



Senate

General Assembly

File No. 628

January Session, 2001

Substitute Senate Bill No. 1394

Senate, May 7, 2001

The Committee on Appropriations reported through SEN. CRISCO of the 17th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING PROCEDURES FOR STATE EMPLOYEE COLLECTIVE BARGAINING.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 5-276a of the general statutes is repealed and the
2 following is substituted in lieu thereof:

3 (a) In the event that either the employer, as defined in subsection (a)
4 of section 5-270, or a designated employee organization, as defined in
5 subsection (d) of said section, may desire negotiations with respect to
6 an original or successor collective bargaining agreement, such party,
7 not more than [one hundred eighty] three hundred thirty days prior to
8 the expiration of the existing collective bargaining agreement nor less
9 than one hundred fifty days prior thereto, shall serve written notice
10 thereof upon the other party. Negotiations shall commence within
11 thirty days of such service. Negotiations as to wage reopeners shall
12 commence within twenty days of receipt by one party of a written
13 notice with respect thereto, served in accordance with the provisions of

14 any such reopener in the affected contract or, if none is stated therein,
15 not more than sixty days nor less than thirty days prior to the effective
16 date of such reopener.

17 (b) Upon the joint request of the parties, following the
18 commencement of good faith negotiations, the State Board of
19 Mediation and Arbitration may designate a mediator to assist the
20 parties in continuing such negotiations and in reaching a settlement of
21 the issues presented in such negotiations. The mediator designated
22 shall be experienced in labor mediation and shall be drawn from lists
23 of such mediators maintained by the board, the American Arbitration
24 Association or the Federal Mediation and Conciliation Service. The
25 mediator so designated may only serve if approved by both parties.

26 (c) If, after a reasonable period of negotiation, or, in the case of
27 negotiations by the parties to an existing collective bargaining
28 agreement to revise such agreement concerning any matter affecting
29 wages, hours and other conditions of employment, after [~~ninety~~] sixty
30 days from the commencement of such negotiations, the parties are
31 unable to reach an agreement, both parties or either of them may
32 initiate arbitration by filing with the State Board of Mediation and
33 Arbitration a list of the issues as to which an impasse has been
34 reached. If such filing is not made jointly, a copy of the filing shall be
35 served on the other party.

36 (d) Within ten days of a joint filing or within ten days of service on
37 the other party in the case of a single filing, the parties shall jointly
38 select an arbitrator. The person selected shall have substantial, current
39 experience as an impartial arbitrator of labor-management disputes.
40 Persons who serve partisan interests as advocates or consultants for
41 labor or management in labor-management relations or who are
42 associated with or are members of a firm which performs such
43 advocate or consultant work may not be selected. If the parties fail to
44 agree on an arbitrator within the ten-day period, the selection shall be

45 made using the procedures under the voluntary labor arbitration rules
46 of the American Arbitration Association.

47 (e) (1) The arbitrator selected shall contact the parties to schedule
48 dates and places for hearings which shall commence not later than
49 twenty days after the selection of the arbitrator and which shall be,
50 where feasible, in the principal locality of the state board, department,
51 commission or agency or unit thereof involved. At least ten days prior
52 to each such hearing, written notice of the designated time and place of
53 such hearing shall be sent to the state employer and the state employee
54 organization. The arbitrator shall preside over such hearings, shall
55 have the power to take testimony, to administer oaths and to summon,
56 by subpoena, any person whose testimony may be pertinent to the
57 proceedings, together with any records or other documents deemed by
58 the arbitrator to relate to such matters. In the case of contumacy or
59 refusal to obey a subpoena issued to any person, the Superior Court,
60 upon application by the arbitrator or either party, shall have
61 jurisdiction to order such person to appear before the arbitrator to
62 produce subpoenaed records and to give testimony touching the
63 matter under investigation or in question, and any failure to obey such
64 order may be punished by the court as a contempt thereof. The parties
65 may, at any time during the course of the proceeding, jointly request
66 the arbitrator to attempt to mediate any or all of the disputed issues.

67 (2) The hearings may, at the discretion of the parties or the
68 arbitrator, be continued and shall be concluded within thirty days after
69 their commencement, unless such period is extended by the joint
70 request of the parties. [or by the arbitrator.]

