

Executive Summary

Binding Arbitration for Municipal and School Employees

The Legislative Program Review and Investigations Committee authorized a study of binding arbitration in Connecticut for municipal and school employers and employees in April 2005. Municipalities and school districts in Connecticut settle labor impasses using a form of arbitration called “last best offer, issue-by-issue” binding arbitration; strikes are illegal.

Introduced under the state’s Municipal Employee Relations Act (MERA) in 1975 and the Teacher Negotiation Act (TNA) in 1979, the process is based on parties submitting their last best offers on each disputed issue to either a single arbitrator or a tripartite panel (which includes a neutral arbitrator and one “advocate” arbitrator for each party). The State Department of Education (SDE) administers the Teacher Negotiation Act, and the Department of Labor, through the State Board of Mediation and Arbitration (SBMA), administers the Municipal Employee Relations Act.

Advocates of binding arbitration argue the process resolves collective bargaining impasses in a fair and timely manner, and adds finality to the contract negotiation process while balancing contractual conditions with the public interest and financial capability of municipalities and school districts. Opponents maintain the current statutory criteria used by arbitrators are vague, and the process limits the review capacity of the local legislative authority in that it effectively turns over local budgets to arbitrators who are not town residents.

The report describes the binding arbitration processes used under TNA and MERA, including whether they achieve their intended purposes of resolving contractual impasse in a timely manner and according to statutory criteria. The report also analyzes how frequently binding arbitration is used as a means of contract settlement, compares negotiated/mediated settlements to arbitrated settlements in terms of results, examines the process to appoint and select neutral arbitrators, evaluates the impact of timetables governing the collective bargaining process, and analyzes the direct and indirect financial impact of binding arbitration on local budgets.

Overview

The program review committee found that binding arbitration is used relatively infrequently as a contract settlement method. Between FYs 02-05, arbitration was used for 10 percent of TNA settlements and 4 percent of MERA settlements. Nearly nine in ten MERA contracts are settled in negotiation, while mediation is used more frequently under TNA.

There are also particular municipalities, regardless of size and wealth, which tend to settle a greater percentage of their contracts in arbitration. In general, cities, and to a lesser extent suburbs, are more likely to use arbitration than rural towns. Arbitration is also more likely to occur in municipalities with more contracts being negotiated simultaneously. Additionally, teachers are four times as likely as administrators to use arbitration; police, fire fighters, and water/sewer/utility workers are more likely to do so under MERA.

Although TNA and MERA use the same form of binding arbitration, some differences exist. A key difference is that TNA has statutory time frames for the collective bargaining process, while MERA allows parties to mutually “waive, defer, or modify” statutory requirements, including arbitration time frames.

Arbitration Awards

The committee found that arbitration awards analyzed under TNA and MERA were relatively consistent in their overall format, although arbitrators need to more fully address the statutory criterion of “public interest,” as well as consistently include agreed upon language in arbitration awards. MERA arbitrators also frequently referenced a municipality’s budget reserve in awards when determining financial capability, although not required by statute. The committee also believes more uniformity is needed in how arbitrators handle identical last best offers.

General wage increase last best offers for management and labor were approximately one point apart, differing between 0.7 percent to 1.2 percent for each year of the contracts analyzed. Overall, the committee found that MERA arbitrators choose management’s last best offers more often than labor’s; the same holds true for general wage increases and health insurance premium cost share amounts. For TNA arbitrators choose offers of boards of education and teachers at roughly the same frequency, while teachers’ offers for general wage increases and health insurance premium cost share amounts are chosen more often.

Fiscal Analysis

Implementation of municipal and school employee contracts, which provide basic public health, safety, and education services to municipal residents, represents the vast majority of municipal expenditures. No matter how these contracts are resolved, the services they represent come at a sizeable cost. Acknowledging that providing local services costs money, a central question is whether binding arbitration, as the final dispute resolution method of last resort, increases these costs in a significantly different way than negotiation/mediation and unduly impact town budgets, taxes paid, and services received.

