



# COLLECTIVE BARGAINING: Trends and Strategies To Reduce Costs

CABE/CAPSS CONVENTION

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# OVERVIEW OF RELEVANT STATUTES

# Municipal Employee Relations Act (MERA or the ACT)

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## Timetables

### Negotiations

- **120 days** before expiration of the current contract – parties must begin negotiations (CGS 7-473b). The parties' obligation to begin negotiations includes the following:
  - Designation of exclusive bargaining representative
  - Duty to meet
    - Set ground rules – must be bargained for in same manner as substantive provisions, generally involve:
      - Timetables
      - Publicity
      - Order of bargaining
  - Duty to make proposals
  - Duty to share information

# Timetables (cont.)

- 50 days after commencement of negotiations – if no agreement, mediator from SBMA appointed. (CGS 7-473b), however, mediation is not mandatory
- Any agreement reached by the negotiators shall be reduced to writing
- 14 days of written agreement – agreement submitted to legislative body, which may approve or reject by majority vote of those present and voting (CGS 7-474(b))
  - If rejected, returned to the parties for further bargaining
  - Considered approved if legislative body fails to vote to approve or reject within 30 days of the end of the 14 day period

# Timetables (cont.)

## Arbitration

- 30 days after expiration of current contract – binding and final arbitration imposed by SBMA (CGS 7-473c(b)1))
- 10 days of notification by SBMA – employer and union each select party arbitrator (CGS 7-743c(b)(2))
- 5 days from selection of party arbitrators – neutral arbitrator chosen by party arbitrators from neutral list established by statute. Neutral arbitrator shall be the panel chair (CGS 7-473c(b)(2))

# Timetables (cont.)

10 days from appointment of neutral – chair shall hold a hearing (CGS 7-473c(c))

- Requires 5 day notice to the employer and union
- Colloquially referred to as a “bump and run”
- Sets agreed upon dates for continuation of arbitration hearing

2 days\* prior to hearing –each party to provide proposed collective bargaining agreement (CGS 7-473c(d)(1))

- in numbered paragraphs
- terms acceptable to that party
- cost data for all provisions
- NB: Often the parties will skip this process and instead do an agreed upon language document



# Timetables (cont.)

- At commencement of hearing – each party shall submit replies identifying:
  - acceptable paragraphs
  - unacceptable paragraphs
  - alternative language for unacceptable paragraphs (CGS 7-473c(d)(1))
- Stipulations as to agreed-upon provisions may be submitted by the parties any time prior to decision (CGS 7-473c(d)(1))
- No party may submit for binding arbitration any issue or proposal which was not presented during the negotiation process unless the submittal of such additional issue or proposal is agreed to by the parties (CGS 7-473c(g))

# Timetables (cont.)

- 20 days\* hearing to conclude – this time limit may be waived by the parties. (CGS 7-473c(d)(1)), and usually is
- 5 days\* after conclusion of testimony – panel shall forward arbitration statement setting forth all provisions agreed upon and those issues that remain unresolved (CGS 7-473c(d)(2))
- 10 days\* after conclusion of testimony – the parties shall file with the SBMA five copies of their statements of “last best offer” (LBO) on each issue.(CGS 7-473c(b)(3))

# Timetables (cont.)

**“Last Best Offer”** – the arbitrator must accept the position of one party or the other on each issue and is not free to make a decision that is a compromise or combination of the parties’ positions. Nor is the arbitrator free to fashion his/her own position, he/she must choose between the final positions of one party or the other.

# Timetables (cont.)

- 7 days\* of distribution of LBO – parties may file briefs on unresolved issues with SBMA, which secretary distributes, as above (CGS 7-473c(d)(4))
- 5 days\* of distribution of briefs – reply briefs, which are simultaneously distributed (CGS 7-473c(d)(5))
- 20 days\* after briefs filed – the panel shall issue, upon majority vote, its decision and file with SBMA (CGS 7-473c(d)(6))
  - Each unresolved issue treated as separate question to be decided
  - Panel shall accept LBO of one party or the other
  - Each member shall state specific reasons/rationale for decision on each unresolved issue
- \*The parties may file with the Panel stipulations modifying, deferring or waiving any of all time provisions in (CGS 7-473c(d)(7))

