

STATE BOARD OF MEDIATION AND ARBITRATION

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LEGISLATIVE
PROGRAM REVIEW
AND
INVESTIGATIONS
COMMITTEE

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**CONNECTICUT GENERAL ASSEMBLY
LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE**

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LEGISLATIVE PROGRAM REVIEW
& INVESTIGATIONS COMMITTEE

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AND ARBITRATION**

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Executive Summary

STATE BOARD OF MEDIATION AND ARBITRATION

Recognizing the need for an efficient and effective system to resolve conflicts between employees and employers within the state, the Legislative Program Review and Investigations Committee authorized a study of the State Board of Mediation and Arbitration in January 1997. Although the board has various responsibilities with respect to labor relations, this study focused solely on the grievance arbitration process used by the board.

As the study progressed, several factors became increasingly clear with respect to the grievance arbitration process and how well it was working. The most obvious procedural deficiency is the current backlog of pending grievance arbitration cases. The board has been operating for several years with a significant backlog of cases awaiting grievance arbitration hearings. In fact, the backlog has been formally referenced in the governor's budget since at least the mid-1980s. It is most likely, however, that the backlog existed before then. Due to the current number of pending cases, the average grievance arbitration case now takes more than a year before a hearing is scheduled by the board.

The board offers its services to both the public and private sectors. Analysis of caseload information revealed the vast majority of grievance arbitration cases before the board were filed by public sector entities. A full 95 percent of the 1,800 cases filed in FY 97 involved public sector employers and employees. The vast majority of those cases came from municipalities.

The committee examined two primary components of the grievance arbitration process, and made several findings. A random sample of cases was analyzed for the length of time before cases received initial hearings from the time they were received, and how long it took the board to render awards following conclusion of cases. The committee found the average time before an initial hearing was assigned to a case was 446 days. Initial hearings for cases considered "priority" by the board (i.e.; terminations, long-terms suspensions, and layoffs) were assigned in a far shorter time frame -- an average of just under three months. With respect to awards, the committee found they were generally not issued in accordance with specified time frames outlined in the board's regulations or policy.

A review of the board's internal policy for postponing cases did not comply with state regulations in several areas, was found to be inherently contradictory, and caused administrative difficulties. The board's regulations require the neutral arbitrator conducting the arbitration hearing to determine whether a case should be postponed, in accordance with specific criteria outlined in regulation. It is current board policy, however, to have the staff director decide on postponements. The board's policy also defines specific factors for postponing cases, while

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at the same time states each case has its own unique circumstances which should be evaluated individually. The committee found this policy was contradictory and caused problems administratively.

As mentioned above, the board has incurred a backlog of grievance arbitration cases. The board calculates roughly 3,000 cases await initial hearings. Examination of the backlog revealed the board has not developed a standard for defining a realistic time frame before grievance arbitration cases are scheduled for initial hearings from the time they are filed. In other words, as soon as a case is filed with the board it is added to the backlog. The committee found this process unnecessarily inflates the number of “backlogged” cases because it does not take into account normal administrative processing time.

The board has made attempts to decrease its case backlog, but with minimal net effect. This is mainly due to increased caseload volume, lack of appropriate funding to fully support the board’s efforts in this area, and lack of a strategic plan to eliminate the backlog. Moreover, the board and the Department of Labor are at odds over how to decrease the number of pending cases.

Although the backlog is recognized as a major problem facing the board and causes long waiting periods before cases are heard, the fact remains that parties using the board are free to choose outside arbitration services if they are dissatisfied. This does not excuse the board from becoming as efficient as possible, however. It simply means that parties with grievance cases have alternatives to the State Board of Mediation and Arbitration.

Several issues relating to the overall operation of the board surfaced during the course of the study. Policies and procedures, performance standards and measurements, the filing fee, management controls, and automation were areas identified as needing improvements or changes.

The committee found the board lacks a clearly defined set of policies and procedures to guide its overall operation. The board’s regulations are also outdated and need revision in several key areas to better reflect current practice. As a way of offsetting the obsolete regulations, the board has developed an informal set of policies and procedures instead of updating the regulations. The policies and procedures are not widely distributed to customers, however, resulting in varied levels of awareness of the board’s requirements. The committee also found that more work needs to be done in developing standards and measuring overall performance.

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One issue prevalent throughout this study -- and discussed in detail at a the public hearing held by the committee -- involved the filing fee currently charged when grievance cases are filed with the board. The committee found the \$25 fee has remained unchanged since its inception in 1979, and has not increased at the same rate as the board's basic administrative costs. The committee also found the American Arbitration Association, which is a not-for-profit organization offering arbitration services nationally, recently increased its administrative fee to help offset cost increases. Further, the board recognizes a fee increase is warranted. In a recent letter to the labor commissioner, the board, which represents a cross-section of the labor relations community, recommended the filing fee be raised. Again, the reason behind the board's action is to have parties pay a more equitable fee based on the board's increased cost of doing business since the fee was originated almost 20 years ago.

In terms of management controls and automation, the committee found that data collection and analyses need to significantly improve in certain areas for the board to operate in the most efficient and effective manner possible. Basic automation for case management purposes is severely lacking. As a result, the board depends highly on manual processes for managing its caseload information, limiting management analysis of overall operations. Although current software in place is inadequate to support the board's overall function, what is available is being used to the fullest capacity. The committee also found that after delay, the labor department is starting to give the board's automation problems some attention.

RECOMMENDATIONS

1. Amend C.G.S. Sec. 31-98 to require payment to arbitrators only after a signed award is submitted following the conclusion of grievance hearing, and the board officially closes the case.

It is further recommended the board begin tracking executive session dates, use those dates when calculating the timeliness of awards, and continue enforcing its policy of not issuing additional cases to neutral arbitrators with late awards.

2. The board shall begin strictly enforcing its current postponement policy based on the specific criteria outlined in the policy. The board shall further review its postponement policy to determine if revisions are necessary. The review should conclude by July 1, 1998.

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3. The State Board of Mediation and Arbitration shall adopt a standard for the length of time it deems necessary for normal administrative processing of grievance arbitration cases from when a case is filed to when it should be scheduled for a hearing.

Once a realistic standard is defined, the board and the labor department shall work cooperatively to develop a strategic plan for eliminating the backlog of grievance cases. The strategic plan should include a time frame for achieving the plan, in accordance with the standard recommended above, and the resources necessary to eliminate the backlog and increase the overall timeliness of scheduling hearings.

After a strategic plan is developed, the labor department shall request from the legislature any additional resources necessary to achieve the plan.

The strategic plan shall be developed no later than January 1, 1999.

4. The State Board of Mediation and Arbitration shall revise and update its regulations in accordance with the Uniform Administrative Procedures Act to better reflect current practice and procedures. The board shall complete the internal process for updating its regulations, and forward revisions to the attorney general's office for review, no later than July 1, 1998.

A standardized manual of the board's current policies and procedures shall also be developed. Practitioners before the board should be made aware such a manual exists, and given copies upon request.

5. The board of mediation and arbitration shall develop a set of realistic standards to be used in evaluating the overall performance of the board. These standards should cover all key components and phases of the board's process. Further, the board shall begin measuring its performance on an annual basis. Included in the evaluation shall be written assessments of the board's performance solicited from parties actually using the grievance arbitration service. Relevant performance information shall be included in the Annual Report to the Governor as presented in the Connecticut Administrative Reports, and provided to the legislative committee of cognizance. Such evaluation reports shall also include a discussion of any improvements made to the board's mediation services.

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6. Amend C.G.S. Sec. 31-97 to increase the filing fee for grievance arbitration services before the State Board of Mediation and Arbitration to \$100.

7. The board of mediation and arbitration shall continue to identify relevant information sources necessary for management analysis purposes, and compare such information with board-established performance standards. In addition to information currently collected, the board shall begin collecting initial hearing dates and executive session dates to be used as performance indicators.

The Department of Labor should provide the necessary automation resources, established in conjunction with the board, and continue to evaluate and upgrade the board's overall case management automation capabilities.

State Board of Mediation and Arbitration

The Legislative Program Review and Investigations Committee authorized a study of the State Board of Mediation and Arbitration (SBMA) in January 1997. The scope of study approved by the committee primarily calls for examination and assessment of the:

- ◆ caseload process for grievance arbitration, including its administration and timeliness;
- ◆ efficiency and effectiveness of the board in resolving grievances filed;
- ◆ nature and causes of the current backlog of grievance cases pending before the board; and
- ◆ organizational structure, board operations, and resources in place to provide such service.

In preparing this report, interviews were conducted with board members, board customers -- including employers and employee organizations, practitioners before the board, and staff. A random sample of grievance arbitration case files, along with aggregate data compiled by the board and board policies and procedures were examined. Testimony from a public hearing held by the committee was also reviewed.

The report is divided into four chapters. The first is a brief historical overview of the State Board of Mediation and Arbitration. Chapter Two describes the main duties and responsibilities of the board. Chapter Three outlines the board's organization and resources. Findings and recommendations relating to the board's overall operations are provided in Chapter Four. Finally, Appendix A shows a list of members serving on the board, Appendix B describes the various systems used in the New England states for providing grievance arbitration services, Appendix C includes agency responses from the labor department and the board.

Key Points

Chapter One: Historical Overview

- State Board of Mediation and Arbitration statutorily created in 1895.
- Board established to act as third party to hear grievances and adjust labor disputes between employees and employers.
- Current duties and responsibilities have only slightly changed since inception.
- Board comprised of six members, with equal representation of employers, labor, and the general public. An unlimited number of alternate members may be appointed to augment board's arbitration function. Governor makes all appointments to board.
- Members receive \$150 upon conclusion of proceedings, with an extra \$100 provided to member who writes decision. No payment is made for second day of proceedings. Each arbitrator provided \$50 per day for any proceeding extending beyond two days.
- No charge to file a grievance arbitration case with State Board of Mediation and Arbitration until 1979, when nonrefundable fee of \$25 was established in statute. Both parties to a grievance required to pay fee.

Historical Overview

The State Board of Mediation and Arbitration (SBMA) was statutorily created in 1895. As a result of the rapid expansion of organized labor at that time, the board was established to act as a third party to hear grievances and adjust labor disputes between employees and employers. Whenever a dispute or grievance would arise and the board was notified, its first duty was to inquire as to the cause(s) of the dispute.

The board was designed to fully investigate all labor controversies brought to its attention. Investigations included taking testimony, issuing subpoenas for necessary witnesses, and examining pertinent records of the business involved in the controversy. Once an investigation was completed, the board had ten days to render its decision regarding the outcome of the dispute. All decisions were to be made in writing, signed by a majority of the board members, and include details of the board's decision along with each member's position.

If the board became aware that a strike or lockout was occurring, or was threatened to occur, it attempted to settle the controversy through mediation. In those situations the board had the same investigatory powers it had when grievances or disputes were formally submitted before it.

