In the matter of

STATE OF CONNECTICUT
DEPARTMENT OF CHILDREN & FAMILIES
-and-
DALE H. KING

Case No. SPP-33,234

Decision No. 5062

Appealed to New Britain Superior Court on 05/16/19
Docket No. CV19-6052674-S

CASE WITHDRAWN ON JANUARY 8, 2020

In the matter of

DALE H. KING
-and-
CONNECTICUT STATE BOARD OF LABOR RELATIONS

Case No. SPP-33,234

Decision No. 5062

Appealed to New Britain Superior Court on 05/23/19
Docket No. CV19-6052882-S

CASE WITHDRAWN ON JANUARY 13, 2020

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF

STATE OF CONNECTICUT
DEPARTMENT OF CHILDREN & FAMILIES

-AND-

DALE H. KING

Case No. SPP-33,234

2nd
CORRECTED COPY[1]

DECISION NO. 5062

APRIL 23, 2019

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

Attorney Adam Garelick
for the State

Dale H. King
Pro Se

DECISION AND ORDER

On June 12, 2018, Dale H. King (the Complainant) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the State of Connecticut Department of Children and Families (the State) had violated the State Employee Relations Act (SERA or the Act) by failing to fully comply with an arbitration award in a disciplinary matter affording him make whole relief.[2]

[1] Decision No. 5062 originally issued on April 11, 2019. This corrected copy issues pursuant to Conn. Gen. Stat. § 4-181a(c) for the sole purpose of correcting a clerical error appearing on page 2 of the original decision and corrects the error by substituting the term "P-5" for the language "social and human services (P-2)" on page 2, numbered paragraph 2.

[2] Section 5-272(a)(4) states, in relevant part:

> (a) Employers or their representatives or agents are prohibited from . . . (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 . . .

Although SERA, unlike the Municipal Employee Relations Act, does not expressly designate failure to comply with a grievance resolution as a prohibited practice, we have long held that such conduct amounts to refusal to bargain in good faith as set forth in section 5-272(a)(4) and thus a violation of the Act. *See* ***State of Connecticut, Office of Labor Relations***, Decision No. 2947 (1991).

After the requisite preliminary administrative steps had been taken, the matter came before the Labor Board for a hearing on August 29, 2018 and October 22, 2018. All parties appeared, were represented, and were allowed to introduce evidence, examine and cross-examine witnesses and make argument. All parties submitted post-hearing briefs, the last of which was filed on February 1, 2019. Based on the entire record before us, 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 Administrative & Residual Employees Union Local 4200-AFT/AFT CT, AFL-CIO (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. The State and the Union are parties to a collective bargaining agreement (Ex. 4) with effective dates of July 1, 2011 through June 30, 2016 and that provides, in relevant part:

> **ARTICLE 14**
> **DISMISSAL, SUSPENSION, DEMOTION OR OTHER DISCIPLINE**
>
> **Section One** . . .
>
> (b) No permanent employee in the classified service . . . shall be dismissed except for just cause.
> . . .
>
> **ARTICLE 15**
> **GRIEVANCE PROCEDURE**
>
> **Section One. Definition. Grievance.** A grievance is defined as, and limited to, a written complaint involving an alleged violation or a dispute involving the application or interpretation of a specific provision of this Agreement . . .
> . . .
>
> **Section Six. The Grievance Procedure.**
> . . .
>
> **Step II. The Office of Labor Relations** . . . An unresolved grievance may be appealed to the Director of Labor Relations . . .
>
> **Step III Arbitration**. [A]n unresolved grievance may be submitted to arbitration by the Union or by the State, but not by an individual employee(s) except that individual employees may submit to arbitration in cases of dismissal . . .

Section Nine. Arbitration. (a) . . .

. . .

On grievances when the question of arbitrability has been raised by either party as an issue prior to the actual appointment of an arbitrator a separate arbitrator shall be appointed at the request of either party to determine the issue of arbitrability . . .

. . .

