



OLR RESEARCH REPORT

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STATE EMPLOYEE GRIEVANCE ARBITRATION

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You asked for a description of the grievance arbitration process for unionized state employees, particularly regarding how arbitrators are selected and the limits on their authority. You also asked about the State Board of Mediation and Arbitration and its current members.

SUMMARY

Grievance arbitration is a process through which unionized state employees and management can resolve workplace disputes over the application or interpretation of their collective bargaining agreements. Each collective bargaining agreement determines the arbitration process, including how arbitrators are chosen, the limits of their authority, and what issues can be arbitrated.

The current collective bargaining agreements for the executive branch's 13 state employee bargaining units generally follow the same arbitration process. Under it, an employee's grievance proceeds through four steps in an attempt to resolve it. Arbitration is the fourth and final step (unless it proceeds to the court). The arbitrators who decide these cases are chosen from a panel of arbitrators that have been mutually agreed upon by the employee's union and the state. In general, the agreements do not require specific qualifications for the arbitrators, although they can be removed from the panel under various circumstances, which vary from agreement to agreement. The agreements also specify what issues an arbitrator cannot rule on or award.

State law generally recognizes arbitration decisions as binding on the parties. However, it requires courts to modify or vacate an arbitrator's award under certain circumstances, such as a material miscalculation of figures (for an order to modify) or evidence of an arbitrator's partiality or corruption (for an order to vacate). A party must move to modify or vacate an arbitration award within 30 days of the award's notice.

The State Board of Mediation and Arbitration, among other things, provides grievance arbitration services to the state's public and private sector employers and employees. The board's six members are appointed by the governor to represent labor, management, or the public's interest. The governor can also appoint alternate members when needed for the board to render efficient service. Additional information about the board can be found at: <http://www.ctdol.state.ct.us/csblr/default.htm>.

GRIEVANCE PROCESS

Any unionized state employee's grievance arbitration case begins with the employee's grievance over how management is applying or interpreting his or her collective bargaining agreement. Although the agreements can differ on certain specifics, in general a grievance moves through the following four steps:

1. the employee submits a written grievance to the supervisor who is first in the chain of command outside the employee's bargaining unit;
2. if the supervisor is unable to resolve the grievance, it is submitted to the employee's department or agency head;
3. if the grievance remains unresolved, the employee can appeal to the director of the Office of Labor Relations (OLR); and
4. if OLR is unable to resolve the issue, it can be submitted to an arbitrator who issues a binding decision.

Except for cases of dismissal, demotion, or suspensions of at least five days, the collective bargaining agreements often specify that the union, but not an individual, must submit the grievance for arbitration. Some also require non-binding mediation before applying for arbitration.

OLR estimates that it typically receives over 2,000 grievances each year. Approximately two-thirds of these cases subsequently file for arbitration, although in order to meet contractually required deadlines, unions often file for arbitration before OLR issues its response to the grievance. Even after a grievance is submitted to an arbitrator, negotiations over the grievance continue throughout the arbitration process and the parties often settle before the arbitrator makes a final decision.

ARBITRATOR SELECTION

Each collective bargaining agreement establishes how arbitrators are selected to hear a case. The agreements we examined all require the union and state to mutually establish a panel of arbitrators from which an arbitrator is selected. Depending on the agreement, the panels range in size from three to ten members, although some do not specify how many arbitrators must be on the panel. The agreements typically require the arbitrator for each case to be assigned from the panel on an alphabetical rotation, unless the parties agree otherwise.

The contract for the paraprofessional and professional health care employees' unions requires its arbitrators to have experience in health care and public sector labor relations. The other agreements do not require their panels' arbitrators to have particular qualifications, other than being acceptable to both parties. However, several agreements allow arbitrators to be removed from the panel under certain circumstances. Table 1 shows the arbitrator removal provisions in these contracts.

Table 1: Arbitrator Removal Provisions in Union Contracts

<i>Bargaining Unit</i>	<i>Arbitrator Removal Provision:</i>
NP-1 (State Police)	<ul style="list-style-type: none"> • Either party can remove an arbitrator from the four-person panel if the arbitrator fails to submit a timely decision and the parties did not mutually agree to extend the decision's deadline.
NP-4 (Corrections)	<ul style="list-style-type: none"> • Either party can remove arbitrators from the five-person panel between March 1st and March 10th each year. Five mutually agreed upon arbitrators must be on the panel by April 1st.
NP-5 (Protective Services)	<ul style="list-style-type: none"> • If the arbitrator, without the parties' permission, does not issue a timely decision then the decision is void, the arbitrator is removed from the panel, and he or she is not paid.
NP-6 (Paraprofessional Health Care)	<ul style="list-style-type: none"> • An arbitrator is removed from the panel and not paid after twice failing to issue a timely decision without the parties' permission.
P-1 (Professional Health Care)	<ul style="list-style-type: none"> • An arbitrator is removed from the panel and not paid after twice failing to issue a timely decision without the parties' permission.
P-2 (Social & Human Services)	<ul style="list-style-type: none"> • Either party can remove arbitrators from the three-person panel during the 60-day period following legislative approval of the agreement.