# Considerations of Arbitration Panel

- “In arriving at a decision, the arbitration panel shall give priority to the public interest and the financial capability of the municipal employer, including consideration of other demands on the financial capability of the municipal employer.” (CGS 7-473c(d)(9)) There is an irrebuttable presumption that 15% of the budget reserve is not available to pay cost of a contract. (PA-17-2) By statute, the panel shall further consider:
  - Prior negotiations between the parties
  - Interests and welfare of the employee group
  - Changes in cost of living
  - Existing conditions of employee group and similar groups
  - Wages, salaries, fringe benefits and other conditions of employment in the current labor market, including private sector wages and benefits

# Effect Of Panel's Decision

- The decision of the panel and resolved issues shall be final and binding upon the municipal employer and union, except if award rejected by two-thirds vote of legislative body (CGS 7-473c(d)(10))
- Within **25 days of receipt of the award**, legislative body may reject by two thirds majority vote of those present at a regular or special meeting (CGS 7-473c(d)(12))
- Within 10 days of rejection of award, the legislative body required to submit a written statement to the SBMA and Union stating the reasons for such vote. (CGS 7-473c(d)(13))
- Within 10 days of receipt of written statement, Union shall submit written response to SBMA and legislative body (CGS 7-473c(d)(13))

# Effect Of Panel's Decision (cont.)

- Within 10 days of receipt of rejection notice, the SBMA shall select a review panel of three arbitrators (or if the parties agree, a single arbitrator) who are residents of Connecticut and on the American Arbitration Association approved list of arbitrators, to review the decision on each rejected issue. (CGS 7-473c(d)(14))
  - Review is limited to the record and the briefs, the written explanation of the rejection vote and the written response by either party.
  - Review is limited to same criteria and shall accept the LBO of either party.
  - Shall be completed within 20 days of appointment.

# Effect Of Panel's Decision (cont.)

- Within 5 days of completion of review, arbitration decision shall be issued, which shall be final and binding unless motion to vacate or modify filed with the Superior Court (CGS 7-473c(d)(15))
- The budget-appropriating body of the municipality shall appropriate whatever funds are required to comply with agreement reached under CGS 7-474(b) or arbitration decision under CGS 7-472 or 7-4743c (CGS 7-474(c))



# TEACHER NEGOTIATIONS ACT (TNA)

- Basically the same as MERA, with a few very important differences.

# Timelines

- meeting between Board and fiscal authority required within thirty (30) days of commencing negotiations (C.G.S. §10-153d)
- representative of the fiscal authority may be present (i.e. as an observer) during negotiations
- “hours” – length of student school year and school day, scheduling of student year, length and number of parent teacher conferences, early retirement incentives, and teacher evaluation plans are not mandatory subjects of bargaining (C.G.S. §10-153d(b))

# Negotiations

- commence not less than two hundred and ten (210) days prior to Board's budget submission date
- contract must be submitted to the Legislative body of the Town/City, binding unless rejected within thirty (30) days of submission (C.G.S. §10-153d(b))

# Mediation

- if parties have not settled prior to the one hundred and sixtieth (160th) day prior to budget submission, they are ordered into mediation, i.e., it is mandatory

# Arbitration

- if the parties have not settled prior to the one hundred and thirty-fifth (135th) day prior to budget submission, arbitration is imposed
- five (5) days to appoint the Party's selected arbitrator
- five (5) days for the Parties to select a third arbitrator
- initial hearing must take place within five (5) to twelve (12) days (C.G.S. §10-153f(c)(2)) after appointment of the panel
- the hearing must conclude within twenty-five (25) days (C.G.S. §10-153f(c)(3))
- the arbitrators have twenty (20) days to issue their decision
- the decision of the arbitrators is binding unless rejected by the Legislative body of the Town/City by a 2/3rds vote of the body within twenty-five (25) days of the date of the award (C.G.S. §10-153f(c)(7))