(c) The arbitrator shall have no power to add to, subtract from, alter, or modify this Agreement, nor to grant to either party matters which not obtained in the bargaining process . . .

The arbitrator's decision shall be final and binding on the parties in accordance with C.G.S. Section 52-418, provided, however, neither the submission shall be deemed to diminish the scope of judicial review over arbitral awards, including awards on competent jurisdiction to construe any such award as contravening the public interest.

. . .

ARTICLE 35
RETIREMENT

The terms and conditions of employee retirement benefits are contained in a separate Agreement between the State and Union.

. . .

4. At all times relevant hereto, Complainant was an attorney admitted to practice law in Connecticut. Complainant entered the State's employ in 2001 and in 2004, became a Staff Attorney 3 in the Department of Children and Families (DCF), a classified service position in the P-2 bargaining unit.

5. By letter (Ex. 5A) to Complainant dated January 7, 2014, DCF human resources director Eileen Meehan (Meehan) stated, in relevant part:

> This letter provides notice of your termination as a Staff Attorney 3 from the State of Connecticut, Department of Children and Families effective January 31, 2014, close of business.
>
> The findings of two separate investigations have substantiated that you engaged in multiple acts of misconduct, violation of policies and/or neglect of your duties . . .
>
> You have the right to appeal this action in accordance with your collective bargaining agreement . . .

6. By grievance filed on or about January 21, 2014, the Union alleged that Complainant was dismissed without just cause and requested Complainant's reinstatement and make whole relief. (Ex. 5, 13).

7. By letter (Ex. 5C) to DCF dated January 29, 2014, Complainant stated, in relevant part:

> Enclosed you will find the following signed documents:
>
> 1) Application for Retirement Benefits,
> . . .
>
> I have been discharged from employment at DCF effective at the close of business on Friday, January 31, 2014. I have filed for an expedited step 2 hearing regarding my dismissal. The foregoing submitted on the condition that my subsequent retirement will not have any impact on my ability to challenge the termination of employment.
> . . .

8. By memorandum (Ex. 5D) to the Union dated February 11, 2014, Office of Labor Relations (OLR) specialist Diane Fitzpatrick stated, in relevant part:

> This grievance is denied . . . The Union should be advised that the State will be bifurcating this issue. The State will argue arbitrability on the basis that the Grievant has retired.

9. On June 25, 2014, Arbitrator Susan E. Halperin (Halperin) conducted an arbitration hearing on arbitrability and by arbitration award (Ex. 5E) dated October 6, 2014, Halperin stated, in relevant part:

> **STIPULATED ISSUE**
>
> Is the grievance arbitrable?
>
> . . .
>
> **RULING AND AWARD**
>
> The grievance is arbitrable as discussed herein.
>
> The merits of the case should forthwith be scheduled for arbitration on the merits in accordance with the collective bargaining agreement.

10. On seven dates in 2014-2015, Arbitrator Jeffrey M. Selchick (Selchick) conducted a hearing on the merits and by arbitration award (Ex. 5F) dated May 18, 2016, Selchick stated, in relevant part:

> **ISSUES**
>
> The parties stipulated to the following issues to be determined by the Arbitrator:

1. Was the Grievant dismissed for just cause as set out in letter dated 1/17/14?

2. If not, what shall the remedy be consistent with the terms of the P-5 contract?

. . .

POSITION OF THE STATE

The State takes note of the fact that the Grievant retired from State service prior to the effective date of his termination. The State claims that the remedy of reinstatement sought by the grievance is a "remedy" that is "not within the purview of this Arbitrator due to the fact that Grievant is retired and was retired prior to the State taking the dismissal action" . . .

. . .

OPINION

Remedy

Because the Arbitrator has found that Grievant was terminated without just cause, he must next address the question of Remedy. This question is a thorny one because of Grievant's retirement. Typically, when no just cause basis exists for discharge, arbitrators reinstate the employee and issue a make whole Award. Grievant's retirement, however, does not permit the Arbitrator automatically to direct the State to reinstate him to the position he occupied when he retired, which retirement occurred before the point in time the State identified as the effective date of termination.