The current duties and responsibilities of the State Board of Mediation and Arbitration have only slightly changed since its inception. The board's main focus continues to be mediating labor disputes, grievances, and contract impasses in the workplace and, if such controversies are formally brought to the board, resolving them through arbitration.

Board Membership

In its beginning stages, the board of mediation and arbitration consisted of three members. One member was chosen from the party casting the most votes for governor in the last election, and one from the party casting the second most votes. The third member was chosen from a labor organization within the state. Each member was appointed for two-year terms.

The method of selecting board members changed in the mid-1930s. Members were no longer chosen according to gubernatorial vote casting. Instead, the governor appointed one member to represent employers, one to represent employees, and a third to represent the general public. The public member was also chosen as the board's chairman.

Terms for board members also changed at this time. Members served for six years rather than two, and terms were staggered among the three appointees. Initially, the employer representative served a two-year term, the labor representative served a four-year term, and the public member served for six years. Following the expiration of the original terms, each new member was appointed for six years.

State law was modified in 1937 allowing alternate members to serve on the board. The change, which took effect in 1941, permitted the governor to appoint one alternate for each member of the board. Terms for alternate members were set at six years. The first alternates, however, served different terms to stagger their appointments. Terms for alternate members were changed to a maximum of one year in 1977. Eleven years later, another change authorized alternates to serve for up to one year or until a replacement is appointed.

One of the main roles for the original alternate members was to take the place of a regular member when that person was unable to serve. If this occurred, the alternate member -- representing the same interest as the regular member -- was given all the powers and duties of the replaced board member.

Alternate members were also given the same investigatory powers as the other board members. This included authorization to examine payroll and other records of a company involved in a labor dispute, probing the overall conditions affecting relations between employers and employees, and issuing subpoenas to gather necessary information related to the duties of the board.

State law was again amended in the 1940s permitting the Department of Labor (DOL) commissioner to appoint an investigator to act on behalf of the department and the board in making investigations and adjusting "industrial disputes." Such investigators are now commonly known as mediators, and the commissioner is currently required to appoint at least five.

The overall structure of the State Board of Mediation and Arbitration was modified in the 1950s. At that time the number of regular board members was increased to six -- two panels with three members per panel. Each panel is comprised of one member representing labor, one representing employers, and one representing the general public. The two labor representatives must be from separate employee organizations. Further, the number of alternate board members that could be appointed also changed from three to "one or more."

The legislature altered the requirements for board membership in 1975. To be eligible for service, members were prohibited from having represented employers or employees in a labor dispute within the five years preceding their appointments to the board.

Procedural Changes

The first substantive change to the board's procedures occurred in the mid-1940s. The change allowed any employee before the board to request the alternative labor board member serve in place of the regular member who represented labor. Similarly, any employer before the board could request the alternative employer member serve instead of the regular board member.

During the early 1950s, state law expressly noted for the first time that the board was to be represented by a panel of three members. The board's subpoena powers were also strengthened at this time. For example, if someone refused to obey a subpoena the board could petition the court to require the person appear before the board and produce the requested information. The subpoena law was further modified in that anyone ordered by the court to appear before the board could not be prosecuted for divulging information, except if the person committed perjury. Another change in the 1950s increased the time frame for finalizing written decisions following a case from 10 to 15 days.

Beginning in 1961, a single public member of the board was permitted to arbitrate cases instead of a full panel of three members. The new procedure, however, could only be used if both parties involved in the dispute jointly agreed to use a single member panel to hear the case.

The next significant change occurred in 1973. Panel members were given authority to issue oral decisions immediately following the conclusion of a case. The change allowed disputing parties to hear an arbitrator's final decision sooner than if a full written decision was issued.

The most recent modification to the board's process came in 1980, dealing with the subject of arbitrability (i.e., which matters were or were not duly before the board.) Once a case was formerly before the board, neither party could claim an issue as improper for arbitration unless the other party was notified at least 10 days prior to the hearing date that such a claim would be made at the hearing.

Compensation

Members of the board of mediation and arbitration started being remunerated for their services during the late-1940s. No salary was given, but members were paid a \$20 stipend in lieu of expenses for each day they were involved with board activities. The stipend was increased several times over the next three decades until it reached \$75 per day in 1979.

In the early 1980s, a flat rate of \$100 was given to each board member upon the conclusion of grievance or arbitration proceedings. An additional \$50 was given to the member who prepared the final written decision on the case. Any member acting as a single panel received \$150 for hearing the case and writing the decision.

Throughout the 1980s, compensation for board members increased until reaching its present rate in 1988. Panel members currently receive \$150 upon conclusion of the proceedings, with an extra \$100 provided to the member writing the decision. Single panel members receive \$250. If a case goes beyond the first day, members are not paid for the second day of proceedings. Each person is, however, provided \$50 per day for any proceeding extending beyond two days.

Filing Fees

Until 1979, there was no charge to file a grievance arbitration case with the State Board of Mediation and Arbitration. At that time, a nonrefundable fee of \$25 was established in statute. The board continues to receive a filing fee for grievance arbitration cases, and the amount remains \$25. The only exception is that since 1982, if the parties to a dispute agree to use a single panel (i.e., expedited process) to arbitrate their case, the filing fee is refunded.

Both parties are required to pay the \$25 fee. The party requesting arbitration, usually the employee organization, must pay the fee at the time of the application. Once the request for arbitration is received by the board, the other party to the dispute is required to submit the \$25 assessment.

Key Points

Chapter Two: Duties, Responsibilities, and Administrative Procedures

- Board is responsible for resolving labor disputes through mediation and arbitration.
- State mediators act on board's behalf in making investigations and adjusting labor disputes.
- Mediators do not impose settlements; leverage and effectiveness derives from power of persuasion, and knowledge of the parties and their issues, labor relations, and applicable law and regulations.
- Mediation is not mandatory, except in contract negotiations for municipal employees if agreement is not reached by certain point in bargaining process or if parties do not request mediation.
- Board offers arbitration services in cases involving workplace grievances and contract negotiation impasses; grievance arbitration is board's most widely used service.
- Grievance arbitration hearings generally conducted by tripartite panels consisting of arbitrator advocating for labor, arbitrator advocating for management, and arbitrator representing public. Public arbitrator is neutral, chairs panel, and writes award.
- Parties to a grievance arbitration award may apply to superior court to have award modified, corrected, or vacated.
- Department of Correction has special arrangement with board regarding grievance arbitration process.
- Vast majority of board's caseload process not automated.

Duties, Responsibilities, and Administrative Procedures

The State Board of Mediation and Arbitration's formal role is defined by statute and regulation. The board is mainly responsible for resolving labor disputes through mediation and binding arbitration. Such disputes may include potential or occurring strikes and lockouts, employee or employer grievances, and contract negotiation impasses. The board also establishes board policies and procedures, promulgates regulations, and provides advice and consent to the labor department commissioner regarding the selection of state mediators.

Mediation

The board extends its mediation services to help settle labor conflicts (i.e., grievances and contract negotiation impasses) within municipalities, state agencies, and the private sector. Mediation is a process whereby a neutral party attempts to open dialogue between two disputing groups allowing them to discuss their differences. The ultimate goal of mediation is to resolve labor disputes without involving formal legal proceedings.

Connecticut is required by law to have at least five mediators. The labor department commissioner, with advice and approval of the board of mediation and arbitration, appoints the mediators. Prior to the most recent early retirement incentive program offered by the state, six mediators were employed. The board's staff director also provides mediation services given the nature of the position, but is not one of the mediators formally appointed by the commissioner.

State mediators act on behalf of the board in making investigations and adjusting labor disputes. Each mediator has the full powers of the board when assigned to a case, including; 1) entering establishments, 2) examining payrolls and other records, and 3) issuing subpoenas and administering oaths.

Mediators have no authority to impose settlements. Their only leverage to find a resolution derives from the power of persuasion. A mediator's effectiveness depends upon his or her knowledge of the parties and their issues, labor relations, and applicable law and regulations.

Mediator effectiveness also relies on how well the disputing parties accept the mediators. Obviously, the more accepted and respected a mediator is to the parties, the better the chances are of reaching a settlement. It is up to the parties to decide whether they want to use mediation as a way of settling their differences. Under most circumstances, mediation is not a mandatory practice for resolving labor disputes. State law, however, requires mediation in contract negotiations for municipal employees if an agreement is not reached at a certain point in the bargaining process or if mediation has not been requested by the parties.

Often times, mediation is used to assist an employer and employee(s) in coming to an agreement that resolves a grievance. Grievances are disputes arising from the interpretation and application of terms of an agreed upon written contract between management and employees.

There are particular situations when the board extends its mediation services. For example, mediation can be specifically requested by the disputing parties. In such cases, a state mediator will go to the site of the dispute and begin the mediation process. In situations of a strike or lockout, or a potential strike or lockout, a mediator is dispatched by the board to intervene on behalf of the board in an attempt to settle or avoid the strike or lockout. Further, the board may extend mediation to areas with a significant number of outstanding grievances. The reason mediation services are offered is to lessen or avoid the use of grievance arbitration or formal legal proceedings.

Figure II-1 shows the number of times mediation was offered to disputing parties over the last six fiscal years. As the figure illustrates, the number of cases offered mediation annually by the board ranged between 300 and 600 for fiscal years 1992-97. Specifically, the number of cases in FYs 92, 93, 96, and 97 varied between 350 and 400. In FYs 94 and 95, this figure increased, due to a concerted effort on behalf of the board to offer mediation in towns with a significant number of grievances.