71 (3) Prior to the commencement of the hearings, each party shall
72 submit to the arbitrator three copies of a list of all resolved and
73 unresolved issues, including the party's proposal on each disputed
74 issue. During the hearing no new issues can be considered unless such
75 addition is mutually agreed to by the parties. Upon receipt of both

76 such lists, the arbitrator shall simultaneously distribute a copy of each
77 to the opposing party. Upon the hearing, each party shall present such
78 testimony and other evidence as it deems appropriate and as the
79 arbitrator finds relevant to the issues presented. Evidence as to each
80 disputed issue shall be presented first by the party presenting the
81 demand underlying such issue. At any time prior to the issuance of the
82 award by the arbitrator, the parties may jointly file with the arbitrator
83 stipulations setting forth such disputed issues the parties have agreed
84 are to be withdrawn from arbitration. Within fourteen days after the
85 conclusion of the taking of testimony, the parties may file with the
86 arbitrator three copies of their briefs including their last best offer on
87 each unresolved issue and, where possible, estimates of the costs of
88 resolution of each disputed issue. Immediately upon receipt of both
89 briefs or upon the expiration of the time for filing such briefs,
90 whichever is sooner, the arbitrator shall distribute a copy of each such
91 brief to the opposing party. Within seven days after receipt of the
92 opposing briefs on the disputed issues or within seven days after the
93 expiration of the time for filing such briefs, whichever is sooner, the
94 parties may file with the arbitrator three copies of a reply brief,
95 responding to the briefs on the unresolved issues. Immediately upon
96 receipt of both reply briefs or upon the expiration of the time for filing
97 such briefs, whichever is sooner, the arbitrator shall distribute a copy
98 of each such brief to the opposing party.

99 (4) Within twenty days after the last day for filing reply briefs, the
100 arbitrator shall file with the secretary of the State Board of Mediation
101 and Arbitration the award on each unresolved issue as well as the
102 issues resolved by the parties during the arbitration proceedings. The
103 arbitrator shall immediately and simultaneously distribute a copy
104 thereof to each party. In making such award, the arbitrator shall select
105 the more reasonable last best offer proposal on each of the disputed
106 issues based on the factors in subdivision (5) of this subsection. The
107 arbitrator (A) shall give a decision as to each disputed issue
108 considered, (B) shall state with particularity the basis for such decision

109 as to each disputed issue and the manner in which the factors
110 enumerated in subdivision (5) of this subsection were considered in
111 arriving at such decision, (C) shall confine the award to the issues
112 submitted and shall not make observations or declarations of opinion
113 which are not directly essential in reaching a determination, and (D)
114 shall not affect the rights accorded to either party by law or by any
115 collective bargaining agreement nor in any manner, either by drawing
116 inferences or otherwise, modify, add to, subtract from or alter such
117 provisions of law or agreement. If the day for filing any document
118 under this subsection falls on a day which is not a business day of the
119 State Board of Mediation and Arbitration, then the time for filing shall
120 be extended to the next business day of the board.

121 (5) The factors to be considered by the arbitrator in arriving at a
122 decision are: The history of negotiations between the parties including
123 those leading to the instant proceeding; the existing conditions of
124 employment of similar groups of employees; the wages, fringe benefits
125 and working conditions prevailing in the labor market; the overall
126 compensation paid to the employees involved in the arbitration
127 proceedings, including direct wages compensation, overtime and
128 premium pay, vacations, holidays and other leave, insurance,
129 pensions, medical and hospitalization benefits, food and apparel
130 furnished and all other benefits received by such employees; the ability
131 of the employer to pay; changes in the cost of living; and the interests
132 and welfare of the employees.

133 (6) The award of the arbitrator shall be final and binding upon the
134 employer and the designated employee organization unless rejected by
135 the legislature as provided in section 5-278, except that a motion to
136 vacate or modify the arbitrator's decision concerning any issue in such
137 award may be filed in the superior court for the judicial district of
138 Hartford within thirty days following receipt of such award. Such
139 motion to vacate or modify shall identify the specific issue or issues in
140 the award which the court is being asked to vacate or modify. Any

141 decision by the arbitrator on issues that are not subject to a motion to
142 vacate or modify shall be final and binding upon the parties. The court,
143 after hearing, may vacate or modify the arbitrator's decision
144 concerning any issue in the award if the court finds that substantial
145 rights of a party have been prejudiced because: [such award is: (A) In
146 violation of constitutional provisions; (B) in excess of the statutory
147 authority of the arbitrator; (C) made upon unlawful procedure; (D)
148 affected by other error of law; (E) clearly erroneous in view of the
149 reliable, probative and substantial evidence of the whole record; or (F)
150 arbitrary or capricious or characterized by abuse of discretion or
151 clearly unwarranted exercise of discretion] (A) The decision has been
152 procured by corruption, fraud or undue means; (B) there has been
153 evident partiality or corruption on the part of an arbitrator; (C) the
154 arbitrators have been guilty of misconduct in refusing to postpone the
155 hearing upon sufficient cause shown or in refusing to hear evidence
156 pertinent and material to the controversy or the arbitrators have been
157 guilty of any other action by which the rights of any party have been
158 prejudiced; or (D) the arbitrators have exceeded their powers or so
159 imperfectly executed their powers that a mutual, final and definite
160 award upon which the subject matter was submitted was not made.