. . .

The Arbitrator finds . . . that the Grievant would not have retired but for the State's decision to terminate him – a decision found in this proceeding to be lacking in just cause. . .

Implicit in the finding that Grievant would not have retired but for the State's decision to terminate him is the practical motivation Grievant had to retire, faced as he was with the loss of the wages associated with his position for some uncertain period of time. It is reasonable to conclude that, to the extent Grievant has experienced a financial loss because of the State's decision to terminate him; that the loss is solely due to the termination decision itself. Under these circumstances, the Arbitrator finds that a make whole remedy is consistent with the notion of just cause and, by virtue of the inclusion of just cause language in the parties' Agreement, consistent with the authority of the Arbitrator under all of the provisions of the Agreement.

The make whole remedy's starting date is the date Grievant was taken off the State's payroll. Its ending date will be 90 days after the date of this Award. The 90 day period is in recognition of the need to fashion an Award that is reasonable under the circumstances – it cannot be for an indefinite period – and the 90 day period will give Grievant a reasonable opportunity, if that is his

desire, to apply to the State Retirement System or some other forum for reinstatement to his position . . .

AWARD

Grievant was not dismissed for just cause as set out in the letter dated 1/17/14 and is entitled to a make whole Remedy.

The starting date for the make whole Remedy is the date Grievant was taken off the State's payroll. Its ending date will be 90 days after the date of this Award. As Remedy, Grievant shall be paid the difference between the salary Grievant would have received during the period of time encompassed by the make whole Award less the retirement benefits he did receive and any earnings received from other sources. Additionally, Grievant is entitled to be reimbursed, for the same period of time, for the loss of any other benefits, such as health insurance benefits, based upon his submission of proper documentation.

Further, if Grievant does return to his active State employment, it shall be without loss of seniority or any other contractual benefits.

11. By letter (Ex. 5G) to Meehan dated June 28, 2016, Complainant stated, in relevant part:

> I understand . . . that the agency's interpretation of the arbitration decision does not include returning me to work . . . I do not agree . . .
>
> Therefore, I would like to afford the agency this opportunity to put me back to work at my job . . . I am ready, willing and able to continue working for the state. I believe a writ of mandamus is appropriate and in the alternative, an action for declaratory judgment will resolve this issue . . .

12. By complaint dated July 27, 2016, Complainant commenced a civil action[3] (Mandamus I) in Superior Court against DCS and OPM for a writ of mandamus[4] to compel his reinstatement to his former Staff Attorney 3 position. DCF and OPM filed a motion to dismiss the case and by memorandum (Ex. 5J) dated April 4, 2017, the court, Cole-Chu, J., granted the motion stating, in relevant part:

> The court finds that the complaint . . . seeks adjudication of whether [Complainant's] election to receive pension benefits after termination prevents him from continuing his employment . . .

[3] ***King v. Katz, et al.***, Superior Court, judicial district of New London, Docket No. KNL-CV16-6027643-S (April 4, 2017).

[4] A writ of mandamus "is proper only when (1) the law imposes on the party against whom the writ would run a duty the performance of which is mandatory and not discretionary; (2) the party applying for the writ has a clear legal right to have the duty performed; and (3) there is no other specific adequate remedy . . ." ***Cook-Littman v. Board of Selectmen of Town of Fairfield***, 328 Conn. 758, 767 n. 9 (2018).

. . . The State Employees Retirement Commission (SERC) controls the general administration and operation of the state employees' retirement system, and conducts all business and activities in that system. General Statutes § 5-155a (a), (c). A retiree may petition the SERC pursuant to General Statutes § 4-176(a) for a declaratory ruling . . .

. . . Mindful that state law generally provides a comprehensive administrative scheme for dealing with state employees' claims concerning their employment, their conditions of employment, and their retirement status and benefits, the court concludes that [Complainant] had a duty to exhaust his administrative remedy or remedies with the SERC before bringing this action . . .