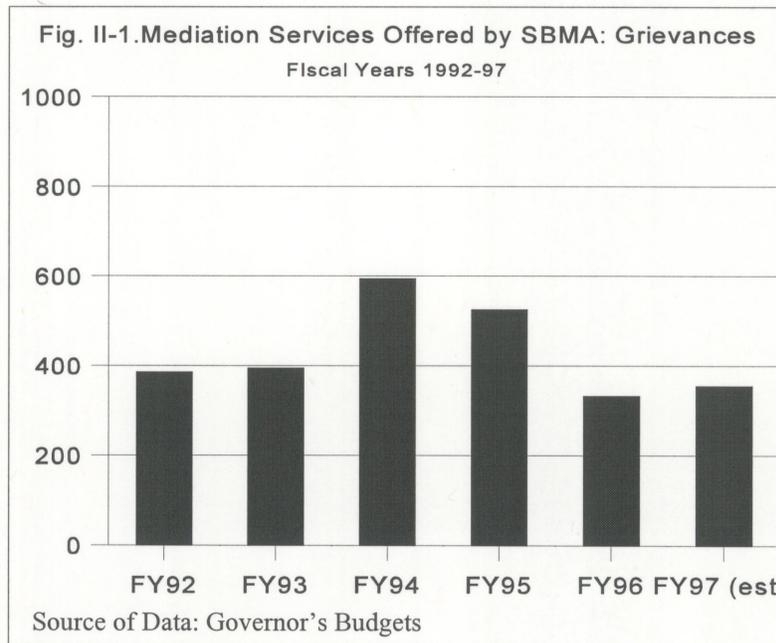
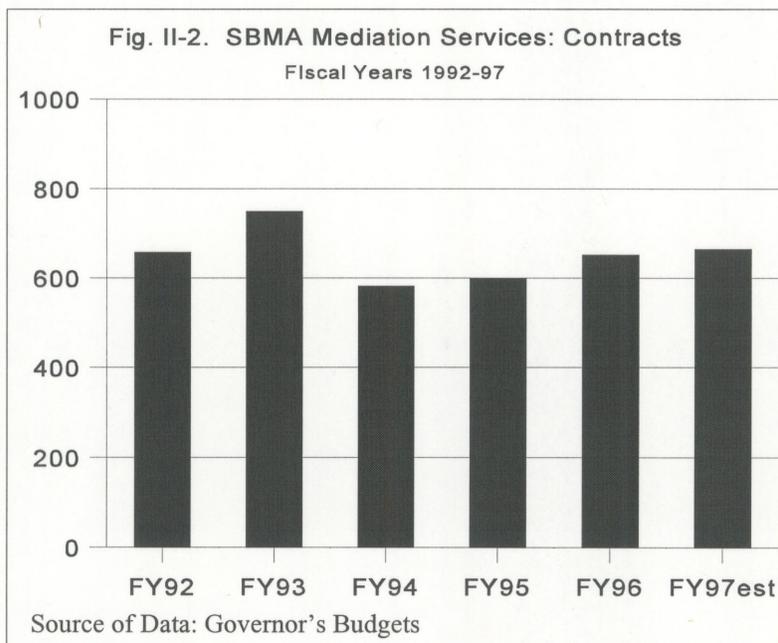


Figure II-2 shows the number of times mediators intervened in contract negotiations. As the figure shows, mediators were involved in roughly 600 to 800 contract negotiations annually between FYs 92-97. It should be mentioned that the numbers in the figure represent the overall number of contract negotiation impasses mediators tried to resolve, and not the actual number of disputes settled.



Arbitration

Arbitration is a process whereby a decision is made by a neutral third party that is binding on the disputing parties, thus ending the controversy. Similar to mediation, arbitration attempts to resolve labor disputes without having the parties resort to the judicial system for settlement.

The board offers arbitration services in cases involving workplace grievances and contract negotiation impasses (i.e., interest arbitration). Grievance arbitration is the board's most widely used service. More grievance cases are filed with the board than any other type of case. For this reason, a more detailed analysis of grievance arbitration is provided later in the report.

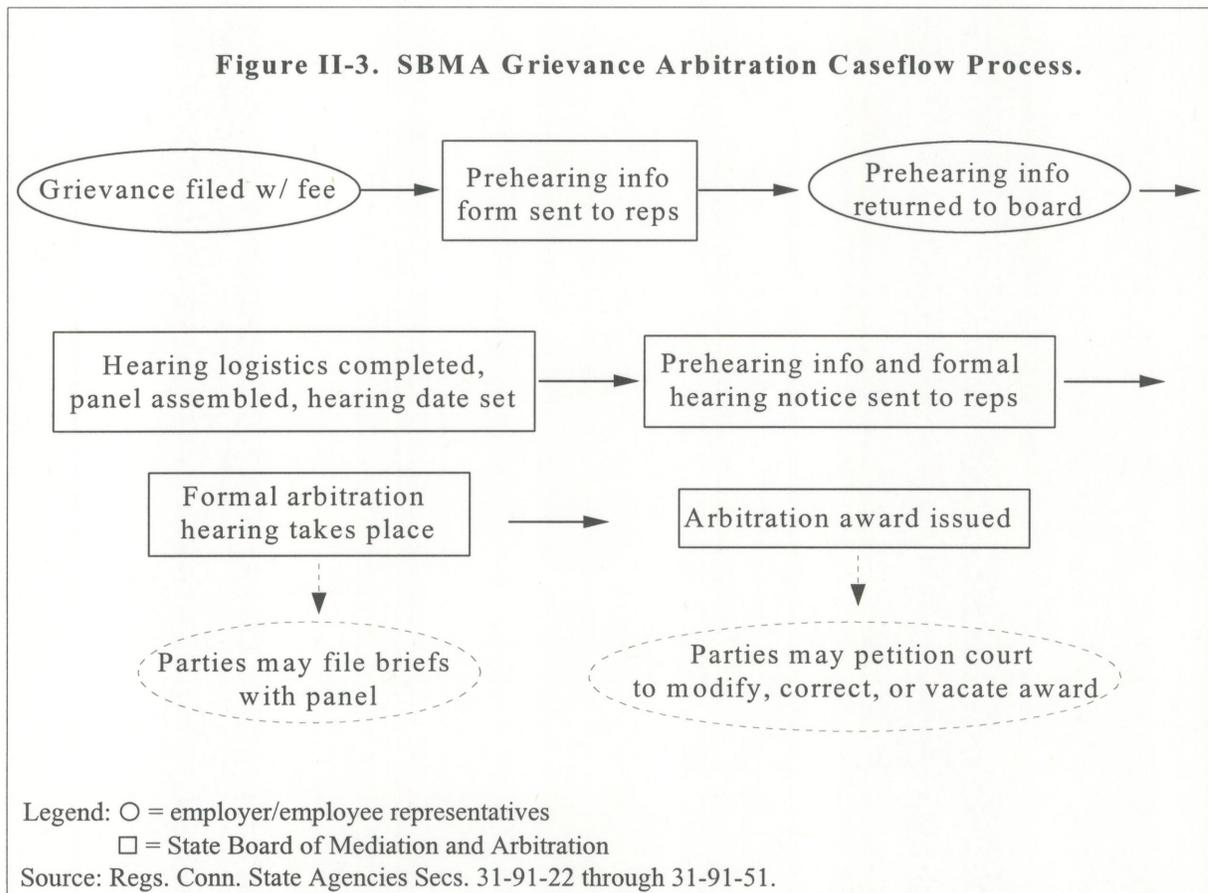
Interest arbitration hearings are held at the site of the dispute, with the cost distributed among the parties. The municipal employer pays the cost of its arbitrator, while the municipal employee organization pays the cost of its arbitrator. The employer and employee organization equally divide the cost of the neutral arbitrator. The cost of any arbitrator appointed by the board is paid for by the party who fails to select its own arbitrator.

Grievance Arbitration Case Administration

The State Board of Mediation and Arbitration generally conducts grievance arbitration hearings using a tripartite panel system. Each panel consists of an arbitrator advocating for labor, an arbitrator advocating for management, and an arbitrator representing the public. The public arbitrator is the neutral arbitrator who chairs the panel and writes the decision.

Grievance arbitration hearings using single-arbitrator panels may also be used. Single panels are available if the two parties agree to use that process, or when the board's "expedited" method is agreed to. Expedited hearings were initiated as a way of decreasing the board's backlog by using the single panel process. Parties must mutually request the expedited process, which proceeds without briefs and other written records.

Caseflow process. A broad overview of the grievance arbitration caseflow process is outlined in Figure II-3. The process begins with a grievance case being filed for arbitration with the board. Once the case is filed, it is date stamped, assigned a case number, given to the appropriate case manager, and entered into a specific case administration log maintained by the staff. Cases must include the required \$25 fee before they are accepted by the board.



According to state regulation, the board is required to issue a "prehearing information form" to the labor and management representatives party to the grievance. The representatives must complete the form within two weeks from receipt and return multiple copies to the board. The form is supposed to include information such as a tentative statement of the dispute and the parties' positions, which provide the board with a general outline of the issues surrounding the controversy (Regs. Conn. State Agencies Sec. 31-91-25). Until recently, the board has not used a standardized form for several years. Instead, whatever information is received from the party filing the grievance is the "prehearing information" passed on to the other party. The board, however, developed a standardized grievance filing form in mid-1997.

Once the prehearing information is received, the board, through its case managers, begins to schedule hearings. Each case manager is assigned specific unions as part of their case manager responsibilities. Hearings are then arranged in chronological order by union by case manager, except under certain circumstances, as described later.

Numerous contacts are made to assemble a tripartite panel and ensure the parties to the grievance are available for a hearing on a specific date. Further, state law allows the employer and the employee organization to choose their own advocate arbitrator. If the parties do not make this designation, which is normally the case, or an arbitrator is not available, the board selects the advocate arbitrators using a process detailed in regulation.

The board gives permanent members the "right of first refusal" when deciding which cases they want to arbitrate. If a permanent member is unavailable to take a case, alternate members are selected. It is board practice to brief regular board members as to the parties of a case. Alternate board members only know the date of the hearing, and get case details at the hearing.

According to regulation, notices informing the case participants of the hearing must be sent no later than 10 days before the hearing date, although the board attempts to send the notices at least eight weeks in advance. The board also provides each representative a copy of the other party's prehearing information, as currently received by the board. Hearings generally take place at the board's central office, although the board can designate alternative hearing locations. At present, two other sites are used in New Haven and Norwalk.

Management and labor representatives are permitted to submit evidence and have witnesses at the formal grievance arbitration hearing. Following the hearing, the parties may submit written briefs, as well as reply briefs, regarding the issue(s) disputed or relating to specific areas solicited by the panel.

Hearings are considered closed for administrative purposes when the parties have no additional evidence to present, or the later of the final date when briefs are to be submitted or the

executive session date, if required. Executive sessions occur when tripartite panels are used, and provide the panel members time to discuss the case and formulate an award. A majority of the three panel members must agree on an award before it formally drafted by the neutral panel member.

State law requires that awards be signed by a majority of the panel members, including single-member panels, within 15 days. If an award was made orally at the close of the hearing, a written decision must be submitted to the parties within 15 days of the oral decision. This law, however, has been ruled by the courts as being directory rather than mandatory, meaning the board is not mandatorily bound by this time frame.

When an award is issued by the neutral arbitrator, and the case involves a tripartite panel, the case manager is responsible for getting the other panel members' signatures and mailing signed awards to the parties and the town where the grievance originated. Awards using single-member panels are submitted directly to case managers for distribution. Final case information is recorded in the appropriate logs when the award phase is completed.

Parties to a grievance arbitration award may apply to the superior court to have an award modified, corrected, or vacated. Awards may be *modified or corrected* if the court finds: 1) miscalculation or mistakes in describing any person, thing, or property referred to in the award; 2) the award was made outside the issue(s) submitted in the grievance, unless it is a matter not affecting the merits of the decision; or 3) the award is imperfect in matter of form not affecting merits of the controversy (C.G.S. Sec. 52-419). Changes or modifications to awards occur infrequently, approximately less than five times per year.

