



TESTIMONY
of the
CONNECTICUT CONFERENCE OF MUNICIPALITIES
to the
LABOR & PUBLIC EMPLOYEES COMMITTEE

February 8, 2011

Good afternoon, on behalf of CCM -- Connecticut's statewide association of towns and cities -- my name is **Steve Werbner, Town Manager of Tolland**. Thank you for the opportunity today to speak before you regarding Connecticut's compulsory **binding arbitration law** as it applies to municipal employees.

Recognizing and acting on the negative fiscal impacts state mandates have on local budgets and hard-pressed local property taxpayers, particularly at a time like this, is paramount to the preservation of the quality of life in our communities and in our state.

Municipalities have led the way making difficult budget cuts and are bracing for additional cuts. In Connecticut's central cities, the situation is increasingly grave and dire. Deep cuts in services and massive layoffs have occurred in these communities -- and more cuts and layoffs will come unless there is significant state action.

The most significant drivers of municipal costs are employee salaries and benefits. These are also some of the toughest costs to contain. **Binding arbitration and other factors give municipalities' limited options to address cost increases.**

Once, generous health and retirement benefits were needed to attract people to state and local employment. Now, public sector salaries are as good, if not better than, the private sector. In fact, according to the U.S. Bureau of Labor Statistics recent study, "public employees earn salaries that are about one-third higher on average than what is provided to private workers per hour."¹

Pension and other post-retirement benefits are a significant and growing challenge for towns and cities. The private sector long ago moved from costly and unsustainable defined-benefit pension programs to defined-contribution plans. Defined-benefit plans are still prevalent in the public sector. "The real windfall for government workers is in benefits. Those are 70% higher than what standard private employers offer..."² With decreased investment performance, many pension funds have seen major losses leading to increased unfunded liabilities. New accounting and reporting requirements mean that municipalities must record liabilities for retiree health coverage on an accrued basis, as they are earned, rather than as they are paid. This means that these liabilities will be more visible and will affect the credit rating for municipalities. Towns and cities that are unable to control these escalating expenditures will pay the price in terms of lower credit ratings and higher costs for borrowing.

¹ The Wall Street Journal, "The Government Boom" March 26, 2010

² Ibid

Reasonable Reform Options:

❖ The following is a list of reforms state lawmakers should consider as an immediate means of improving the local bargaining/arbitration process:

1. **Modify state-mandated compulsory binding arbitration laws under the Municipal Employee Relations Act (MERA) and the Teacher Negotiation Act (TNA)** by maintaining the power of local legislative bodies to reject arbitrated awards by a two-thirds vote, but providing that the entire contract goes back to negotiation in the event of such a rejection – instead of going to a second, final and binding arbitration panel that is just limited to review those issues previously submitted to arbitration. That is, **make the process for municipalities the same as that for the State.**
2. **Prohibit arbitrators from including municipal fund balances** (essentially “emergency contingency funds”) **in determining a municipality’s ability to pay** under the Teacher Negotiation Act (TNA) and Municipal Employees Relations Act (MERA) by adopting national GFOA guidelines for appropriate municipal fund balances (approximately equal to two months of municipal expenditures) as well as recommendations by recognized municipal financial advisers as an accepted threshold for exemption. GFOA recommends, “at a minimum, that general-purpose governments, regardless of size, maintain unrestricted fund balance in their general fund of no less than two months of regular general fund operating revenues or regular general fund operating expenditures,” which is approximately 16.67%.³

A “**fund balance**” is **not a surplus** - the operating surplus (or deficit) is the difference between the amount of revenue and expenses in the same fiscal year. A “fund balance” is described by the GFOA as the “cumulative difference of all revenues and expenditures from the government's creation.”⁴ Municipalities build up their fund balances over time. More importantly they do so for good reasons. The one most cited is that fund balances preserve a municipality's bond rating, lowering the cost of borrowing for capital needs.

Other reasons to maintain a fund balance include unanticipated expenditures for natural disasters, spikes in energy costs, unanticipated employee overtime, unexpected variations in cash flow, unexpected capital expenditures resulting from water main breaks or other infrastructure problems, and more. Combining the worst fiscal crisis in decades with record breaking snowfalls so far this winter -- towns and cities are already dipping into their fund balances to keep afloat.

3. Similar to the rules established under the Teacher Negotiation Act (TNA) – **establish strict timetables under the Municipal Employees Relations Act (MERA)** by (a) maintaining the ability to modify, defer, or waive negotiation deadlines – **provided that interest arbitration is completed no later than one year from the date the contract expires; and (b) for grievance arbitration, enacting a deadline of ninety-days after the close of the hearing** (which includes submission of briefs). Such measures could limit the size of liabilities for retroactive pay and benefits and provide for a more orderly collective bargaining process. It is not unusual for collective bargaining processes to go on well beyond a year and for grievance arbitration awards to be awards issued multiple years after the filing of briefs.