. . . [Complainant] is permitted to petition the SERC with regard to the applicability of the provisions of the retirement act to his specified circumstances, namely, in essence, whether his post-termination election to receive pension benefits prevents him from undoing that election and going back to work.

For the foregoing reasons . . . the defendants' motion to dismiss is granted . . . (footnote and citations omitted).

13. On or about April 13, 2017, Complainant filed a petition with the State Employees Retirement Commission (SERC) seeking a declaratory ruling that a state employee who receives pension benefits after being terminated without just cause is not precluded from being reinstated. On September 21, 2017, SERC issued a Decision and Declaratory Ruling (Ex. 5K) that states, in relevant part:

CONCLUSIONS OF LAW

A. There is no prohibition within the statutes, regulations and other rules governing the State Employees Retirement Act on reinstatement after retirement.

. . .

B. [SERC] is without jurisdiction to rule with respect to whether [Complainant] is entitled to be reinstated.

[SERC] was not [Complainant's] employer. Whether [Complainant] is entitled to, or should be reinstated, is beyond the scope of [SERC's] jurisdiction, and instead, is governed by the appropriate collective bargaining agreement, as well as the State Personnel Act (Conn. Gen. Stat. § 5-193 *et seq.*), which appears to leave such determination within the jurisdiction of other state departments or offices.[Footnote omitted.]

. . .

DECLARATORY RULING

By virtue of and pursuant to the powers vested in the Connecticut State Employees Retirement Commission by the State Employees Retirement Act, the Commission issues the following limited declaratory ruling:

There is no provision of the State Employees Retirement Act which precludes a state union employee who elects to receive, and receives, pension benefits after being terminated from employment without just cause from being reinstated to State employment.

14. On October 11, 2017, Complainant commenced a new civil action[5] (Mandamus II) in Superior Court against DCF and OPM for a writ of mandamus to compel his reinstatement based on the Selchick award and the SERC declaratory ruling. DCF and OPM filed a motion to dismiss the case[6] and by memorandum (Ex. 5N) dated June 5, 2018, the court, Frechette, J., granted the motion stating, in relevant part:

> In the present case, the arbitration award ruled that [Complainant's] employment should be restored unless his election to receive pension benefits after termination prevents him from reinstatement to his employment. [SERC] issued a declaratory ruling that an employee receiving pension benefits after termination is not precluded by the State Retirement Act from reinstatement to state employment, and therefore [Complainant] could have been reinstated. [Complainant] was required to exhaust his administrative remedy before the [Labor Board] for enforcement of the arbitration award for purposes of his reinstatement. "The failure to comply with a grievance decision is . . . implicitly a prohibited practice under SERA, and prohibited practices generally are entrusted to the SBLR." [***Turner v. State Department of Mental & Addiction Services,*** Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-15-6026331-S (August 5, 2016, *Povodator, J.*)]
>
> Accordingly, the defendants' motion to dismiss is hereby granted due to lack of subject matter jurisdiction on that ground that [Complainant] failed to exhaust his administrative remedies.

CONCLUSIONS OF LAW

1. A State employer's failure or refusal to comply with a valid arbitration award is a prohibited practice under 5-272(a)(4) of the Act.

2. The State failed to comply with the arbitration award in OLR File No. 16-4775.

DISCUSSION

In this case, Complainant contends that the State has violated the Act by failing to comply with an arbitration award. Specifically, Complainant contends that SERC expressly ruled that reinstatement after retirement is not prohibited and that Selchick's

[5] ***King v. Katz, et al.***, Superior Court, judicial district of New London, Docket No. KNL-CV17-6031581-S (June 5, 2018).