161 (7) The secretary of the State Board of Mediation and Arbitration
162 shall serve as staff to the arbitrator for purposes of all proceedings
163 undertaken pursuant to this subsection.

164 (f) The arbitrator's fees and itemized expenses, the rental, if any, of
165 the facilities used for the hearing and the cost of the transcript, if any,
166 of the proceedings shall be divided equally between the employer and
167 the designated employee organization.

168 (g) Any or all of the timing requirements established in this section
169 that are imposed upon the parties may be waived by agreement of the
170 parties or by [request] a ruling of the arbitrator. Any or all of the
171 timing requirements established in this section that are imposed upon

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Indeterminate

Affected Agencies: Various

Municipal Impact: None

Explanation

State Impact:

The bill extends the time during which a party to a collective bargaining agreement between the state and a designated employee organization may notify the other party of its intent to negotiate a new agreement (from 180 days to 330 days).¹ The bill reduces the number of days that negotiations before a party can request arbitration (from 90 to 60 days). The fiscal impact to the state as a result of this bill is indeterminate.

¹ The bill does not alter the minimal notice required by statute (150 days).

OLR Bill Analysis

sSB 1394

AN ACT CONCERNING PROCEDURES FOR STATE EMPLOYEE COLLECTIVE BARGAINING.**SUMMARY:**

This bill makes a number of changes concerning state collective bargaining procedures. Specifically it:

1. increases the time during which parties may begin negotiating a new contract from 180 to 330 days before the expiration of the existing contract,
2. reduces the time during which a party may initiate arbitration from 90 to 60 days after negotiations begin,
3. eliminates an arbitrator's authority to continue a hearing more than 30 days after it has begun and his authority to waive deadlines imposed on him,
4. creates new requirements for motions to vacate or modify an arbitrator's award filed in Superior Court,
5. modifies the reasons a judge may vacate or modify an award, and
6. allows arbitration on issues subject to collective bargaining even if there is a dispute about whether another issue is subject to collective bargaining before the State Board of Labor Relations.

EFFECTIVE DATE: October 1, 2001

MOTIONS TO VACATE OR MODIFY

Under the bill, motions to vacate or modify filed in Superior Court on an arbitrator's decision must identify the specific issue or issues in

dispute. Any arbitrator decisions on issues not subject to the motion are final and binding upon the parties.

Under the bill, the court, after a hearing, may vacate or modify the arbitration award if:

1. the decision has been obtained by corruption, fraud, or undue means;
2. the arbitrator was partial or corrupt;
3. the arbitrator prejudiced a party's rights by committing misconduct including, refusing to postpone a hearing for sufficient cause or refusing to hear pertinent and material evidence; or
4. the arbitrator exceeded his power or improperly executed his power such that a mutual, final, and definitive award was not made.

ARBITRATOR TIME LIMITS

Under current law, all of the time frames in negotiation and impasse resolution procedures can be waived by agreement of the parties or by an arbitrator's request. The bill permits the time requirements imposed on an arbitrator to be waived only by agreement of the parties and those imposed on the parties, only by agreement of the parties or an arbitrator ruling.

PROCEDURES WHEN THERE IS A DISPUTE ABOUT WHETHER AN ISSUE IS SUBJECT TO COLLECTIVE BARGAINING

Currently, when there is a dispute about whether an issue is a mandatory or nonmandatory subject of collective bargaining before the State Board of Labor Relations, issues that are not involved in the dispute may not be submitted to arbitration until the board rules unless both parties agree. The bill eliminates that prohibition and allows issues that are not involved in a dispute to proceed to arbitration. If an arbitration award is rendered prior to the board's decision, and the board subsequently finds that one or more of the issues before it are subject to bargaining, the issues are treated in the

same manner as supplemental understandings or awards.

BACKGROUND

Reasons to Vacate or Modify

Currently, a judge may vacate or modify an arbitrator's award if a party's substantial rights were prejudiced because the award: (1) violates the constitution; (2) goes beyond the arbitrator's authority; (3) is made by illegal procedures; (4) is affected by some other legal error; (5) is clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or (6) is arbitrary or capricious or characterized by abuse or clearly unwarranted exercise of discretion.

Scope of Bargaining

Nonmandatory subjects of bargaining (subjects other than wages, hours, and conditions of employment) and matters concerning academic policy that do not specifically affect faculty wages, hours, or conditions of employment cannot be submitted to arbitration. The State Board of Labor Relations resolves disputes about whether an issue is a mandatory or nonmandatory subject.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute Change of Reference

Yea 9 Nay 3

Appropriations Committee

Joint Favorable Report

Yea 33 Nay 18