Overall, the committee found no evidence that arbitration has driven up costs. For the period analyzed, higher general wage increases were not found in arbitration awards in comparison to negotiated contracts. MERA contracts, for example, had similar general wage increases regardless of settlement method. Negotiated contracts for teachers on the other hand, tended to have greater general wage increases than arbitrated awards, while administrators received significantly higher general wage increases when they settled in arbitration.

By and large, the collective bargaining system is working in that municipalities with “higher financial capability” (as defined by the committee) have contracts/settlements with relatively higher general wage increases, and municipalities with “lower financial capability” (as defined by the committee) are more likely to have contracts/settlements with relatively lower general wage increases.

Arbitration Process

Generally, state oversight of the administration of TNA and MERA is appropriate, although some improvement is needed. MERA negotiated contracts, for example, are mostly settled after their expiration dates, including after the time when arbitration should be imposed under the law, which is 30 days after the contract expiration date. One in five settlements occurred more than one year after the contract expiration date.

An explanation for this occurrence is that binding arbitration under MERA is not imposed in over half of the times it is required, mainly due to SBMA not having a full accounting of contract expiration dates. Additionally, over 40 percent of arbitrated awards occurred more than two years after the contract expired. In contrast, TNA contracts all settle by their expiration dates, which is how the system is designed.

Stipulated awards account for 12 percent of all TNA contract settlements and 54 percent of TNA arbitration awards. The committee found that current law does not provide the same process for local legislative bodies to review/reject stipulated awards as it does for other types of resolutions. MERA treats full stipulations between the parties as negotiated agreements, which are reviewable at the local level. Alternatively, MERA negotiated settlements for board of education employees do not have the opportunity for review by the local legislative body, and almost half of MERA settlements fall into this category.

Arbitrator Appointment Process

The processes for appointing neutral arbitrators differ under TNA and MERA, and no significant problems were found with either process. Both processes provide sufficient levels of accountability, including requiring unanimous approval from their respective selection committees. The processes have also been “legitimized” by time.

The arbitrator appointment process for second review panels under TNA and MERA, however, needs to be formalized. The committee also found that the second panel review is useful and does not always uphold decisions reached by first panel arbitrators.

Although a relatively small number of arbitrators hear most arbitration cases, the current system of having the parties mutually agree to the selection of a neutral arbitrator to hear their case is an acceptable process to many and does not seem to increase the possibility of decisions being “similar” among awards.

If SDE should determine that more arbitrators are needed for the TNA panel, it can choose to re-establish its intern program for training of prospective arbitrators. A comparable program, however, does not exist with SBMA, and would need to be developed as one avenue for adding more arbitrators to the MERA panel.

Recommendations

The committee adopted the following 14 recommendations:

1. **The Municipal Employee Relations Act shall be amended to require each arbitration award include all agreed-upon language between the parties prior to the issuance of the award. The State Board of Mediation and Arbitration should review awards to assure that agreed-upon language is included.**
2. **The Municipal Employee Relations Act and the Teacher Negotiation Act shall be amended to clarify when parties make identical last best offers on a previously unresolved issue, the arbitrators should consider the issue resolved, and incorporate the issue resolution into the agreed-upon language portion of the award.**
3. **Arbitration panels (and single arbitrators) should ensure that arbitration awards fully address the required statutory criteria, particularly for issues dealing with general wage increases and health insurance premium cost share. Increased attention should be given to addressing the priority criterion of “public interest.”**
4. **The Municipal Employee Relations Act shall specify that, in assessing the financial capability of the town or towns in arbitration, there shall be an irrebuttable presumption that a budget reserve of five per cent or less is not available for payment of the cost of any item subject to arbitration under this chapter.**
5. **The Municipal Employee Relations Act shall be amended to retain the parties’ ability to defer, modify, or waive the statutory time frames governing binding arbitration by mutual agreement up to one year past the current contract expiration date, but parties to any expired collective bargaining agreement that has not been settled after 365 calendar days of the contract expiration date must follow the mandatory timetable for arbitration outlined in C.G.S. Sec. 7-473c. The required change shall take effect for all collective bargaining agreements with expiration dates beginning July 1, 2007, and thereafter.**
6. **The State Board of Mediation and Arbitration should compile a complete list of MERA collective bargaining units by town and update the list annually. The board should use the list to fully implement the binding arbitration requirements specified under MERA.**
7. **The Teacher Negotiation Act shall be amended to require fully stipulated awards be considered negotiated agreements and submitted to the local legislative body for review. Should the local legislative body reject the stipulated award, then the first panel arbitration process would begin anew. The opportunity for review by a second panel would not be available for stipulated awards rejected by local legislative bodies that go again into arbitration. The amended process follows, once the arbitration deadline has been reached:**