[6] DCF and OPM argued that Complainant "was required to exhaust his administrative remedy before [the Labor Board] for enforcement of the prior arbitration award for purposes of his reinstatement rather than bringing this mandamus action, assuming reinstatement could be based on that award only, as supplemented by the declaratory ruling the award was conditioned on." (Ex. 5M).

award requires reinstatement unless prohibited by the State's retirement system. The State contends that Selchick's award does not require reinstatement, that Complainant failed to commence a statutory proceeding to vacate, to modify, or to correct the arbitration award, and that Complainant should be treated like any other voluntary retiree. Given the record before us, taken as a whole, we find that the State has not complied with Selchick's award and we order Complainant's reinstatement to his former position.

Our standard for ascertaining compliance with arbitration awards is well-established.

> When a party claims that there has been a refusal to comply with an arbitration award we will interpret the award to ascertain what it requires and then determine whether the respondent has compiled with those requirements. ***State of Connecticut*, *Office of Policy and Management***, Decision No. 4610 (2012); ***Town of Middlebury***, Decision No. 4603 (2012); ***City of Bridgeport***, Decision No. 4602 (2012); ***Town of Enfield***, Decision No. 4461 (2010); ***City of Willimantic***, Decision No. 1795 (1979). 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 as valid defenses. ***Town of Wallingford***, Decision No. 3807 (2001); ***Town of Stratford***, Decision No. 3277 (1995); ***City of New Haven***, Decision No. 3060 (1992); ***Town of Newington***, Decision No. 2957 (1991); ***Weston Board of Education***, Decision No. 2678 (1988); ***Hartford Board of Education***, Decision No. 2683 (1988). Nor is it our function to relitigate or second guess the merits of grievance decisions. 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); ***City of Waterbury***, Decision No. 2195 (1983). As such, our analysis " 'only looks to the language of the settlement' or in this case, the arbitration award." ***Town of Enfield***, *supra* at p. 11 (*quoting* ***City of Waterbury***, Decision No. 3593 (1998). If we find there has not been compliance, we will find a violation of the Act. ***Town of Westbrook***, Decision No. 4687 pp. 5-6 (2013); ***State of Connecticut, Department of Correction***, Decision No. 4475 (2010).

Town of East Hartford, Decision No. 4907, p. 10 (2016), *see also* ***State of Connecticut*, *Department of Children and Families***, Decision No. 5020 (2018); ***City of Waterbury***, Decision No. 5009 (2018); ***Hartford Board of Education***, Decision No. 4924 (2016); ***Town of Westbrook***, Decision No. 4687 (2013). Arbitration awards, like judgments, "are to be construed in the same fashion as other written instruments . . . [and] should admit of a consistent construction as a whole . . . [and] we. . . ascertain. . . intent. . .from the language used and, if necessary, the surrounding circumstances." ***Wheelabrator Bridgeport, L.P. v. City of Bridgeport***, 320 Conn. 332, 355 (2016)(*quoting* ***Ottiano v. Shetucket Plumbing Supply Co***., 61 Conn. App. 648, 652 (2001)).

In this instance, we find an intent in the award at issue to reinstate Complainant to his former position absent any impediment arising from Complainant's receipt of pension benefits. Arbitrator Selchick's remedy discussion states, in relevant part:

> . . . Typically, when no just cause basis exists for discharge, arbitrators reinstate the employee and issue a make whole Award. Grievant's retirement, however, does not permit the Arbitrator automatically to direct the State to reinstate him to the position he occupied when he retired . . .
> . . .
>
> The Arbitrator finds . . . that the Grievant would not have retired but for the State's decision to terminate him – a decision found in this proceeding to be lacking in just cause . . .
>
> . . . It is reasonable to conclude that, to the extent Grievant has experienced a financial loss because of the State's decision to terminate him; that the loss is solely due to the termination decision itself. Under these circumstances, the Arbitrator finds that a make whole remedy is consistent with the notion of just cause . . .
>
> The make whole remedy's starting date is the date Grievant was taken off the State's payroll. Its ending date will be 90 days after the date of this Award. The 90 day period is in recognition of the need to fashion an Award that is reasonable under the circumstances – it cannot be for an indefinite period – and the 90 day period will give Grievant a reasonable opportunity, if that is his desire, to apply to the State Retirement System or some other forum for reinstatement to his position . . .