# Arbitration (cont.)

- the arbitrators must give priority consideration to the public interest (not defined) and the financial capability of the Town/City. There is a presumption that a budget reserve of 5% [NOTE: MERA is 15%] or less is unavailable for paying the cost associated with the award
- the remaining statutory factors are as follows:
  - A. the negotiations between the parties prior to arbitration, including the offers and the range of discussion of the issues.
  - B. the interests and welfare of the employee group.
  - C. changes in the cost of living averaged over the preceding three years.
  - D. the existing conditions of employment of the employee group and those of similar groups; and
  - E. the salaries, fringe benefits, and other conditions of employment prevailing in the state labor market, including the terms of recent contract settlements or awards in collective bargaining for other municipal employee organizations and developments in private sector wages and benefits.
- the fiscal authority has the right to participate in arbitration typically in the form of testimony

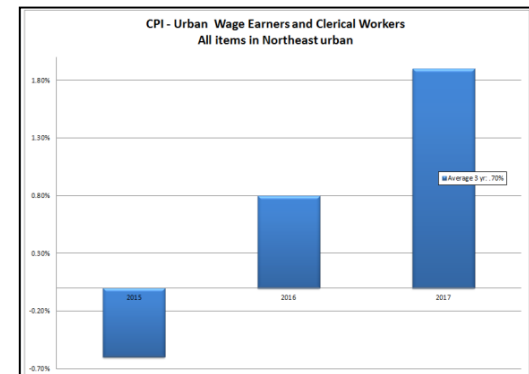
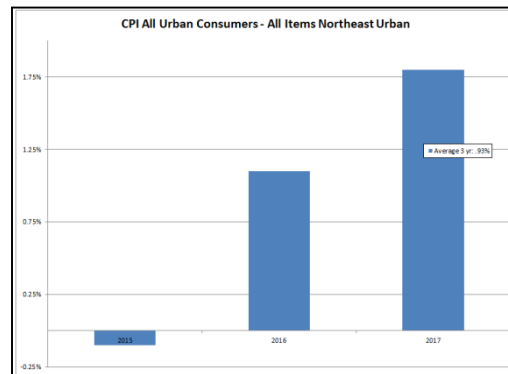
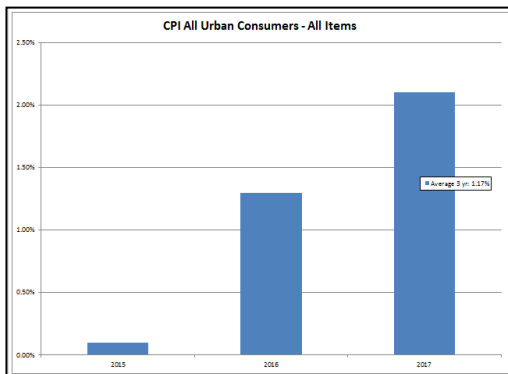
# OBSERVATIONS FROM THE TRENCHES



# Wages

## Teachers:

- CPI – TNA looks back 3 years
- current CPI has averaged around 1.11%



# Greenwich Teacher Decision (2016)

## Arbitration Decisions:

- arbitrator: Lee Williamson
- Greenwich teachers highest paid in the state
- noted inflation averaging around 1%
- awarded: 2.8%, 2.73% and 3.6%, a total of 9.13%
- this was 1% less than prior years averages

## Settlement Data:

- 2015-16 - 9.72%
- 2016-17 - 9.25%
- 2017-18 - 7.78%
- 2018-19 - 8.4% trending
  - two contracts could have settled around 7.8% - 8.0%, CEA not budging NB: State aid down; grand list growth is still nominal, why are Towns agreeing to numbers north of 9%?

# East Haven Teacher Decision (2016)

- 2.3% (half step), 2.365%, 3.52% (step only)
- total 8.19%
- AENGLC 139

# Cheshire Teacher Decision (2016)

- Arbitrator was Gerald T. Weiner, Esq.
- DRG B, AENGLC 75
- CPI average 1%
- prior TA rejected by Town Council following cuts in state aid
- 2.8%, 3.1%, 3.2%, 3.2%

- Steps – The aggregate cost of advancing those on step, e.g. if 50% are on step, assume a perfect 4% difference between steps, cost of step is 2.0%
- Delaying steps mid-year can reduce the cost of step in the year of the delayed step, but beware the remainder carries over into the following year
- Generally, arbitrated awards average about .2% per year below negotiated settlements