Grievance arbitration awards issued by the board may be *vacated* if the court finds: 1) the award was ascertained by corruption, fraud, or undue means; 2) obvious partiality or corruption on the part of any arbitrator; 3) arbitrators were guilty of misconduct in refusing to postpone the grievance hearing when sufficient cause is shown, or in refusing to hear pertinent and relevant evidence, or any other action by which any party's rights are prejudiced; or 4) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final, and definite award was not made (C.G.S. Sec. 52-418). Any party filing an application to vacate an award issued by the board of mediation and arbitration must notify the board and the attorney general's office, in writing, within five days of the application file date. Motions to vacate awards occur roughly 25 times per year, on average.

Postponements. The State Board of Mediation and Arbitration has recently developed an internal policy with respect to postponing hearings. The board will grant postponements for the following reasons; 1) death or illness, 2) an attorney handling a case must be in court and has no replacement, or 3) a party has a previously scheduled vacation or interest arbitration hearing.

The board does, however, evaluate postponement requests on an individual basis given each case has its own particular circumstances.

The board's postponement policy states that cases pending before the board for six months or longer are assigned a hearing date, and participants in those cases are permitted one postponement per grievance. Parties are given 10 days from when they receive their hearing notice to agree on the postponement, find an alternative hearing date, and inform the board of such date. The new hearing must be scheduled between three and six months from the date of the postponement request. If the parties cannot agree on whether to postpone a case or on an alternate hearing date, the board will proceed with its normal policy for issuing postponements using the criteria outlined above.

The board gives scheduling priority to cases involving terminations, suspensions of 30 or more days, and layoffs. The hearing notice for such cases gives the parties two weeks to inform the board that the hearing date is not acceptable. If a new date cannot be agreed to or the parties fail to inform the board of a new date within the two weeks, a formal request for postponement must be made.

Correction department. The Department of Correction (DOC) has a special arrangement with the board. The department uses the board to hear grievances, but does not follow the board's routine practice of rotating neutral arbitrators. Until recently, the department and its employee organization were able to choose the arbitrators they wanted outside of the board's normal practice. As such, only a particular group of neutral arbitrators was being selected to hear DOC cases.

Cases involving the department do not require the \$25 administrative fee. Instead, the department pays the costs of the arbitrators, at the present statutory rate, hearing its cases through a \$5,000 budget allotment specifically earmarked for paying the fees.

Due to the number of cases involving DOC and its relatively limited funding amount set aside for arbitrators' fees, the board was only hearing the department's termination, layoff, and suspension cases (types of cases considered board priorities.) This resulted in an increased backlog of other DOC cases filed, which also added to the board's overall case backlog.

Under the most recent collective bargaining agreement between DOC and the NP-4 bargaining unit, the grievance procedure for department employees states that only suspensions of greater than five days, demotions, and dismissals can be filed for arbitration with the board. Further, the \$5,000 account remains to pay arbitrators at a rate of \$250. Unexpended funds from the account may be carried over into the next contract year. If the annual amount is not sufficient to cover the costs for a given contract year, then the parties to the grievance are required to equally share the per case cost.

The department and the bargaining unit also agreed to using only two of the board's neutral arbitrators on a rotating basis to hear their grievances. If either of the two arbitrators no longer serves on the board, the department and the union must mutually agree on a replacement. For all other types of grievances, a separate panel of arbitrators mutually selected by the parties serves as the dispute resolution mechanism.

Automation. The vast majority of the caseflow process is not automated. The board's automation capabilities presently only include word processing. From a management perspective, statistical reports for analytical purposes must be manually collected from the paper files maintained by the board.

Key Points

Chapter Three: Board Organization and Resources

- Board consists of six regular members and 47 alternates, including 16 public members, 22 management members, and 15 labor members. Regular members serve co-terminously with the governor; alternates serve up to one year or until reappointed. No limit on terms.
- Average length of service among six regular members is just over 13.5 years -- includes service as regular or alternate status.
- Ten of the 16 neutral board arbitrators are grievance arbitrators with the American Arbitration Association, a not-for-profit organization offering arbitration services nationwide. Other advocate board members have AAA standing outside of grievance arbitration.
- Board is within the Department of Labor for budgeting and staffing purposes.
- \$25 filing fee required from parties when filing grievances. Just under \$71,000 in fees collected in FY 97.
- Budget expenditures for FY 97 totaled \$1.3 million; salaries accounted for \$713,600, and fees paid to arbitrators totaled \$513,300.
- Annual budget shortfalls for arbitrator fees occurred in three of last five fiscal years between FYs 92-97.
- Board staff headed by a director responsible for administrative components of board's work. Current staffing level consists of 5 Secretary I positions, 1 Processing Technician, and 1 Office Assistant.
- 4,468 grievance arbitration cases filed with board between FYs 95-97; public sector filed 92 percent.
- Only employers or employee organizations may file grievances for arbitration.

Board Organization and Resources

Membership and Appointment Process

The Board of Mediation and Arbitration is a six-member board. According to the board's enabling statutes, members are appointed by the governor and serve six-year terms. According to C.G.S. Sec. 4-9a(c), however, board members serve co-terminously with the governor, which is current practice. There is also no limit on the number of terms a board member may serve.

One or more alternates may be appointed in addition to the six regular members. Alternate members support the board in fulfilling its arbitration responsibilities. Terms for alternates cannot exceed one year or until a replacement is appointed. Alternate members represent organized labor, employers/management, and the general public as neutral members.

Membership on the State Board of Mediation and Arbitration totals 53, including the six regular members, 14 alternate public members, 20 alternate management members, and 13 alternate labor members. (Appendix A provides a list of board members). It should be noted that the configuration of alternate members can vary depending on who the governor appoints.

Table III-1 outlines the years of service for each of the six regular board members as of May 1997. The average length of service among the six members is just over 13.5 years -- this includes their service as either a regular or alternate member. The longest tenure for service on the board is slightly over 20 years, while the shortest is approximately five years. Half of the members have served for 10 or more years.

Although the average years of service for the current permanent board membership may seem somewhat high at just under 14 years, state law does not specify term limits. As a result, board appointees may serve unlimited terms as long as they are reappointed.

**Table III-1. State Board of Mediation and Arbitration:
Permanent Board Member Tenure List (as of May 1997)**

| Member | Affiliation | Appointment(s) | Total Years of Service |
|--|-----------------------|-----------------------------------|-------------------------------|
| Peter Blum | Chair, Neutral | 5/71--4/79 and 3/87 -- present | 18 years 1 month |
| Laurie Cain | Deputy Chair, Neutral | 11/91 -- present | 5 years 6 months |
| Donald Bardot | Management | 2/92 -- present | 5 years 3 months |
| Michael Ferrucci | Labor | 7/86 -- present | 10 years 10 months |
| David Ryan | Management | 12/73 -- 5/75 and 3/78 -- present | 20 years 6 months |
| Raymond Shea | Labor | 6/76 -- 12/86 and 7/88 -- present | 19 years 4 months |
| Notes: Appointments and total years of service are calculated from first day of the month. Tenure includes service as either a regular or alternate member. Source of data: State Board of Mediation and Arbitration. | | | |

There are currently 16 neutral arbitrators on the board, including the two permanent members who represent the general public. Of the 14 alternate neutral members, 7 have served on the board for less than 5 years, 4 have served for between 5 and 10 years, and 3 have served for more than 10 years.

It is difficult to determine if board members' qualifications and professional experience are relevant to their work with the board, especially for neutral members. One indicator of appropriate experience, however, is whether they serve as arbitrators with the American Arbitration Association (AAA). The association is a national, not-for-profit organization committed to resolving conflicts between disputing parties, including arbitrating grievances. AAA only uses neutral, third-party arbitrators to hear cases.

The American Arbitration Association has a specific process that prospective candidates must complete before they can work as neutral arbitrators for the association. Candidates must get referrals from 12 different people representing employers, employees, and neutrals. They must also have a minimum of 15 years experience in the field of dispute resolution. Further, there is a one-year moratorium if candidates previously represented either employers or employees. The association screens candidates to make sure the requirements are followed.

Ten of the 16 neutral arbitrators, including the two permanent members, serving on the State Board of Mediation and Arbitration are AAA arbitrators. This plus the fact that six of those arbitrators have served on the state board for more than five years, serve as indicators of the experience they bring to the board.

Budget Resources

Organizationally, the board is within the Department of Labor. The department provides the board with the resources to carry out its administrative functions. Funding for the board comes from the state's General Fund.

State revenues are enhanced somewhat by the filing fees required when parties file grievances. In FY 97, roughly 1,800 grievance arbitration cases were filed (including 195 cases filed under the separate arrangement with the correction department.) According to the board's FY 97 records, fees were required in a total of 1,592 grievance cases. Unions filing the cases submitted \$39,800, while 1,237 employers submitted \$30,925. The board makes subsequent attempts to collect unpaid fees.

Overall budget expenditures for the board since FY 94 are provided in Table III-2. The categories examined include the number of permanent positions; recurring expenses such as capital equipment rentals, telephone services, software maintenance, salaries for permanent staff; agency specific expenses including office equipment, miscellaneous supplies, and specific agency projects; and discretionary expenses such as postage, motor vehicle rental, fees for temporary employees, and fees paid to board members for arbitrating cases.

As the table shows, recurring expenses, mainly salaries for permanent employees, is consistently the greatest expense incurred by the board. Salaries accounted for 53 to 60 percent of the board's annual expenses for the years analyzed.

Examination of expense fluctuations shows the most obvious percent change occurring between FY 94 and FY 95 under the "agency" category. Expenses increased from just over \$800 to almost \$197,000. The reason for the large increase is due to one-time renovation costs allocated to the board's budget when its staff office was moved out of the labor department's central office building to an alternate site.

| Table III-2. State Board of Mediation and Arbitration Budget Expenditures: FYS 93-97. | | | | | | | |
|---|--------------------|--------------------|-------------|--------------------|---------------|--------------------|-------------|
| Category | 1994 | 1995 | % + (-) | 1996 | % + (-) | 1997 | % + (-) |
| Perm. Pos. | 14.9 | 15.1 | 1.3% | 16.6 | 9.9% | 17.8 | 7.2% |
| Recurring | \$655,862 | \$638,788 | (2.6) | \$694,929 | 8.8 | \$742,973 | 6.9 |
| Perm. Sal. | 617,906 | 607,368 | (1.7) | 665,962 | 9.6 | 713,631 | 7.2 |
| Agency | 811 | 196,552 | 24,136 | 10,620 | (94.6) | 1,985 | (81.3) |
| Discretionary | 413,954 | 318,056 | (23.2) | 403,096 | 26.7 | 557,763 | 38.3 |
| Bd. Fees | 362,750 | 264,350 | (27.1) | 346,250 | 31.0 | 513,300 | 48.2 |
| TOTAL | \$1,070,627 | \$1,153,396 | 7.7% | \$1,108,645 | (3.9)% | \$1,302,721 | 17.5 |
| Source of data: Board of Mediation and Arbitration and Governor's Budgets. | | | | | | | |

Another interesting detail illustrated by Table III-2 is the sharp decrease in board fees from FY 94 to FY 95. Fees fell 27 percent between the two years. The main reason for the decline is because board appointments were not made for approximately six to nine months following the 1994 gubernatorial election, resulting in fewer grievance cases arbitrated during that period. As such, the amount paid out in fees to board members dropped.