This language, construed in the context of the State's unwavering position that Claimant's receipt of pension benefits precluded reinstatement to his former position, evidences intent to afford reinstatement, absent conflict with the existing retirement system. An inability "automatically . . .to direct the State to reinstate" does not, in our view, preclude reinstatement upon satisfaction of a clearly identified condition precedent. Nor, as the State argues, does a requirement for affirmative action by the Claimant abrogate the arbitrator's expressed intent for remedial reinstatement in addition to certain monetary relief. Indeed Selchick's parameters for that relief are additional evidence of his intent to reinstate Claimant, if possible under the circumstances. In short, we agree with Judge Frechette that Selchick's "award ruled that [Complainant's] employment should be restored unless his election to receive pension benefits after termination prevents him from reinstatement to his employment." Since SERC's declaratory ruling states that Claimant's retirement does not preclude reinstatement, we find State's rejection of Claimant's request to resume employment in his former position a failure to comply with Selchick's award and therefore a violation of the Act.

Our conclusion that Selchick's award provides for reinstatement in these circumstances disposes of the State's argument that Complainant should have commenced statutory proceedings[7] to vacate, modify or correct the award. Claimant does

[7] Conn. Gen. Stat. § 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 . . .(4) if the arbitrators have exceeded their powers or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made . .

not contend that the award was defective or unclear, nor does the State contend that any of the recognized grounds for vacatur[8] or modification/correction exist in this case. Furthermore, SERC's ruling addressing the State's retirement objection to Claimant's reinstatement issued over five months after Claimant petitioned for a declaratory ruling, a period well in excess of the thirty day window for seeking vacatur or modification or correction of the award in court.[9]

Nor do we find ***Finder v. Department of Administrative Services***, Superior Court, judicial district of Hartford/New Britain at Hartford, Docket No. CV 930523739 (October 28, 1994) (1994 WL 621919) applicable to the case before us. In ***Finder,*** the court dismissed an appeal of a decision by the state employees' review board declining to address the merits of a grievance challenging a layoff because the grievant subsequently applied for and received pension benefits. The case is inapposite because, unlike the administrative forum in ***Finder***, Arbitrator Selchick *did* address the merits of the grievance before him notwithstanding Complainant's receipt of pension benefits and because the entity charged with administering the state retirement system expressly found that such receipt did not preclude subsequent reinstatement.

We also find that our conclusions here do not conflict with our reasoning in ***Town of Middlebury***, Decision No. 4603 (2012).[10] In ***Town of Middlebury***, the complainant union sought enforcement of an arbitration award that found a significant violation of the parties' collective bargaining agreement but, consistent with the issue as defectively framed by the parties,[11] failed to provide for a remedy. We dismissed the complaint finding that a remedy was not ordered "for reasons entirely within the province of the

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Conn. Gen. Stat. § 52-419 states, in relevant part:

> (a) Upon the application of any party to an arbitration, the superior court . . . shall make an order modifying or correcting the award if it finds any of the following defects . . .(2) if the arbitrators have awarded upon a matter not submitted to them unless it is a matter not affecting the merits of the decision upon the matters submitted; or (3) if the award is imperfect in matter of form not affecting the merits of the controversy . . .

[8] Where the parties have not limited the authority of the arbitrator to adjudicate the controversy, there are "three grounds for vacating an award: (1) the award rules on the constitutionality of a statute . . . (2) the award violates clear public policy . . . (3) the award contravenes one or more of the statutory prescriptions of § 52-418 . . . " ***Garrity v. McCaskey***, 223 Conn. 1, 6 (1992)(citations omitted); *see* ***AFSCME, Council 4, Local 2663 v. Department of Children and Families***, 317 Conn. 238, 252-254 (2015).

[9] Conn. Gen. Stat. § 52-420(b) states:

> (b) No motion to vacate, modify or correct an award may be made after thirty days from the notice of the award to the party to the arbitration who makes the motion.

