSION OF LAW**

1. The State did not violate the Act when it entered into a CHRO settlement agreement with Dunmore that did not conflict with the State’s obligations pursuant to SERA.

**DISCUSSION**

In this case the Union claims that the State violated the Act by bargaining directly with a member of the bargaining unit concerning a mandatory subject of bargaining and in doing so, granted that member a benefit not available to other members of the bargaining unit. Specifically, the Union alleges that the State credited bargaining unit member Dunmore for time she had worked as an acting Lieutenant for purposes of calculating her seniority; a calculation not allowed by the parties’ collective bargaining agreement and not negotiated with the Union.

The State makes several arguments. First, it claims that it did not calculate seniority by including time as an acting Lieutenant. Instead, Dunmore was actually promoted retroactively and as such, the collective bargaining agreement requires that she be credited with seniority from the beginning of her time in that classification. Further, the State argues that promotions are excluded from collective bargaining by §5-272(c) and (d) of the Act. Finally, the State contends that the Union waived any right to bargain about this issue by waiting 15 months to file the complaint during which time a successor collective bargaining agreement was finalized. In this case, we agree with the State for the following reasons.

It is well settled that an employer may not bargain directly with employees concerning mandatory subjects of bargaining. *West Hartford Education Association*
v. DeCourcy, 162 Conn. 566 (1972); State of Connecticut, Decision No. 2368 (1985); State of Connecticut, Decision No. 2786 (1990). Even in the context of lawsuits or other actions filed by individuals against employers outside the collective bargaining arena, we have consistently held that settlements of such matters must take into consideration the employer’s collective bargaining obligations. An employer cannot ignore its contractual or collective bargaining obligations simply because it desires to avoid liability in another arena. Town of Winchester, Decision No. 3430 (1996); State of Connecticut, Decision No. 3575 (1998). As such, although an employer is free to negotiate an individual settlement of a lawsuit or the like, it must do so with a mind toward its responsibilities under the collective bargaining statutes.

In this case, the settlement of Dunmore’s CHRO claim does not implicate the State’s collective bargaining obligations and, as such, does not violate the Act. In this regard the settlement did not violate any contractual provision nor was it contrary to the parties’ practice of not counting “acting” time when making promotions. The Union admits that the State is free to determine when to make promotions without bargaining with the Union. In the case of Dunmore, the State determined that she should have been fully promoted as of February 13, 2004 and changed her promotion date to reflect that decision. Dunmore’s full promotion on that date gave her more seniority in the lieutenant classification than others promoted after her. This is different than crediting an employee with seniority based on “acting” status.

The above reasoning also applies to the Union’s argument that the State must negotiate the impact on others of Dunmore’s settlement agreement. The only impact of the settlement agreement is that it placed Dunmore ahead of others in seniority, which is in keeping with the contractual provision regarding seniority. The settlement agreement did not effectuate a change in others’ conditions of employment that required bargaining. Classification seniority is always impacted by the date of promotion under this particular collective bargaining agreement. The Dunmore agreement did not change that system. As such, there is no bargainable impact in this case.
ORDER

By virtue of and pursuant to the powers 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

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 28th day of November, 2007 to the following:

Attorney Robert J. Krzys
557 Prospect Avenue
Hartford, CT 06105-2922

Attorney Ellen M. Carter
Office of Policy, Management, and Labor Relations
450 Capitol Avenue
MS#53OLR
Hartford, CT 06106-1308

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Jaye Bailey, General Counsel
CONNECTICUT STATE BOARD OF LABOR RELATIONS