Table III-2 also shows a marked increase in board fees from FY 96 to FY 97. The reason for the increase is due to a revised system for scheduling hearings implemented by the board. The new system, described in detail later, required two cases to be scheduled per arbitrator panel per day, instead of the previous practice of one case. Additional funding for board fees was necessary to support the new practice.

Board fee deficiencies. In three of the last five fiscal years, the board has needed supplementary funding from the department to cover fees paid to board members for their service. The annual shortfalls, shown in Table III-3, range from a low of \$8,400 in FY 96, to a high of \$139,300 in FY 97. The main reason for such a high deficiency during FY 97 is attributed to the board's new practice of having panels hear two cases per day. As a result, board fees increased because the number of hearings increased.

| Table III-3.State Board of Mediation and Arbitration Fee Deficiency Amounts: FYS 93-97. | | | |
|--|------------------------|------------------|-------------------|
| Fiscal Year | Amount Budgeted | Fees Paid | Deficiency |
| 1992-1993 | \$325,000 | \$341,650 | \$16,650 |
| 1993-1994 | \$349,000 | \$343,500 | \$0 |
| 1994-1995* | \$349,000 | \$275,650 | \$0 |
| 1995-1996 | \$349,000 | \$357,350 | \$8,400 |
| 1996-1997 | \$374,000 | \$513,300 | \$139,300 |
| * Appointment of arbitrators necessary to hear cases was held for approximately six months. Source of Data: State Board of Mediation and Arbitration. | | | |

Staff Resources

The State Board of Mediation and Arbitration is provided staff by the Department of Labor. The staff, headed by a director, is responsible for the administrative components of the board's work. The current staffing level for the full board consists of the following positions: 5 Secretary I's, 1 Processing Technician, and 1 Office Assistant.

Mediators. State law requires the labor commissioner to appoint at least five mediators to act for the board in making investigations and adjusting labor disputes. The appointments are made with the advice and approval of the board.

Before the most recent early retirement program, six labor department employees provided mediation services. However, two of those employees opted for early retirement, leaving the board with four mediators available for service. There has been no indication thus far that replacements will be made for the two retired mediators, although the commissioner is required to appoint at least five mediators.

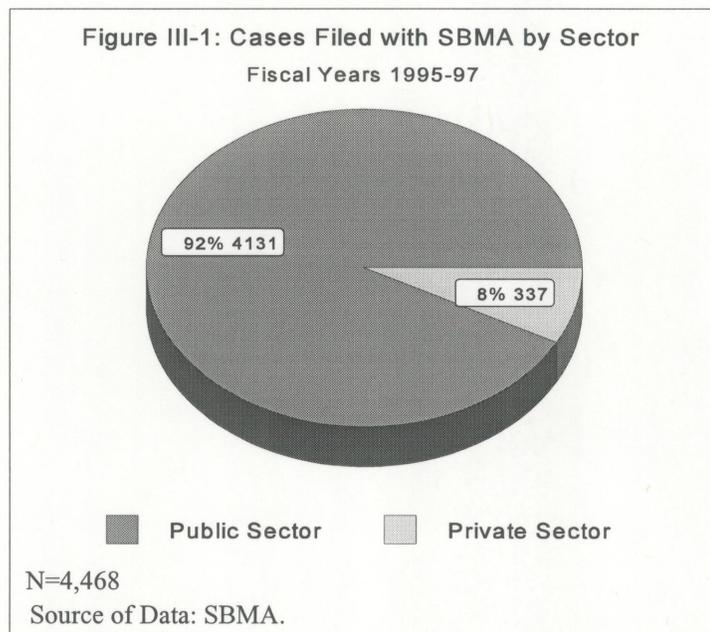
Board Customers

The board of mediation and arbitration serves both the public and private sectors. The vast majority of the board's grievance arbitration workload comes from employee organizations representing public sector employees.

Figure IV-2 presents the actual breakdown of grievance arbitration cases filed with the board by sector for FYS 1995-97. As the figure shows, a total of 4,468 cases were brought to the board, of which 4,131 (92 percent) were filed by the public sector. The private sector filed 337 cases, or 8 percent of the cases for that time span.

Under most circumstances, the board's policy only allows employers or employee organizations, as opposed to individuals, to file grievances for arbitration.

Employee organizations must be recognized as a bona fide labor organization under state or federal law. Most employee organizations are labor unions, although this does not necessarily preclude other entities, such as in-house associations, from filing cases with the board.



Key Points

Chapter Four: Findings and Recommendations

- 95 of the state's 169 localities used board's services in FY 97; 38 different labor unions, representing approximately 210 locals, were parties to cases filed with board.
- Vast majority of grievances filed in FY 97 came from public employers; only 5 percent of the 1,800 grievances filed involved private employers.
- Ten employers accounted for half the grievances filed with board in FY 97; seven unions accounted for 85 percent of the grievances filed.
- On average, arbitration awards submitted beyond the time specified in regulation and board policy. Appropriate dates not tracked to properly calculate the actual timeliness of awards.
- Almost three-fourths of all cases closed during last three fiscal years were resolved at some point during hearing process before board rendered formal award.
- Over a quarter of cases scheduled for hearings in FYS 96 and 97 were postponed; board's postponement policy inherently contradictory.
- Board calculates its backlog of cases awaiting initial hearings at approximately 3,000.
- No standard has been developed defining realistic time frame before grievance arbitration cases are scheduled for initial hearings once filed.
- Board has attempted to increase number of hearings scheduled, however, funding is not available to continue this effort. Overall net effect of cases eliminated from backlog is limited.
- An estimated 1,600 cases of board's 3,000 pending cases will most likely need formal hearings at an additional cost in arbitrator fees of roughly \$611,000. This is in addition to funding needed for current services.
- Grievance arbitration backlog not thoroughly analyzed, and no strategic plan developed to eliminate it. Board and labor department at odds over how best to close pending cases and eliminate backlog.

- Board's regulations outdated; informal policies and procedures in place, some of which run contrary to board regulations; additional work needed in developing standards and measuring performance.
- \$25 filing fee unchanged for almost 20 years, despite board's basic administrative costs increasing fourfold. Board recently recommended increase in fee.
- Data collection and analyses need to significantly improve in certain areas; board uses current computer resources to fullest capacity.

Findings and Recommendations

Caseload Volume

This chapter contains analyses of grievance arbitration caseload data, the overall timeliness of the grievance arbitration process, board operations, and the committee's findings and recommendations in those areas. A discussion regarding the caseload backlog is also presented.

No centralized, automated data source was available for collecting caseload and process timeliness information. The State Board of Mediation and Arbitration tracks case data using various methods. As such, the information used in this section was obtained from different sources.

The State Board of Mediation and Arbitration maintains different case summary logs as a way to manage and oversee the volume of grievances filed for arbitration. The logs are kept both on paper and via the board's word processing capabilities. The board also maintains individual files for each case.

Grievance arbitration caseload information was analyzed in several ways. First, case volume was reviewed by type of filer, including a breakdown of the parties (e.g., employers and unions) using the board's services, and whether certain parties account for the bulk of the grievances filed.

Next, the information was reviewed by case type. The board categorizes cases in three different ways: 1) priority, 2) expedited, and 3) general. "Priority" cases involve terminations, layoffs, or long-term suspensions (30 or more days). The board offers parties immediate hearing dates for those cases, due to the urgent nature of such cases. Priority cases are scheduled for hearings before all other pending cases, regardless of when the other cases were filed.

"Expedited" cases follow a different process than other types of cases. For example, they are given scheduling preference before all other pending cases (except priority cases), use single-member panels, and receive filing fee refunds. The expedited process was initiated to hear, and ultimately close, cases quicker than the board's normal process.

Cases not considered priority or expedited are “general” cases, and follow the board’s standard procedures. General cases are heard by a three-arbitrator panel (or single arbitrator at mutual request), require the \$25 filing fee from both parties, and are scheduled for hearings according to the board’s normal scheduling procedures.

Volume by filer. The State Board of Mediation and Arbitration keeps limited aggregate caseload volume information. The information it does have was manually culled from a log showing all cases filed during a particular fiscal year. The log tracks several characteristics of each case, including case number, employer, union, filing fee dates, issue areas, disposition, and case closed date.

The board’s FY 97 case log was examined to provide a framework for who uses its grievance arbitration services. As Table IV-1 illustrates, 199 different employers, including municipalities, boards of education, housing authorities, special districts, and private companies, were party to grievances filed with the board in FY 97. The vast majority of the employers were municipalities, with 95 of the state’s 169 localities represented. The table also shows 38 different labor unions, representing approximately 210 locals, were involved with cases filed before the board.

| Table IV-1. Aggregate Caseload Volume by Employer and Union -- FY 97. | |
|--|-------|
| Cases Filed | 1,802 |
| Employers Involved | 199 |
| Public | 155 |
| Private | 44 |
| Unions Involved | 38 |
| Locals | 210 |
| Note: Public employers includes Department of Correction, municipalities, boards of education, local housing authorities, and special districts. The number of union locals is an approximate figure base on information in the FY 97 case log. Source of data: SBMA. | |

Similarly, caseload data show the vast majority of grievances filed in FY 97 involved public employers. In fact, only 98 of the 1,800 grievances filed involved private employers -- representing just over 5 percent of all grievances filed that year.

One issue expressed throughout this study was whether certain parties accounted for a larger volume of grievances filed with the board. If so, what might this indicate, and is the State Board of Mediation and Arbitration aware that certain parties account for more of its volume than others.

The FY 97 case log was analyzed to determine if particular employers and unions accounted for more grievances filed with the board during that year. Table IV-2 shows the top 10 employers involved in the most grievance filings during FY 97. Overall, the employers listed in the table accounted for half of the grievances filed before the board of mediation and arbitration.

| Table IV-2. Top Ten Employers Aggregate Grievance Volume: FY 97. | | |
|---|-------------------------|-------------------------|
| Employer | Grievances Filed | Percent of Total |
| Department of Correction | 211 | 11.7 |
| Bridgeport | 178 | 9.9 |
| Hartford | 153 | 8.5 |
| Stratford | 74 | 4.1 |
| Middletown | 73 | 4.1 |
| New Haven | 62 | 3.4 |
| Hamden | 49 | 2.7 |
| Metro. District Commission | 44 | 2.4 |
| Torrington | 38 | 2.1 |
| Norwalk | 31 | 1.7 |
| TOTAL | 912 | 50.6 |
| N=1,802 Source of data: SBMA | | |

The Department of Correction, which is the only state agency using the board's services, filed the most grievances with 211, or just under 12 percent of the total caseload. As mentioned earlier, DOC correction officers have a special arrangement with the board outlined in their collective bargaining agreement. The arrangement allows correction officers to use the board's scheduling services and several of its arbitrators for grievance hearings. The department is not required to pay the normal filing fee, but does pay the board arbitrators hearing its cases their statutorily designated fee out of a \$5,000 fund within the department's budget. Even though the board is not responsible for arbitrators' fees for DOC cases, board resources are still consumed in the overall administration of such cases. It should also be noted that the DOC contract was recently modified refining the types of grievances that can be taken before the board. The board expects this change should decrease the overall volume of DOC cases filed.