[10] At the conclusion of the October 22, 2018 hearing, the panel chair instructed the parties to address ***Town of Middlebury***, *supra*, in their briefs.

[11] The Issue in ***Town of Middlebury*** stated, in relevant part:

> [D]id the Town . . . violate the Collective Bargaining Agreement . . . If *not*, what shall the remedy be?

(Emphasis added).

arbitrator" and quoting ***City of Meriden***, Decision No. 4273 p. 5 (2007), for the principle that "[w]e will not read into an arbitration award what is not there." *Id* at p. 7. Here, however, the award evidences an express intent to issue a remedy that includes, in our view, reinstatement. Selchick found that Complainant was terminated without cause, noted that reinstatement is typically awarded in such situations, concluded that in light of Complainant's receipt of pension benefits, reinstatement required the assent of "the State Retirement System or some other forum", and afforded monetary relief that contemplated Complainant's application for such assent. In short, unlike the nonexistent remedy at issue in ***Town of Middlebury***, remedial reinstatement was conditionally awarded in the instant case. Given the record before us, including Selchick's award, Complainant's June 28, 2016 request for reinstatement, and SERC's declaratory ruling, Complainant has satisfied the conditions precedent for reinstatement.

Lastly, we address Complainant's claim for back pay[12] and attorney's fees. We decline to order additional back pay for the simple reason that Selchick's award expressly delineates the monetary relief allowed Complainant and it does not provide for such payments. Nor do we find grounds for an award of attorney's fees.

> The Act affords us the authority and discretion to award a prevailing party's reasonable attorney's fees and costs where we conclude that a proffered defense presents no debatable issue and is wholly frivolous. ***City of Bridgeport***, Decision No. 4478 (2010); ***Killingly Board of Education***, Decision No. 2118 (1982). If a party only presents defenses that are not reasonably debatable, the other party has been caused to incur expenses for no valid reason. We must carefully examine each of a respondent's defenses to determine whether there is any substance to them. If there is, an award of attorney's fees, costs and interest is not warranted. ***Norwalk Third Taxing District***, Decision No. 3676 (1999) at p. 6-7.

City of Hartford, Decision No. 4549 p. 5 (2011), *see also* ***City of New Haven***, Decision No. 4974 (2017); ***Town of East Hartford***, Decision No. 4907 (2016); ***City of Hartford,*** Decision No. 4736 (2014). The State's defenses throughout this dispute have included a claim that Complainant's voluntary receipt of pension benefits precludes reinstatement to his former position. At no point did any of the forums involved opine that this claim was frivolous or not debatable and neither will we. As such, we limit the remedy in this case to Complainant's reinstatement to his former position within a reasonable time of the issuance of this Decision and Order.

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 State of Connecticut Department of Children and Families shall:

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[12] In his brief, Complainant asks for "full back pay" which we construe to mean that salary he would have earned had the State reinstated him within 90 days of the award, less that money Complainant in fact earned by mitigating his damages.

I. Cease and desist from failing to comply with a valid arbitration award.

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

A. Within thirty (30) days, reinstate Dale King to the Staff Attorney 3 position with the Department of Children and Families that he held immediately prior to his termination on January 31, 2014, and without loss of seniority or other contractual benefits.

B. Post immediately and leave posted for a period of sixty (60) consecutive days from the date of the posting, in a conspicuous place where the members of the bargaining unit customarily assemble, a copy of this Decision and Order in its entirety.

C. Notify the Connecticut State Board of Labor Relations at its offices at 38 Wolcott Hill Road, Wethersfield, Connecticut, within thirty (30) days of the receipt of this Decision and Order of the steps taken by the State of Connecticut Department of Children and Families to comply herewith.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Wendella A. Battey
Wendella A. Battey
Acting Chairman

Barbara J. Collins
Barbara J. Collins
Board Member

Susan Meredith
Susan Meredith
Alternate Board Member

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 23rd day of April, 2019 to the following:

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