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Arbitration Processes In Need Of Reform

Timeliness of decisions just one factor that needs to be addressed

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The vast majority of Connecticut's municipal employees are represented by unions, with terms and conditions of employment governed by labor contracts. With the exception of school teachers and administrators, negotiations for these public employees come under Connecticut's Municipal Employee Relations Act (MERA), which provides for interest arbitration when the employer and union cannot agree on a contract, as well as grievance arbitration for contract dispute resolution through the State Board of Mediation and Arbitration (SBMA).

Both the MERA binding arbitration process and the grievance arbitration process have advantages and disadvantages, and both systems are in need of reform to better serve public employers, unions, employees, and taxpayers who ultimately pay the price for the flaws in those systems.

Grievance Arbitration

Section 7-472 of the Connecticut General Statutes, establishing the SBMA and providing for arbitration of grievances, was first passed by the Connecticut General Assembly in 1949. However, municipal employees did not have the statutory right to bargain collectively until 1967. Since then, union organizing of public employees has far outstripped the private sector. Hence, the SBMA's caseload now consists largely of public sector cases.

The SBMA's grievance arbitration process has a major advantage for employers and unions – it is essentially "free." The filing fee of $25 per party has not increased since 1979 and the parties pay none of the arbitrators' fees. Contrast this to private labor arbitration, where the parties each pay filing and administrative fees of $150 or more, and share the arbitrator's fee which is in the range of $1,200 to $1,800 per day.


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What are the disadvantages of the SBMA arbitration system and how could those be fixed?

■ **Timeliness of decisions.** There is no mandatory time limit within which arbitrator(s) must issue an award. Unfortunately, the SBMA's regulation on the time for rendering awards has no teeth. As a result, the time between hearings and a decision can stretch for many months, even a year. Particularly in cases involving reinstatement, this is unacceptable. Employers and unions should jointly support a mandatory deadline for SBMA arbitration awards. It does not have to be 30 days; give the board 60 or even 90 days, but make the deadline mandatory.

■ **Access to arbitration awards.** The ability to research how arbitrators have addressed issues can be beneficial in the assessment of one's case and perhaps lead to settlement. Currently, the only way to get decisions is to subscribe to the SBMA's quarterly mailing or to review decisions at the State Library. The state should provide support to the SBMA to include decisions on its web site, with a search engine, comparable to that of many state agencies such as the State Board of Labor Relations and the Freedom of Information Commission.

■ **Expedited arbitration.** The SBMA should revise its current regulations to permit the parties to jointly select a single arbitrator for an expedited arbitration case. Currently, the regulations provide for no briefs and no written opinion in an expedited case. If expedited arbitration was limited to the use of a single arbitrator, jointly selected by the parties, and allowed for short briefs and opinions, there would likely be greater use of that process.

■ **Scheduling.** The SBMA has a small staff and will not likely get more in this fiscal climate. However, some procedural changes might help. Instead of assigning a hearing date allowing that date to be postponed at will, the SBMA could notify the parties that a case is "on the docket" for a particular time period and require that the

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parties provide three dates on which they would be prepared to proceed. The staff could then assign one of the dates. Also, there needs to be more rigid enforcement of the policy that the arbitrators and the parties be available for a full day when a hearing is scheduled. This would limit the number of hearings needed.

Interest Arbitration

Since 1975, MERA has provided for binding interest arbitration to ensure continuation of pubic services during impasse in negotiations, as MERA prohibits strikes by public employees. In interest arbitration, the arbitrators decide what the contract provision will be for each disputed issue by awarding the last best offer of one of the parties. The most recent revisions to MERA's binding arbitration provisions were enacted in 1992.

The binding interest arbitration process calls for use of a three-person arbitration panel unless the parties agree to use a single arbitrator. For employers and unions, having an advocate arbitrator on a panel is an important element that should not be eliminated, as the legislature proposed in the last session. The advocate can help resolve issues, alert parties to what evidence will be persuasive, advise on last best offers and be a persuasive force in the panel's executive session.

The 1992 reforms included establishment of a priority factor for arbitration decisions – the public interest and the financial capability of the employer. While a move in the right direction, there is room for improvement.

■ **Mandatory mediation.** While MERA requires appointment of a mediator, participation in mediation is not required. Mediation should be mandatory to facilitate greater rates of settlement. Also the present staff of two full-time mediators could not handle all the mediation required, so consideration should be given to having a panel of mediators available for selection by and paid by the parties.

■ **Timelines.** Sections 7-473b and 7-473c of MERA provide timelines for negotiations and interest arbitration, but these timelines are considered "directory" rather than mandatory. There needs to be some mandate to conclude interest arbitration under MERA so that awards are not coming out two or even three years after a contract has expired. Public employers and unions should jointly support legislation requiring that there be a final contract not more than one year after the old one has expired. That would give ample time for negotiations, mediation and interest arbitration.

■ **Access to decisions.** Similar to SBMA grievance arbitration decisions, access to the results of binding interest arbitration is difficult. Review of such decisions assists management and labor in assessing their positions in negotiations, and may limit the number of issues brought to interest arbitration. Having these awards available on the SBMA web site would be valuable to both employers and unions.

■ **Arbitrator selection.** Under MERA, the parties must use a neutral arbitrator who is on the list approved by a committee consisting of equal representatives of management and labor. Appointment requires a unanimous vote; one committee member can veto an appointment. The law should permit appointment by a majority vote. A more intractable problem is the seeming dearth of qualified arbitrators. The list has long had fewer than the 20 arbitrators MERA requires. Initiatives, such as training or mentoring programs, should be undertaken to ensure that there are enough arbitrators available to timely conclude interest arbitrations in a manner that merits the confidence of both labor and management.

Many of the changes discussed here require legislative action and, in some cases, increased financial support either from state appropriations or user fees. However, these changes are needed for a high quality and effective process of dispute resolution in the public sector. ■

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