



# Senate

General Assembly

**File No. 17**

January Session, 2003

Senate Bill No. 844

*Senate, March 10, 2003*

The Committee on Labor and Public Employees reported through SEN. PRAGUE of the 19th Dist., Chairperson of the Committee on the part of the Senate, that the 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 Section 5-276a of the general statutes is repealed and the  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 (*Effective October 1, 2003*):

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 for good cause shown.

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 that 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  
172 the arbitrator may be waived by agreement of the parties.

173 Sec. 2. Subsection (g) of section 5-278 of the general statutes is  
174 repealed and the following is substituted in lieu thereof (*Effective*  
175 *October 1, 2003*):

176 (g) (1) Nonmandatory subjects of bargaining shall not be subject to  
177 the impasse procedures of section 5-276a, as amended by this act. In  
178 the case of higher education teaching faculty, the arbitrator shall not  
179 make a decision involving academic policy unless it affects the wages,  
180 hours or conditions of employment of such faculty. Any arbitration  
181 award issued on such matters shall be unenforceable.

182 (2) Unless mutually agreed to by the parties, when the impasse  
 183 procedures of section 5-276a, as amended by this act, [shall not be] are  
 184 invoked during the pendency before the State Board of Labor Relations  
 185 of any scope of bargaining question arising from the parties'  
 186 negotiations, such procedures shall not include the specific issues upon  
 187 which such scope of bargaining questions are raised. Any such  
 188 question shall take precedence over all other matters pending before  
 189 said board. If an arbitration award is rendered under this section prior  
 190 to the determination of such scope of bargaining question by the State  
 191 Board of Labor Relations, and if the State Board of Labor Relations  
 192 subsequently rules that one or more of the specific issues in dispute are  
 193 mandatory subjects of bargaining, such specific issue or issues shall be  
 194 subject to bargaining and arbitration under this section, and shall be  
 195 treated in the same manner as supplemental understandings or awards  
 196 are treated under this section.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>

**LAB**      *Joint Favorable*

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:

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**OFA Fiscal Note**

**State Impact:** See Explanation Below

**Municipal Impact:** None

**Explanation**

The bill allows parties to negotiate a new contract 5 months earlier than currently allowed in addition to making other adjustments to the state employee collective bargaining process. As a result of these changes and other substantive unknowns that are affected by this process, the statewide implications cannot be determined at this time.

**OLR Bill Analysis**

SB 844

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

This bill makes several changes in state employee collective bargaining procedures. It:

1. reduces the time during which a party may initiate arbitration from 90 to 60 days after negotiations begin;
2. increases the time during which parties may begin negotiating a new contract from 180 to 330 days before the expiration of the existing contract;
3. allows an arbitration to extend a hearing for more than 30 days for good cause only, rather than for any reason;
4. eliminates an arbitrator's authority to waive other deadlines imposed on him;
5. requires motions filed in Superior Court to vacate or modify an arbitrator's award to identify the specific issue or issues and makes final and binding any arbitrator's decision on issues not subject to the motion;
6. modifies the reasons a judge may vacate or modify an award; and
7. allows arbitration on issues subject to collective bargaining even when a dispute is before the State Board of Labor Relations about whether another issue is subject to collective bargaining.

EFFECTIVE DATE: October 1, 2003

**MOTIONS TO VACATE OR MODIFY**

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

1. the decision was 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, such as 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.

Current law allows the court, after a hearing, to vacate or modify an award only if it:

1. violates the Constitution;
2. exceeds the arbitrator's statutory authority;
3. is made due to unlawful procedure;
4. is affected by other error of law;
5. is clearly erroneous in view of the reliable, probative, and substantial evidence of the record; or
6. is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

## **ARBITRATOR TIME LIMITS**

Under current law, any or all of the time frames in negotiation and impasse resolution procedures can be waived (1) by agreement of the parties or (2) at an arbitrator's request. The bill bars an arbitrator from waiving deadlines imposed on him. It instead permits such waivers only by the agreement of the parties. It allows deadlines imposed on the parties to be waived by an arbitrator ruling instead of an arbitrator request.

## **PROCEDURES FOR ISSUES NOT SUBJECT TO COLLECTIVE BARGAINING**

Currently, when there is a dispute before the State Board of Labor Relations about whether an issue is a mandatory or nonmandatory subject of collective bargaining, issues that are not part of the dispute may be submitted to arbitration before the board rules only if both parties agree. The bill eliminates the prohibition and allows such issues to proceed to arbitration. If an arbitration award is rendered before the board's decision and the board subsequently finds that any of the issues before it are subject to bargaining, they must be treated in the same manner as supplemental understandings or awards.

## **BACKGROUND**

### ***Scope of Bargaining***

Nonmandatory subjects of bargaining (subjects other than wages, hours, and conditions of employment) and other matters that do not specifically affect 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 Report

Yea 8      Nay 4