Aside from the correction department, Bridgeport and Hartford were involved in the most grievance filings in FY 97. The two cities accounted for 331 grievances, or 18 percent of the board's total caseload -- Bridgeport was involved in 178 of the board's 1,800 grievances, while Hartford was party to 153. Stratford and Middletown rounded out the top five with 147 grievance filings, or just over 8 percent of the board's total volume between the two of them.

To more accurately gauge the current demand on the board's grievance arbitration services by employer, and eliminate disparity based solely on analyzing aggregate numbers, the rate of grievances filed per 100 general government employees (excluding board of education employees) within municipalities was calculated. The employee figures were generated by the Connecticut Conference of Municipalities in 1997. The results of the analysis are outlined in Table IV-3.

The table shows the municipalities with the highest rates of grievances per 100 general government municipal employees for FY 97. Caution should be used when analyzing the figures, however, because some municipalities show high rates resulting from a small number of employees. Further, there may have been particular events in certain municipalities causing more grievances to be filed than usual, which the committee was told occurred in some instances. With these caveats in mind, the table illustrates the towns with highest rates of grievances filed per 100 employees for FY 97.

The board is aware that certain towns have higher rates of grievances, and is taking several measures to work with those towns. It is attempting to work with particular municipalities to increase mediation efforts in those areas. The board is also focusing on at least one town with a high rate of grievances to evaluate the cases, establish communication between the parties, and determine if similar grievance issues can be condensed into a fewer number of grievances.

| Table IV-3. Top Ten Employers Filing Grievances per 100 Municipal Employees: FY 97. | | | |
|--|--------------------------|-------------------------|-----------------------------|
| Employer | General Gov. Emp. | Grievances Filed | Griev. Rate/100 Emp. |
| Killingly | 88 | 31 | 35.2 |
| Windsor Locks | 97 | 28 | 28.9 |
| Brooklyn | 22 | 6 | 27.3 |
| Stratford | 453 | 74 | 16.3 |
| East Granby | 20 | 3 | 15.0 |
| Torrington | 277 | 38 | 13.7 |
| Middletown | 554 | 23 | 13.2 |
| Voluntown | 8 | 1 | 12.5 |
| Bridgeport | 1,489 | 178 | 12.0 |
| Hamden | 471 | 49 | 10.4 |

Note: Calculations were made by taking the number of general government employees divided by 100, then dividing that number into the number of grievances filed.
Sources of data: SBMA and Connecticut Conference of Municipalities.

Usage of the board's services by union was also analyzed, and the results are shown in Table IV-4. In aggregate terms, seven unions accounted for 85 percent of the grievances filed with the State Board of Mediation and Arbitration during FY 97. The analysis shows what occurred last fiscal year, and is not intended to be indicative of previous years.

The American Federation of State, County, and Municipal Employees union accounted for almost six of every 10 grievances filed with the board, which is not surprising given the size of its membership base. The committee was told the union represents approximately 21,000 municipal employees in the state. Using CCM's figures for general government municipal employees, this equates to about 70 percent. The union also represents the roughly 6,000 DOC correction officers. Thus, similar to town size, it is expected that unions representing large numbers of employees would account for more volume of grievances filed, based on their size alone. Analysis of the rate of grievances filed per 100 employees represented by each union could not be done due to the unavailability of such data by individual union.

Table IV-4. Aggregate Grievance Involvement by Union: FY 97.

| Union | Grievances Filed | Percent of Total |
|-------------------|-------------------------|-------------------------|
| AFSCME Council 4 | 834 | 46.3 |
| AFSCME Council 15 | 206 | 11.4 |
| IAFF | 182 | 10.1 |
| IBPO | 97 | 5.4 |
| Teamsters | 80 | 4.4 |
| CILU | 73 | 4.1 |
| NAGE | 67 | 3.7 |
| TOTAL | 1,539 | 85.4 |

N=1,802
Note: AFSCME=American Federation of State, County and Municipal Employees, IAFF=International Assoc. of Firefighters, IBPO=International Brotherhood of Police Officers, CILU=Ct. Independent Labor Union, and NAGE=National Assoc. of Government Employees.
Source of data: SBMA

Volume by case type. As mentioned earlier, the State Board of Mediation and Arbitration classifies grievance cases into three groups: 1) priority, 2) expedited, and 3) general. The board's caseload data were analyzed to determine the volume of cases filed by type.

The data reviewed do not differentiate between general and expedited cases because the board does not formally note expedited cases in its log. This makes determining an exact count difficult. As a proxy, caseload data were reviewed and the number of cases with a disposition of "expedited," along with cases receiving a refund of their filing fee -- indicators of expedited cases -- were totaled. The result shows fewer than 100 cases, or about 5 percent, were expedited cases in FY 97. Again, this is a rough estimate and the figure may be higher if cases not having "expedited" under their disposition or shown as having a filing fee refund, were actually expedited cases. The board was questioned as to the number of such cases, and said an estimated 5 to 10 percent of cases use the expedited process in a given year.

More reliable information involving priority cases was available from the board's log, since a brief description of the issue(s) cases entailed was provided in the log. Sorting the cases by issue, it was determined 196 grievances, or 11 percent of the total cases filed in FY 97, were considered priority cases.

Further analysis of the board's FY 97 caseload data reveals the vast majority of cases are considered "general" type cases. Of those cases, short-term suspensions (less than 30 days), overtime, written warnings or reprimands, and seniority were the most frequently listed grievance issues. This is an approximate measure of the types of grievances filed with the board because the board does not differentiate the type of grievance in the case log. Further, the issues listed in the log are very broad, making it difficult to pinpoint the exact number of grievances by type and issue.

Summary. Overall, the program review committee, through analysis of caseload volume data from the State Board of Mediation and Arbitration, finds:

- ◆ *Over 1,800 grievances involving 199 employers and 38 different unions were filed with the State Board of Mediation and Arbitration in FY 97. Of the 199 employers, 155 (78 percent) were public sector entities.*
- ◆ *Ninety-five percent of the grievances filed with board involved public sector employers.*
- ◆ *Ten of the 199 employers accounted for half of the total volume of grievances filed during FY 97. The Department of Correction, Bridgeport, and Hartford accounted for almost one-third of board's total caseload for the year.*
- ◆ *Seven unions accounted for 85 percent of the grievances filed with the board.*
- ◆ *Approximately 11 percent of the grievances filed in FY 97 involved terminations, long-term suspensions, and layoffs. A breakdown between general and expedited cases is difficult to determine due to the board's record keeping system, although an estimate is 5 to 10 percent of the cases used the expedited process. The vast majority of cases are "general" cases, such as overtime and short-term suspensions.*

Process Timeliness

There are numerous steps within the grievance arbitration process to analyze for timeliness. The committee focused on two main phases -- the length of time from when a grievance is filed to when the first hearing date is set to occur, and the time it takes to issue awards for cases not resolved before the award is rendered.

The main case summary log kept by the board only provides certain key components of the overall caseflow process. The board does not track several principal dates in its log, including hearing dates or when arbitrator panels hold their executive sessions to discuss cases. Such dates are crucial in analyzing the overall timeliness of the process.

Since the board does not formally track hearing dates in its case log, a stratified random sample of 153 cases filed between July 1, 1995 and June 30, 1996 was selected and reviewed. The sample was chosen to determine the length of time before a grievance arbitration case is assigned its first hearing date by the board. The sample represents roughly 10 percent of each type of grievance case received during that year. Given the board's current backlog in scheduling hearings, cases from FY 96 were chosen to provide a broader range of cases with actual initial hearing dates scheduled.

Initial hearing dates. The stratified sample accounted for the hearing scheduling differences among general, priority, and expedited cases. Overall, 124 general cases, 19 priority cases, and 10 expedited cases were chosen for the sample.

Actual first hearing dates were discernable in 65 of the 124 general cases sampled. Cases in the sample that settled before an initial hearing date was set, or had not yet received initial hearing dates, were not analyzed. Of the 65 general cases reviewed, the average time before the initial hearing date was assigned by the board was 446 days, or about one year and three months. This calculation coincides the board's estimate that the time initial hearings for general cases are assigned by the board continues to be more than a full year.

The sample of priority cases produced hearing date information for 14 cases. The average time among the those cases from when the grievance was filed to the first hearing date set by the board was 81 days, or just under three months. It should be kept in mind that although the board gives scheduling preference to priority cases, it is up to the parties to find mutually acceptable hearing dates, which may add to the overall time before a hearing date is set. This shows, however, that priority cases are scheduled for initial hearings quicker than general cases.

A total of 10 expedited cases were reviewed for initial hearing dates, and dates were discernable for each case sampled. The average time after an expedited cases was filed to when a date for the initial hearing was set by the board, was 166 days, or just over five months. This time frame is not as prompt as priority cases, but is still much faster than general cases. Again, the parties are responsible for determining a mutually agreeable hearing date, not the board.

Awards. The board's policy for closing grievance cases depends on several factors. For example, parties may resolve cases at any part of the arbitration process before a formal award is issued by the board -- which the vast majority do, as described later. When this occurs, the board closes the case when it is withdrawn by the party filing the grievance.

Cases progressing to the award phase are considered closed *for hearing purposes* the later of: 1) the last hearing date, if no briefs are filed and no executive session is necessary; 2) the due date for briefs, if submitted, and no executive session is held; or 3) the executive session

date. The board officially closes cases once the award is signed by the arbitrator(s) hearing the case.

State law requires awards be submitted within 15 days following the conclusion of the hearing. The courts have ruled over the years that this requirement is discretionary rather than mandatory, because there is nothing in the statute expressly invalidating an award issued after the required period.

Board regulations specify awards shall be rendered by panel members within 30 days from the date of the close of the hearing or the executive session, whichever is later. It is board policy, however, that awards in priority cases be submitted within 30 days of the later date and 60 days for all other types of cases.

The board's practice provides that neutral arbitrators submit their awards to board staff once they have written and signed them. If a tripartite panel was used to hear the case, the staff is then responsible for obtaining signatures from the other panel members. The board tracks when awards are submitted by the neutral arbitrator for payment purposes.

When a tripartite panel hears a case, which the committee is told occurs in the vast majority of cases, an executive session is required for the panel to develop an award. Given executive session dates are when hearings formally conclude, they are the dates that should be used to calculate whether awards are submitted according to required time frames. The board, however, does not track executive session dates. Instead, it uses other dates to approximate when awards should be submitted.