Table 1 (continued)

<i>Bargaining Unit</i>	<i>Arbitrator Removal Provision:</i>
P-4 (Engineering, Scientific, and Technical)	<ul style="list-style-type: none"> • Either party can remove a newly appointed arbitrator from the panel after any of the arbitrator's first three decisions. After those decisions, removal of an arbitrator must be by mutual agreement between the parties. Any replacements must also be jointly agreed upon.
P-5 (Administrative & Residual)	<ul style="list-style-type: none"> • Either party can remove an arbitrator from the panel after three case experiences with the arbitrator. Any replacement arbitrator must be jointly agreed upon. • If the arbitrator, without the parties' permission, does not issue a timely decision then the decision is void, the arbitrator is removed from the panel, and not paid.

ARBITRATOR RULES AND LIMITS

Each collective bargaining agreement outlines the scope of the arbitrator's authority and a timeline under which the arbitration must proceed. All of the agreements we examined allow the parties to mutually waive the deadlines and nearly every agreement specifies that its arbitration hearings do not follow the formal rules of evidence unless both parties and the arbitrator agree in advance. In addition, all of the agreements prohibit an arbitrator from:

1. modifying a collective bargaining agreement in any way,
2. granting either party something that it did not obtain in the bargaining process,
3. imposing a remedy for something which predated the agreement, and
4. granting back pay retroactive to more than 60 days prior to the initial grievance's filing.

The bargaining agreements also specify which subjects cannot be arbitrated. The prohibited subjects vary by agreement, but can include:

1. decisions to layoff employees,
2. establishing new bargaining units,
3. employer compliance with health and safety laws,
4. unlawful discrimination cases when the Commission on Human Rights and Opportunities has asserted jurisdiction,

5. appealing rejections from a civil service exam,
6. non-disciplinary-related terminations due to a position's loss of funding,
7. classifications and pay grades for newly created jobs,
8. dismissals during working test periods,
9. dismissals of non-permanent employees, and
10. non-renewals of unclassified employees.

All of the bargaining agreements specify that the arbitrator's decision is final and binding, although most of them also require it to be in accordance with the state's laws or, more specifically, [CGS § 52-418](#), which requires a court to vacate an award under certain circumstances.

COURT REVIEW OF ARBITRATION AWARDS

The state's law on arbitration proceedings ([CGS §§ 52-408](#) to [52-424](#)) recognizes any written contract's agreement to use arbitration to settle a controversy arising from the contract as valid, irrevocable, and enforceable, unless there is sufficient cause at law or in equity for the avoidance of written contracts generally. Among other things, the law allows a court to:

1. stay an action or other proceeding if it finds that the issue involved is referable to arbitration under a contract,
2. order a party to proceed with arbitration under an applicable contract,
3. appoint an arbitrator if the contract did not provide a method for appointing one,
4. issue orders for arbitration-related subpoenas and depositions, and
5. issue orders confirming an arbitration award.

The law also requires the courts, under certain circumstances, to modify or vacate an arbitration award. Upon the application of a party to the arbitration, [CGS § 52-419](#) requires a court to modify or correct an

award if it finds that (1) there was an evident material miscalculation of figures or an evident material mistake in something described in the award; (2) the arbitrator awarded on a matter not submitted to him or her, unless it was a matter not affecting the merits of the decision; or (3) the award is imperfect in a matter of form that does not affect the controversy's merits. The order must modify and correct the award to effect its intent and promote justice between the parties.

Upon the application of a party to the arbitration, [CGS § 52-418](#) requires a court to vacate an award if it finds:

1. the award was procured by corruption, fraud, or undue means;
2. evidence of an arbitrator's partiality or corruption;
3. the arbitrator was guilty of misconduct by (a) refusing to postpone a hearing despite a showing of sufficient cause, (b) refusing to hear pertinent and material evidence, or (c) any action that prejudiced any parties' rights; or
4. the arbitrator exceeded his or her powers, or so imperfectly executed them, that a mutual, final, and definite award was not made.

By law, a motion to confirm, modify, or vacate an award must be made within 30 days of the award's notice. Parties can appeal to the court from any of these orders as in ordinary civil actions.