³ “GFOA Best Practice”, Appropriate Level of Unrestricted Fund Balance in the General Fund (2002 and 2009) (BUDGET and CAAFR)

⁴ Government Finance Officers Association *Research Bulletin*, November 1990

- It is no secret that there is a disconnect between the practice of binding arbitration and the intent of the law. In 2006, the General Assembly's Program Review & Investigations (PRI) Committee published a report analyzing various aspects of the binding arbitration process. This report discovered "**an upward trend in the board not imposing binding arbitration upon the 30-day time period required by statute.**" Consequently, the state board did not enforce such timelines in approximately 56% of these contracts from FY 02 to FY05 – while in FY 05 alone, timelines were not enforced in 68% of the contracts.⁵
 - The PRI report noted that in 1980, 80% of contracts were extended beyond their expiration dates – that figure rose to 87% between FYs 02-05. Thus, the report concluded that "**the notion that the advent of binding arbitration under MERA would lessen the length of the time settlements occur after contracts expire has not held true.**"⁶ [emphasis added]
 - Among the report's recommendations, was a proposal that would have required both parties of an expired collective bargaining agreement to "follow the mandatory timetable for arbitration outlined in C.G.S. Sec. 7-473c" (*this proposal allowed for a 1-year grace period*).⁷
 - Local officials concur with the findings of the non-partisan PRI staff that "settlements delayed for extended periods of time are not positive for the collective bargaining system as a whole if a goal of binding arbitration is to bring timeliness to the process notwithstanding each party's current ability to unilaterally force binding arbitration."⁸
4. **Eliminate from negotiations the methods by which municipalities provide post-employment (retiree) benefits for people hired after 1/1/11.** Specifically, allow municipalities, without bargaining, to require that all newly hired employees enroll in defined-contribution plans in lieu of defined-benefit pensions. These items should no longer be subject to collective bargaining – governments simply can no longer afford the explosive long-term costs associated with traditional post-employment benefits.
 5. **Eliminate item-by-item decisions on economic and fringe benefit issues.** Instead, ensure that these two separate issues are addressed under their respective categories as a whole.
 6. **Modify the State appointment process for neutral arbitrators** to ensure parties are assigned an arbitrator at random – from a pool of up to 10 neutral members rather than the current list of twenty arbitrators – and that such neutral arbitrators who are selected (in accordance with the State Employees Relations Act) are approved by the American Arbitration Association.
 7. Allow for impact negotiations if eligible under the provisions of MERA **over the implementation of "regional consolidation of services"**, but not over decision as to whether consolidating should occur.
 8. Ensure that **negotiations of health benefits are conducted on a coalition basis** within municipalities, including those units within boards of education with negotiations conducted by the municipal authority.

⁵ "Binding Arbitration: Municipal and School Employee," Legislative Program Review and Investigations Committee, January 2006.

⁶ Ibid

⁷ Ibid

⁸ Ibid.

9. **Amend the municipal employee collective bargaining statutes to clarify the statutory definition of "department head"** for purposes of excluding such personnel from collective bargaining. Current law uses the vague term "major" which allows for some municipal department heads (managers), such as town assessors, public works directors, or planning and zoning directors, to join collective bargaining units. Specifically:
- Amend section 7-467(4) so that the definition of a Department head will include an employee who heads any department in a municipal organization, has substantial supervisory control of a permanent nature over the municipal employees, and is accountable to the board of selectmen of a town, city or borough not having a charter or special act form of government or to the chief executive officer of any other town, city or borough directly or through a superior within the municipal organization, and
 - Amend section 7-467(5) to delete "major" and simply define "department" as "any functional division in a municipal organization which shall include identified departments and divisions within a department notwithstanding the provisions of any charter or special act to the contrary."

Simply put, **Connecticut cannot go on conducting business as usual.** Whether we like it or not, we are in an era of limits. Every mandate has its constituency – but it's time to make the difficult decisions necessary so that we will be able to maintain core government services over the next few years. The alternatives – higher property taxes, cutbacks in services, and massive layoffs of local government employees – will benefit nobody. With these proposals we are not looking to abolish binding arbitration, but to make contract and grievance arbitration a more efficient and cost effective process.

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If you have any questions, please contact Bob Labanara (rlabanara@ccm-ct.org) or Jim Finley (jfinley@ccm-ct.org) of CCM.