- Parties have five days to select an arbitrator(s) (day 130 prior to local/regional education budget submission date).
 - The arbitrator(s) must set the time, date, and place for an initial hearing to occur within 12 days after the arbitrator(s) selection (day 118).
 - Hearing process must conclude within 25 days (day 93).
 - Parties may only agree to fully stipulated language up to five days following conclusion of hearing process (day 88).
 - Arbitrator(s) has five days to file stipulated award with town clerk (day 83).
 - Town clerk must give public notice of award and local legislative body must, if it chooses, consider/reject the award within 20 days (day 63).
 - The town has five days to notify the union and education commissioner of the stipulated award rejection (day 58).
 - Parties have five days to select arbitrator(s) (day 53).
 - The arbitrator(s) must set the time, date, and place for an initial hearing to occur within 12 days after the arbitrator(s) selection (day 41).
 - Hearing process must conclude within 20 days (day 21).
 - Parties submit last best offers
 - Arbitrator(s) has 20 days to issue award (day 1).
8. The Department of Education and the State Board of Mediation and Arbitration should each assemble a committee of representatives involved in interest arbitration under the Teacher Negotiation Act and the Municipal Employee Relations Act for the purpose of determining whether statutory modifications are necessary for incorporating local legislative review of agreed-upon language in arbitration awards. The committees should be formed by July 1, 2006, and report any findings and/or recommendations to legislative committee(s) of cognizance by February 1, 2007.
9. The Municipal Employee Relations Act shall be amended to provide local legislative bodies the opportunity to review/reject any agreement reached under the act through negotiation or mediation, regardless of employer, which contains a request for funds necessary to implement such agreement, which shall be reduced to writing and submitted to the local legislative body for review.

- 10. The State Board of Mediation and Arbitration should review arbitration awards to be certain no stipulated awards are issued by arbitrators, and that all issues are reviewed by second panel arbitrators. The board shall also prepare an annual summary report that at least highlights, by town and collective bargaining unit, all contract settlements for that particular year, mediators and/or arbitrators assigned to a particular case and, if known, the length of time between contract expiration date and settlement/award date.**
- 11. The Department of Education should actively seek candidates to participate in its neutral arbitrator intern program if the department determines that the qualifications and/or experience levels of prospective candidates do not meet expectations. Such determination should include input from the neutral arbitrator screening and interview committees.**
- 12. The State Board of Mediation and Arbitration should develop an intern program for prospective candidates for neutral arbitrators under the Municipal Employee Relations Act who would otherwise lack the necessary qualifications and experience to be appointed to the neutral arbitrator panel. At minimum, the program should require candidates to attend several arbitration cases with different experienced arbitrators and write mock awards for review by the department. The program should be developed by the department by January 1, 2007.**
- 13. The Teacher Negotiation Act and the Municipal Employee Relations Act shall be amended to require the Department of Education and the State Board of Mediation and Arbitration each maintain a panel of neutral arbitrators to serve as review arbitrators whenever first panel awards are rejected. Each review panel should include no fewer than nine members, with terms of two years or until a successor is appointed. The education commissioner and the State Board of Mediation and Arbitration should appoint members to the respective arbitration review panels.**
- 14. The State Board of Mediation and Arbitration should develop and formalize an internal procedure outlining the process used to recruit, screen, and interview prospective second panel arbitrators by January 1, 2007. The procedure should also describe the minimum qualifications necessary to become a review panel member. The recruitment process should ensure that first panel members who are approved by the American Arbitration Association are invited to join the review panel.**