

## **Municipal and Education Binding Arbitration Decisions in Select States**

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### **Issue**

Describe what limits, if any, are placed on an arbitrator during municipal and education (teacher) binding arbitration in California, Massachusetts, New York, and Rhode Island. Specifically, address whether limits are placed on the arbitrator regarding decisions on wages in these states and if Connecticut differs.

### **Summary**

California, Massachusetts, New York, and Rhode Island all provide for municipal and education binding arbitration. However, none of these states restrict an arbitrator's final decision, giving the arbitrator discretion in making an award. But they often require an arbitrator to consider the public interest, cost of living, or other factors. Additionally, California, in certain circumstances, allows public employers to unilaterally implement their last, best, and final offer, but only following an impasse in negotiations, a fact finding request by public employee unions, and a public hearing.

In contrast, Connecticut's arbitration statutes require arbitrators to choose between an employer's last best offer or a union's last best offer.

### **Connecticut**

#### ***Municipal Binding Arbitration***

Under Connecticut law, before the beginning of arbitration, both a municipal employer and an employee union must submit a proposed collective bargaining agreement. Each party must provide a reply to the proposed agreement of the other party, identifying provisions it is willing to accept and those which it is unwilling to accept. In addition, each party must file its last best offer if an agreement cannot be reached. For each unresolved issue, state law requires an arbitrator to choose between the municipality's last best offer or a union's last best offer ([CGS § 7-473c\(d\)](#)).

Among other things, in making a decision an arbitrator is required to give priority to the public interest and the municipality's financial capability. The arbitrator must also consider (1) negotiations prior to arbitration, (2) the employee groups' interests and welfare, (3) cost of living changes, (4) existing employment conditions of the employee group and groups similar to it, and (5) the wages, salaries, benefits, and employment conditions of comparable employee unions, including the private sector ([CGS § 7-473c\(d\)\(9\)](#)).

### ***Education Binding Arbitration***

In the event of an impasse in negotiations between a local board of education and public school teacher union, both parties must submit their dispute to an arbitration panel. Similar to the municipal binding arbitration process, each party is required to submit its last best offer, which an arbitration panel will choose between to make a decision. Generally, in rendering a decision, an arbitration panel will consider the same factors as those assessed in municipal arbitration ([CGS § 10-153f](#)).

## **Other Select States**

### ***California***

***Municipal Binding Arbitration.*** In California, municipalities and public employee unions may adopt binding arbitration procedures for resolving collective bargaining disputes. However, they are not required to include binding arbitration procedures in a collective bargaining agreement.

In general, following an impasse, a public employee union may request that the dispute be submitted to a fact-finding panel. In arriving at its recommendations, a fact-finding panel must consider, among other factors (1) state and federal law, (2) local rules and regulations, (3) the stipulations set forth by the parties, (4) the public's interests and welfare, (5) comparability of wages and benefits of others similarly situated, (6) cost of living, and (7) the overall compensation received by the employee group including but not limited to wages and medical benefits. If the dispute still cannot be settled and is subject to arbitration procedures, the parties must proceed to final and binding arbitration ([Cal. Gov't Code §§ 3505.4-3505.8](#)).

When binding arbitration is not required and a mediator cannot settle the parties' dispute, an employee union, but not a municipality, may request that the dispute be submitted to a fact-finding panel. If the dispute still cannot be settled, the city or county may, after holding a public hearing, unilaterally implement its last, best, and final offer regardless of the employees union's acceptance. This process differs among cities and counties depending on local charters ([Cal. Gov't Code § 3505.7](#)).

***Education Binding Arbitration.*** By law, California's local school boards and school teacher unions may include procedures for final and binding arbitration in any collective bargaining agreement. In the event of an impasse, either party may submit a request for mediation to the state public employment relations board. If the dispute still cannot be settled the parties may request the appointment of a fact-finding panel. The fact-finding panel must consider the same criteria as those listed in municipal arbitration except for local rules and regulations. If the parties fail to implement the recommendations of the fact-finding panel, the dispute will be submitted for final and binding arbitration ([Cal. Gov't Code §§ 3548-3548.1](#)). If a collective bargaining agreement does not include

such procedures both parties may agree to submit disputes for binding arbitration at a later date ([Cal. Gov't Code § 3548.6](#)).

## ***Massachusetts***

Massachusetts has both mandatory and voluntary binding arbitration for municipal employees and teachers. In Massachusetts, the labor relations commission may order binding arbitration at the request of a municipality, employee union, or both. Voluntary arbitration is agreed to by both parties but is only binding where it has been previously authorized by the appropriate legislative body or local school board ([Mass. Gen. Laws ch. 150E, §§ 1-9](#) & [Mass. Gen. Laws ch. 71, § 38](#)). When resolving collective bargaining disputes involving municipalities and their [police officers and firefighters](#), an arbitrator must consider, among other things (1) an employer's financial capability, (2) what the employer has historically paid similar employees, and (3) wages in similarly situated communities.

## ***New York***

Under New York law, the state public employment relations board may order binding arbitration upon its own motion or upon the request of a public employer (e.g., municipality or school district) or public employee union. In addition, a public employer and public employee union may also agree to voluntary arbitration after reaching an impasse in negotiations. Unlike Massachusetts, such a decision to go to voluntary arbitration is binding regardless of whether it was previously authorized by the appropriate legislative body or school board.

During any such arbitration proceedings, an arbitration panel must render a decision about any and all matters in dispute, making "a just and reasonable determination." New York courts have interpreted this to mean that arbitrators are required to follow the criteria set forth below and that their determination must have a plausible basis (*Watts v. Roberts*, 2009 WL 8732889, at \*5 (N.Y. App. Div. 2009)). An arbitration panel is required to provide a written basis for its findings while taking into account, among other factors (1) comparability of wages, (2) the public's interests and welfare, (3) the public employer's ability to pay, (4) any peculiarities of the profession, and (5) the history of other collective bargaining agreements between the parties ([N.Y. Civ. Serv. Law § 209](#)).

## ***Rhode Island***

***Municipal Binding Arbitration.*** In Rhode Island, municipal employees and municipalities are required to submit to binding arbitration after a request is made by either party to the state's labor and training director. Following such proceedings, an arbitration panel must provide its written findings and opinions to the parties. Arbitrators must render a decision about any and all matters in controversy and make a just award according to the best of their understanding ([R.I. Gen. Laws § 28-9-10](#) & [R.I. Gen. Laws §§ 28-9.4-12](#)).

***Education Binding Arbitration.*** School teachers are not defined as municipal employees. Teacher unions enter into collective bargaining agreements with local school boards instead of directly with municipalities. Still, the binding arbitration process is generally the same as that of municipal employees. School boards and teachers are bound by an arbitration panel's decision after a panel's examination of the evidence relative to the unresolved issues. An arbitration award

can only be appealed if it is deemed to have been obtained by fraud or is adverse to existing law ([R.I. Gen. Laws § 28-9.3](#)).

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