STATE BOARD OF MEDIATION AND ARBITRATION

By law ([CGS §§ 31-91](#) to [31-100](#)), the State Board of Mediation and Arbitration provides mediation, conciliation, and arbitration services in employer-employee labor disputes. One of its major activities is to decide grievances and disputes that arise from administering collective bargaining agreements. Such grievances are submitted to the board in accordance with grievance procedures set out in applicable collective bargaining agreements. The board can also arbitrate disputes during contract negotiations ("interest arbitration") between public employee unions and their state or municipal employers ([CGS §§ 5-276](#) and [7-472](#)).

The board's services are available to both private and public-sector employers and unions, although none of the state employee collective bargaining agreements we examined explicitly require the parties to use

the state board. One agreement, however, requires grievances that occurred under an earlier collective bargaining agreement to be decided by the board.

The board hears arbitration cases in three-member panels, with one public, management, and labor representative each on the panel. If the parties mutually agree, a single member representing the public can also hear a case. If the case is before a panel, the employer can pick the management representative on the panel and the employee can pick the labor representative. The parties must each pay a \$25 fee to initiate a proceeding with the board. The fee is refunded if the parties use a single public member of the board to arbitrate their case.

Once a case has been initiated, the parties must promise to not strike or conduct a lockout while a decision is pending, as long as a decision is issued within 10 days after the arbitrators' investigation is completed. The arbitrators must fully investigate the controversy. They can take testimony under oath and issue subpoenas for witnesses and documents. Written decisions must be given to each party and filed with the town clerk in the town in which the controversy arose. With the parties' consent, the decisions can also be issued orally immediately after the proceeding's conclusion. In such instances, the written decision must be provided to the parties within 15 days.

Appointments

The board consists of two three-member panels appointed by the governor. On each panel, one member represents management, one represents labor and must be a member of a bona fide labor union, and the third represents the public interest. No two board members can be from the same union and public representative members cannot have represented any employer or employee in a labor dispute during the five years immediately preceding their appointment. The two public representatives serve as the board's chairperson and deputy chairperson.

Each board member serves a six-year term, staggered so that two are replaced every two years. The governor can remove any board member for cause or for the good of the service, but only after notice and a public hearing on the charges. The removal can also be appealed to the Superior Court. The governor must fill any vacancy for a term's unexpired portion within 30 days.

Upon the labor commissioner’s or chairperson of the board’s request, the governor can also appoint alternate members in each category if conditions warrant. Alternate members serve a one-year term, or until a replacement is appointed. They are subject to the same eligibility requirements as regular members, and when serving, have the same powers.

Current Members

Table 2 lists the board’s current membership.

Table 2: SBMA Members

	Regular Members	Alternate Members
Public Representatives	Gerald T. Weiner, Esq. (Chair) Peter R. Blum, Esq. (Deputy Chair)	Ruben E. Acosta, Esq. Laurie G. Cain, Esq. Joseph M. Celentano, Esq. Douglas Cho, Esq. Patrick E. Daly, Esq. Nestor L. Diaz Thadd A. Gnocchi, Esq. Susan E. Halperin, Esq. Kenneth A. Hampton Gregory M. McMahon Rocco Orlando, Ph.D. Louis Pittocco, Esq. Alan L. Shectman Mark E. Sullivan, Ph.D. M. Jackson Webber, Esq.

Table 2 (continued)

	<i>Regular Members</i>	<i>Alternate Members</i>
Management Representatives	David A. Ryan Michael C. Culhane	Kenneth Baldyga J. Stuart Boldry Carroll A. Caffrey Daniel A. Camilliere Robert V. Canning Christopher Y. Duby, Esq. David J. Dunn Robert C. Johnson, Esq. John Leverty Marilyn J. Lipton, Esq. Frank H. Livingston Tanya J. Malse Marc S. Mandell, Esq. John B. Margenot, Jr. Robert A. Massa Russell J. Melita Victor M. Muschell, Esq. John F. O'Connell Richard A. Podurgiel John M. Romanow, Esq. Betty H. Rosania Terence P. Sullivan Timothy Sullivan, Esq. Louis Smith Votto, Esq.
Labor Representatives	Michael J. Ferrucci, Jr. Raymond D. Shea	Robert H. Brown John F. Cronan Stephen R. Ferrucci, III Santo Franzo Betty Kuehnel Frank R. Krzywicki David B. Mulholland James Neary Richard Panagrossi Jeffrey Rosenberg, Esq. Helene H. Shay Clifford Silvers John B. Toomey, Jr. Lionel Williams

LH:ts