To compensate for the lack of executive session dates, timeliness of awards is assessed using either the last hearing date or the date briefs are received from the parties, if submitted. Calculations using these dates are done manually because the information is not maintained in any automated or centralized location.

Various data sources from FY 97 were analyzed to determine the length of time from when hearings close, to when awards were submitted, to when cases officially close. Despite some data limitations, the committee believes the information analyzed is the most reliable maintained by the board for tracking dates through the award phase. Key dates were reviewed for 215 awards submitted among neutral arbitrators in FY 97. Information from last fiscal year was used because it provided the most current award data.

Time frames for when arbitrators submitted their awards were analyzed using the later of the date of the last brief or the last hearing date. As mentioned, this provides a less accurate depiction of the overall timeliness than calculations based on executive session dates. Using executive session dates could lessen the time frames, depending on when the sessions were held.

The analysis shows an average of 80 days passed from the close of the hearing, to the date the award was submitted by the arbitrator drafting the decision. The time decreased to an average of 50 days for cases the board considers priority, as described above. A decrease is expected for priority cases because they are held to a stricter time frame for when awards are due.

As mentioned, the board *officially* closes cases when the award is signed by all the arbitrators hearing a case, not when it is submitted by the neutral arbitrator. As a service to the arbitrators, the board's staff sends awards to other panel members for their signatures after the awards are submitted from the neutral arbitrator. The analysis shows an average of 19 days is required to obtain the proper signatures and officially close the case.

The board is aware that awards are issued within various time frames after hearings close. Board policy states that arbitrators who do not submit their awards in a timely manner are not given additional cases. The program review committee is aware this policy has been enforced several times this year alone. There is some latitude, however, with this policy in extreme circumstances, such as illness. For the most part, though, the committee believes this policy is being enforced.

Based on the above analysis, the program review committee finds awards are on average submitted, and cases ultimately closed, beyond the time specified in both regulation and board policy. Further, appropriate dates are not tracked to properly calculate the actual timeliness of awards. It is recommended, therefore:

C.G.S. Sec. 31-98 be amended to require payment to arbitrators only after a signed award is submitted following the conclusion of grievance hearing, and the board officially closes the case.

It is further recommended the board begin tracking executive session dates, use those dates when calculating the timeliness of awards, and continue enforcing its policy of not issuing additional cases to neutral arbitrators with late awards.

According to state law, payment to arbitrators is made upon the conclusion of the proceedings. For tripartite panels, the board has interpreted this to mean whenever hearings conclude, but before a formal award is rendered. Further, neutral arbitrators are paid when their award is submitted to the board, but before it is signed by the panel members and officially closed by the board.

The committee believes payment for arbitrators hearing a grievance case should be made when the case is formally closed by the board, meaning when awards are signed by *all* arbitrators hearing the case. Given the finding that awards are generally not submitted according to

regulation or board policy, additional measures are necessary to ensure awards are issued, signed, and cases closed, in a timely manner.

Although neutral arbitrators are responsible for writing awards, the committee believes the entire arbitrator panel hearing a case shares the responsibility of ensuring the case is closed expeditiously since it is the panel's duty to resolve cases and decide awards. Panel members, as a whole, have an obligation to make sure parties of a grievance case receive their award in timely manner. The committee believes the panel members' responsibility does not stop once the "proceedings" end, rather it is their obligation to ensure cases officially close in a timely manner. The recommendations outlined above should provide the incentive necessary to see this occurs.

The labor department recently tried to initiate a similar policy administratively. The policy was reversed because several board members had a different interpretation of the statutes regarding when payment should be issued (i.e., upon conclusion of the proceedings,) and also objected to the way the policy was implemented. Apparently, the department made its decision without seeking the board's input. Regardless of what happened in the past, the program review committee believes cases need to be closed timely, and payment should not be made to any panel member until a case is *officially* closed by the board.

Summary. Overall, the program review committee, through analysis of process timeliness data, finds:

- ◆ *Data needed for a thorough analysis of case processing timeliness are not kept in a centralized fashion making an overall summary difficult.*
- ◆ *A random sample of grievance cases filed during FY 96 showed the average time before an initial hearing date was assigned to parties by the board was 446 days for general cases, 81 days for termination, layoff, and long-term suspension cases, and 166 days for "expedited" cases.*
- ◆ *Analysis of 215 awards submitted in FY 97 shows an average of 80 days passed from the close of the hearing, to the date the award was submitted. An average of 50 days passed for "priority" cases. Based on this analysis, awards are generally not submitted in accordance with board regulations or policy.*

Withdrawals

Cases filed with the board for grievance arbitration may be withdrawn (i.e., resolved) at any stage of the hearing process before a formal award is issued by the board. For example, cases can be withdrawn before or during a hearing is conducted by the board. Cases not withdrawn, and moving through the hearing stage, are issued awards by the board.

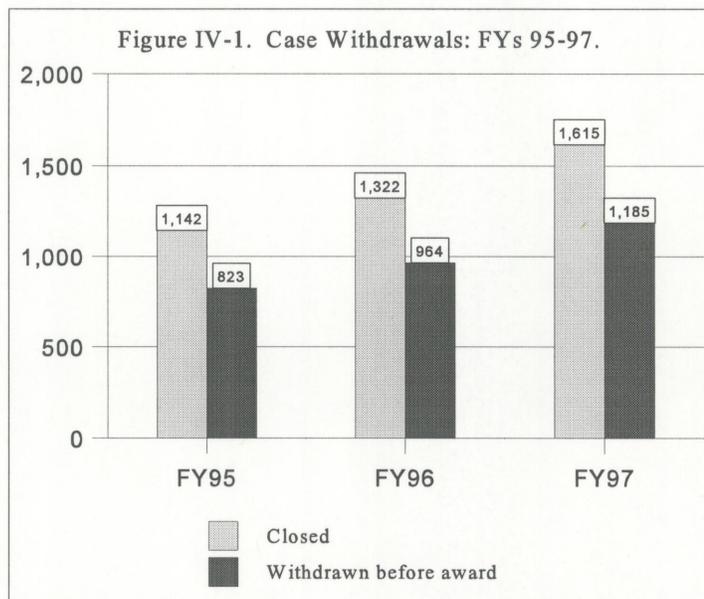
The State Board of Mediation and Arbitration has aggregate data available for the total number of cases withdrawn over the last three fiscal years. A more detailed breakdown of when cases were withdrawn in the hearing process is available for FY 97.

Statistics compiled by the board show the vast majority of cases are withdrawn before a formal award is rendered by the arbitrator panel. As shown in Figure IV-1, the number of cases withdrawn before the formal award phase is almost three-fourths of all cases closed during the last three fiscal years.

In addition to analyzing the aggregate number of withdrawals, when in the process cases were actually withdrawn was also reviewed. As depicted in Table IV-5, a closer analysis of the 1,185 cases withdrawn reveals nearly half (547 cases) were actually withdrawn

before a hearing. This includes cases closed before a hearing was scheduled, and those closed after a hearing was scheduled but before it took place. The remaining 638 cases were withdrawn once the actual hearing was opened by the board.

The table also shows the percentage of cases withdrawn in relation to the total cases closed in FY 97. Overall, cases withdrawn before a hearing was scheduled accounted for 16 percent of the cases closed that year. Eighteen percent were withdrawn after a hearing was scheduled, but before it opened. Forty percent of the cases withdrawn were done so at the time of the hearing.



| Table IV-5. Disposition of Withdrawn Cases: FY 97. | | | |
|---|------------------------|---|-----------------------------------|
| Case Withdrawn | Number of Cases | Percent of Total Cases Withdrawn | Pct. of Total Cases Closed |
| Before hearing scheduled | 262 | 22% | 16% |
| After scheduling\ before hearing | 285 | 24% | 18% |
| During hearing | 638 | 54% | 40% |
| N=1,185 (withdrawn cases) Source of data: SBMA. | | | |

Cases may be withdrawn more than five days before the hearing with no “penalty” to the parties. To fill the voided hearing date when cases are withdrawn more than five days before, the board allows the filing party to schedule any of its pending cases on the original hearing date. This was done for two reasons: first, the hearing details are already completed, meaning the hearing is scheduled and the arbitrator panel assembled, thus any additional case that could be heard would avoid wasting the hearing date; and second, it gives parties the opportunity to have any of their pending cases taken out of chronological order and heard by the board. The committee has been told parties seldom schedule other cases for various reasons, which questions the value of the policy.

The board’s practice for cases withdrawn within five days before the hearing requires the parties to attend the hearing and formally close the case before the panel. The board believes this policy holds parties somewhat accountable for withdrawing cases late in the process, since parties may not be so willing to make a trip to the board’s office to withdraw a case. The policy also allows board members, who have already scheduled their time to attend the hearing, to be paid for the hearing once the hearing is opened. This, however, does not cost the parties anything, since the state subsidizes the cost of arbitrator fees.

The figures outlined above show the vast majority of cases are withdrawn at some point in the grievance arbitration process before a final award is issued by the board. It can be inferred that the scheduling of an arbitration hearing motivates the parties involved in a case to resolve their grievances.

There are two schools of thought regarding the purpose of grievance arbitration hearings. First, once a grievance gets to the arbitration hearing stage the process should be formal and cases should move forward to the award phase. In other words, there was plenty of time to resolve cases prior to reaching arbitration by the State Board of Mediation and Arbitration. The

Second, the hearing process provides an additional means for parties to talk and resolve their cases before a formal award is issued, which is more advantageous from an overall labor relations standpoint than having an arbitrator issue an award.

Postponements. The board of mediation and arbitration has compiled basic information relating to postponements. Specifically, the board has aggregate figures on the number of cases postponed prior to the scheduled hearing date. The data show 27 percent of the cases scheduled for a hearing were postponed in FY 96. Postponements decreased to 25 percent in FY 97.

The board's regulations state "arbitration hearing dates shall not be subject to postponements, except for circumstances of an extraordinary nature as determined by the panel chairman." (Regs., Conn. State Agencies Sec. 31-91-27.) It is board policy that postponements be granted for the following reasons:

- death or illness;
- the attorney handling the grievance case has to be in court and no one from his/her firm can handle the case;
- a previously scheduled vacation; or
- a previously scheduled interest arbitration hearing.

The board's postponement policy further states each case has its own unique set of circumstances, and the board has to evaluate the requesting party's position before making a decision. Moreover, as of July 1995, postponements are no longer determined by the panel chairman, rather the board's director has been given this responsibility. The board made this change to centralize the decision making authority and provide it with more continuity in making postponement decisions.

Review of the case file sample showed some postponements were granted using wider latitude than the reasons specified under the board's formal policy. This is not unexpected since the board's policy is contradictory. It defines specific conditions for postponements, yet states every case is unique and has its own set of circumstances.

The board is fully aware of the administrative difficulties the current postponement policy creates. It has been discussing the issue at recent board meetings, attended by committee staff, although consensus has not been reached on a definitive solution.

