

Questions on Public Employee Supersedence Laws

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Issue

This report addresses various questions about laws that allow certain provisions in state or municipal employee collective bargaining agreements to supersede state and local laws. The Office of Legislative Research is not authorized to issue legal opinions and this report should not be considered as one.

What Are the State's Supersedence Statutes and to Whom Do They Apply?

Connecticut has two supersedence statutes: [CGS § 5-278\(e\)](#), which applies to state employee collective bargaining agreements, and [CGS § 7-474\(f\)](#), which applies to municipal employee collective bargaining agreements.

State Employees

The state employee collective bargaining law generally allows the provisions of a collective bargaining agreement to supersede any conflicting state statutes, special acts, or regulations. However, the superseding provisions must be "appropriate" to collective bargaining ([CGS § 5-278\(e\)](#)). The law grants state employees the right to collectively bargain on questions of wages, hours, and other conditions of employment. It also explicitly prohibits them from bargaining over the state's ability to (1) establish, conduct, and grade merit exams; (2) rate candidates and establish lists from the exams; and (3) make appointments and promotions from the lists in the competitive division of the classified service ([CGS §§ 5-271 & 5-272\(d\)](#)).

An agreement's superseding provisions must also be approved under the procedures established in the state employee collective bargaining law. Under these procedures, once the parties reach an agreement, the state's bargaining representative must submit the agreement and a written request for approval of any superseding provisions (commonly known as a supersedence appendix) to the legislature. The legislature must vote to approve or reject the agreement and if it fails to do so within certain deadlines, the agreement is deemed rejected ([CGS § 5-278\(b\) & \(e\)](#)).

Municipal Employees

The collective bargaining law for municipal employees generally allows the provisions of a municipal collective bargaining agreement to supersede any conflicting municipal charter, special act, ordinance, rules, or regulations. However, their ability to supersede state statute is more limited; they may only supersede state statutes that (1) directly regulate the work hours of police officers and firefighters or (2) provide a method for covering or removing employees from the Connecticut Municipal Employees' Retirement System (CMERS) or the Policemen and Firemen Survivors' Benefit Fund ([CGS § 7-474\(f\)](#)).

Similar to the state employees' law, any superseding provisions must be appropriate to collective bargaining and properly approved. The municipal employees' collective bargaining law grants municipal employees the right to collectively bargain on questions of wages, hours, and other conditions of employment ([CGS § 7-468](#)).

It also prohibits collective bargaining over (1) conducting and grading merit exams, (2) rating candidates and establishing lists from the exams, (3) making appointments from the lists, and (4) any municipal charter provision about municipal employees' political activity. However, once a municipality establishes procedures for the promotional process, changes to the process proposed by the municipality must be collectively bargained if they concern (1) qualifications for taking a promotional exam; (2) the relative weight attached to each exam method; or (3) using and choosing monitors for written, oral, and performance exams. A promotional exam's content cannot be bargained ([CGS § 7-474\(g\)](#)).

The superseding provisions in a municipal collective bargaining agreement must also be approved under the procedures established in the municipal employees' collective bargaining law (see the question about municipal supersedence appendices below).

When Did This Happen and What Was the Rationale Behind It?

Both supersedence provisions are longstanding laws. The legislature adopted the supersedence provision for municipal employees in 1965, when it enacted the municipal employees' collective bargaining law (February 1965, PA 159, § 8). It adopted the provision for state employees 10 years later, when it enacted the state employee collective bargaining law (PA 75-566, § 9).

The legislative histories of the two acts do not include any significant discussions about why the supersedence provisions were included (histories for these acts are available from the State Library [here](#) and [here](#)).

According to a 1971 [article](#) in the *University of Chicago Law Review*, supersedence provisions such as Connecticut's "recognize that civil service rules should not present a monolithic barrier to all bargaining and reflect a legislative judgment as to which aspects of civil service should be immune from bargaining" (see p. 846). The article also cites a 1965 report that provided the impetus for the municipal employees' law. This report states that the supersedence provision was included "to clarify any question that may arise if a provision of an agreement is in conflict with other rules or regulations in the municipality" because "as a practical matter, it is not possible to have two separate rules in effect at the same time covering the same subject matter" (p. 846, footnote 102).

Do Other States Have Similar Statutes?

Among the New England states, only Connecticut and Massachusetts generally allow provisions in state employee collective bargaining agreements to supersede conflicting state statutes. The other New England states largely prohibit their state employee unions from collectively bargaining over issues that would contradict state laws, although Maine does allow for one limited exception. For additional information, see OLR Report [2017-R-0356](#).

How is This Enforced?

By law, the [State Board of Labor Relations](#) administers the collective bargaining laws for state and municipal employees ([CGS §§ 5-273 & 7-471](#)). Parties can appeal the board's decisions to the state courts under the Uniform Administrative Procedure Act.

How Would Amending the Supersedence Statutes Affect Existing Contracts?

If the legislature amended the statutes in a way that affected existing contracts, the amendments could be subject to claims that they violate the U.S. Constitution's contracts clause (art. 1, § 10). The clause generally prohibits states from passing laws that impair the obligation of contracts.

However, the courts have allowed states to modify their contracts through legislation if the impairment to the contract is not substantial. If the impairment is substantial, the legislation must serve an important and legitimate public purpose, and the means to accomplish it must be reasonable and necessary. For additional information about interpretations of the contracts clause, see [this 2017 opinion](#) from the state attorney general.

How Many Municipal Contracts Supersede the State's Freedom of Information Act (FOIA)?

We are unable to determine how many municipal contracts supersede FOIA, however it does not appear that state law allows such a supersedence. As discussed above, under the municipal employee collective bargaining law, municipal collective bargaining agreements may only supersede state statutes that (1) directly regulate the work hours of police officers and firefighters or (2) provide a method for covering or removing employees from CMERS or the Policemen and Firemen Survivors' Benefit Fund ([CGS § 7-474\(f\)](#)). The law does not provide any broader authority for municipal agreements to supersede state statutes.

Does the Law Require Municipalities to Inform the State When a Local Contract Supersedes State Law?

The state statutes and regulations do not require municipalities to notify the state when municipal contracts supersede state law. As noted above, this should only occur under certain limited circumstances.

Are Municipal Contracts Required to Include Supersedence Appendices? Must Local Governing Boards Approve Them? Can They Be Deemed Approved?

Once the parties reach an agreement, the municipal bargaining representative must submit the agreement and a written request for approval of any superseding provisions (i.e., the supersedence appendix) to the municipal legislative body within 14 days. The legislative body may approve or

reject the agreement as a whole by a majority vote of those present and voting on the matter. If the municipal legislative body is a town meeting, approval by a majority of the selectmen makes the agreement valid and binding. Unlike the state, if the municipal legislative body fails to vote on the agreement within 30 days after the 14-day submission deadline, the agreement is deemed approved ([CGS § 7-474\(b\)](#)).

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