# Administrators

- Subject to the TNA so same time tables and procedures
- Administrator settlements have averaged about 2.5% per year. Step cost is typically lower than teachers so most of that (1.5% - 1.75%) goes to GWI
- Administrator asks in recent years
  - salary protection in RIF situation
  - long term care
  - Board funded annuities
  - retiree medical
  - long term disability insurance
  - anything else the Superintendent might have in his/her contract

# Health Insurance

- State Partnership 2.0 Plan
  - the State of Connecticut will allow Boards/Towns access to their \$15 United Healthcare Co-pay Plan
  - if the cost of family coverage is in excess of \$26,000, you can possibly save money from switching to the State Plan
  - down side to the plan, including:
    - plan design cannot be changed unilaterally; based upon the State Plan which is locked in until 2020, possible withdrawal liability if you leave within 3 years
    - if you are in a self-funded plan, and go to the State Plan, then wish to return to a self-funded plan, you will need to accumulate/fund reserve again
  - a number of Fairfield County boards have moved to the State plan
  - is this an answer for your District?

# Health Insurance (cont.)

- The current trend is clearly towards high deductible plans typically with deductibles of \$2,000 single/\$4,000 two or family, funded 50% by employer. Consider:
  - in network coinsurance and/or post deductible prescription co-pays
- Health incentive plans
- Cadillac Tax – goes into place January 1, 2020, current threshold is \$10,200/\$27,500, need to put plans in place which will avoid or reduce the tax
- Waivers
  - in a self-funded insured plan arguably does not make sense
  - cost share contributions are high enough to incentivize employees to waive



# Health Insurance (cont.)

- Certified Staff
  - post-65 insurance coverage - consider TRB plan
  - less expense than Anthem and other plans since it is subsidized by the State, ex: Milford saved 30%
  - benefits are rich: includes vision, dental and Rx
  - TRB Advantage (is the new TRB Base Plan) – be specific in your contracts – cost of the Stirling & Stirling plans is going up 20%
- Non-Certified Staff
  - health benefits were inexpensive years ago so many districts gave away very generous benefits for retiree and dependents at virtually no cost
  - now accounting rules regarding OPEB have brought to light how expensive these benefits are, e.g. Westport \$10 million/yr
  - if offered make sure benefits and employee cost are not locked in at retirement
  - consider eliminating for new hires

# Pension Concessions

- Applicable to non-certified staff only because teachers are in the State TRB plan
- In most communities, part of Town/City plan and Town/City will generally negotiate the terms
- If you are “charged” by the Town/City for the pension contributions, or maintain your own plan, consider bargaining concessions if your plan is funded less than 75%, or your Annual Required Contribution is rising putting pressure on your operating budget

# Management Rights

- Common in non-teacher contracts
- Uncommon in teacher contracts
- Our State Labor Board requires specificity in language or it will not find the employer has the right to make unilateral changes, e.g. transfer and assignment of staff
- Accordingly, consider a Management Rights clause with very specific rights such as to transfers, make assignments, and the like

# Janus Decision (Janus v. AFSCME)

- Reversed 40 years of precedent and held involuntary agency fee provisions are unconstitutional (violates First Amendment)
- Agency fee is a fee required of bargaining unit members who do not want to be a member of the union
- In Connecticut, and other non-right to work states it is common to require in a CBA that employees either be a union member or pay a service fee. Typically an employee must be fired if they don't pay one or the other

## Immediate Impact:

- Stop withholding agency fees until a voluntary waiver is in place

# Janus Decision (Janus v. AFSCME)

## cont.

### Practical Consideration:

- Employees can choose not to be in a union
- Employers should not be actively involved in encouraging employees to drop out of the union to avoid an “interference” charge
- The employee will still be subject to the CBA and entitled to union protection
- Connecticut law requires that the employer have an authorization to withhold union dues/agency fees. Make certain you have one for each employee. If an employee revokes a dues authorization, stop withholding the dues
- Implications For Negotiations:
  - You need to consider cleaning up any language which is inconsistent with Janus and the above principles, e.g. requiring the employer withhold without an authorization, requiring that an employee be terminated if they don't sign an authorization

Questions?