The committee believes the board is in the best position to develop its own procedural guidelines regarding postponements, but should do so expeditiously. Further, the board's current method of reviewing postponements does not comply with regulations. The program review committee recommends, therefore,

The board begin strictly enforcing its current postponement policy based on the specific criteria outlined in the policy. The board shall further review its postponement policy to determine if revisions are necessary. The review should conclude by July 1, 1998.

Summary. Based on the overall analysis of withdrawals, program review committee makes the following findings:

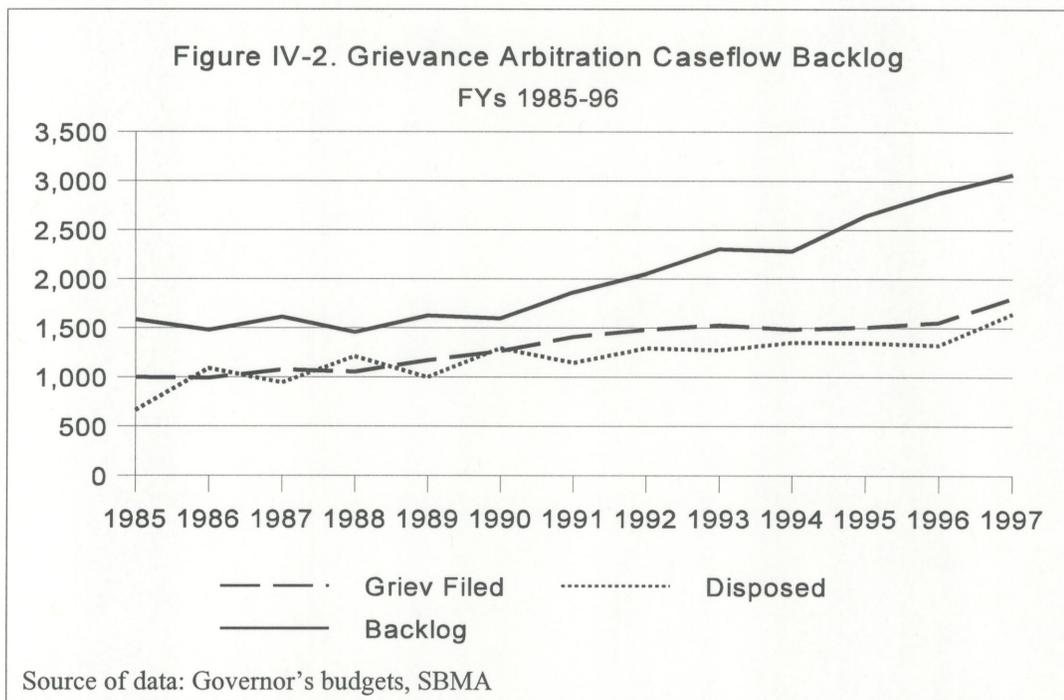
- ◆ *Almost three-fourths of all cases closed during the last three fiscal years were withdrawn at some point during the hearing process before a formal award was rendered by the board.*
- ◆ *About half of the 1,185 cases withdrawn in FY 97 were done so before a hearing occurred.*
- ◆ *Sixteen percent of the total cases closed for FY 97 were withdrawn before a hearing was scheduled, while 18 percent of the cases closed were withdrawn after a hearing was scheduled, but before it opened. Forty percent of cases closed in FY 97 were withdrawn at the time the hearing took place.*
- ◆ *Twenty-seven percent of the cases scheduled for a hearing were postponed in FY 96. The figure decreased to 25 percent in FY 97. Further, the board's postponement policy is inherently contradictory.*

Backlog

History and nature. A review of the board of mediation and arbitration's program budget measures and general caseload information reveals the board generally closes fewer grievance arbitration cases than it receives. As a result, the board has had continual growth of pending cases.

It is difficult to verify a definitive date as to when the board started to incur a backlog. Interviews conducted by committee staff of several municipal human resource directors, established that the backlog may have been present since at least the early 1970s.

For analysis purposes, state budget information for the last decade, along with data obtained from the board, was examined to determine the status of the board's backlog. A trend graph of the growing backlog grievance arbitration cases was developed, and is shown in Figure IV-2.



As the figure illustrates, the number of grievance arbitration cases filed annually with the board has steadily increased since 1988 -- ranging from 1,000 to just over 1,800 in FY 97. Further, the number of cases closed during the six-year period between 1985 and 1991 varied. Since then, the number of cases disposed has increased from about 1,100 in 1991, to roughly 1,600 in 1997.

The time it takes from when a grievance case is filed to when an arbitration hearing is scheduled varies between one and three years, depending on the number of grievances filed by a given employee organization. This time frame does not include cases involving layoffs, dismissals, or long-term suspensions. Due to the nature of those grievances, hearings are considered a priority and scheduled as soon as possible. All other grievance cases are taken in chronological order by case manager with hearings scheduled based on when the case was received by the board. As the figure shows, roughly 3,000 cases are pending before the board.

Reasons for the backlog are varied. The committee has been told that the economic downturn experienced by the state over the last several years is a contributing factor. The effect of a slow or weak economy seems to create more tension between labor and management. As a result of friction between employers and employees, the number of grievance arbitration filings rises.

Information about the board's backlog did not appear in the governor's budget until 1985. At that time, the backlog was already over 1,500 cases. Given the extent of the backlog and the fact that such information was first reported in the official state budget in the mid-1980s, it is likely the board experienced a caseload backlog before 1985.

This explanation is somewhat borne out in Figure IV-2. The rate of increase in cases filed with the board was the highest between fiscal years 1988 and 1992. This coincides with the economic troubles experienced by the state in the late-1980s and early 1990s. However, the figure also shows an increase in cases received beginning again in FY 96 after remaining flat since FY 92.

Another factor put forth to explain the backlog is the number of neutral board members appointed in any given year. Since each arbitration decision must be written by a neutral arbitrator, the number of hearings scheduled depends on the number of neutral board members available. As such, the number of hearings scheduled and awards made is heavily dependent upon the number/workload of neutral arbitrators. The committee has been told that more neutral board members would allow for more grievance hearings to be scheduled, thus enabling the board to better manage its backlog. There are currently 16 neutral arbitrators -- two permanent members and 14 alternate members.

There was a period of time in mid-1990s when board appointments were not made for approximately six to nine months. The subsequent effect on the board resulted in fewer hearings scheduled during that time and a rise in pending cases, thus adding to the backlog. (It is unclear exactly what the net effect was on the board's backlog, although Figure IV-2 shows a sharp increase in backlogged cases beginning in FY 95.)

As previously mentioned, the backlog of grievance arbitration cases has been a problem with the board for numerous years. Although each of the factors described above may have contributed to the board's delay in scheduling arbitration hearings, the fact remains that the backlog has not been eliminated, or even substantially decreased, for more than a decade. Further, the backlog impacts the board's overall operations, including the time necessary to schedule hearings and the methods used to hear cases.

Table IV-6 shows what has transpired with the board's caseload over the last three fiscal years. As the table indicates, the board accumulated a backlog of 2,277 cases in years prior to FY 95. Although the overall volume of the backlogged cases has been increasing from 2,644 to 3,067 since then, the net number of cases added to the backlog has been decreasing on a yearly basis, from 367 in FY 95 to 190 in FY 97. The committee believes the reason for the decrease is partly attributed to the board's new policy of scheduling two cases per arbitrator panel per day, which was initiated in January 1996. This move allowed the board to schedule, and ultimately close, more cases than the previous year.

| Table IV-6. State Board of Mediation and Arbitration Case Backlog: FYS 95-97. | | | |
|---|------------|------------|------------|
| | FY 95 | FY 96 | FY97 |
| Cumulated backlog from previous years | 2,277 | -- | -- |
| Cases Received | 1,509 | 1,555 | 1,805 |
| Cases Closed | 1,142 | 1,322 | 1,615 |
| Overall Backlog Volume | 2,644 | 2,877 | 3,067 |
| Net Yearly Increase to Backlog | +367 cases | +233 cases | +190 cases |
| Source of data: SBMA | | | |

Comparing FY 96 with FY 97, the board was able to close 22 percent more cases in FY 97, probably because of the new case scheduling system. Although the board closed more cases, which somewhat slowed the rate of cases added to the backlog, the impact on the overall backlog volume was limited. This is most likely due to the board receiving substantially more cases in FY 97, adding to the backlog. In fact, the cases received by the board increased 16 percent in FY 97 from the previous year (1,555 to 1,805 cases), after remaining almost constant between FY 95 and FY 96. Even though the board closed more cases in FY 97 than FY 96, the impact on the backlog was minimal because it was offset by the increased number of cases received, and added to the backlog, in FY 97.

As mentioned, the change in the number of hearings scheduled per day per arbitrator panel implemented by the board allowed it to schedule 29 percent more cases for hearings in FY 97 than the year before -- 2,200 as compared to 1,700. This is important because, as noted earlier, over a third of the cases scheduled for hearings in FY 97 were withdrawn before a formal hearing occurred, likely indicating the more hearings the board can schedule, the more cases will be withdrawn before a hearing takes place.

Resources. The board's ability to schedule and hear more cases depends on its resources, namely funding for arbitrators' fees and number of neutral arbitrators needed to conduct hearings. In FY 97, appropriation for arbitrators' fees totaled \$374,000. The board was given an additional \$139,000 as a result of its new scheduling system, for a total yearly expenditure for arbitrator fees of \$513,000. The labor department, however, budgeted \$374,000 for arbitrators' fees in FY 98, and has told the board additional funding is not available due to budget constraints.

The board believes the current funding level is not adequate to support its effort of reducing pending cases. It also is continuing to use the two case per panel daily scheduling method as a way to increase the number of hearings and close more cases. Under this approach, however, the board expects to deplete its allotted resources for arbitrator fees in March 1998 -- three months before the end of the fiscal year. If this occurs, either the board will not schedule cases for hearings during the last three months of FY 98, or additional funding will be needed.

As a way of analyzing how much service the \$374,000 will provide, a per case cost for the cases closed in FY 97 where arbitrator fees were incurred was first determined. This was done by taking the number of hearings opened by the board, meaning arbitrator fees were paid, and dividing that number into the yearly \$513,000 expenditure for arbitrator fees.

Overall, board statistics show 1,369 hearings were opened in FY 97. Of those, 27 cases involved DOC, which pays arbitrator fees from its own budget. In total, 1,342 cases involved arbitrator fees paid from board resources. This figure, divided into the \$513,000 spent for fees that year, equates to an average cost in arbitrator fees of \$382 per case.

The per case cost figure is important because it shows the FY 98 appropriation of \$374,000 is not enough to significantly address the board's backlog. To illustrate this, a calculation was made as to what the board can reasonably assume will happen over the current fiscal year in terms of caseload. For example, the board can expect to receive roughly 1,700 grievance cases, which is an average of the cases received in the last two years. Of those cases, approximately 34 percent will most likely be withdrawn before a hearing occurs, based on the analysis shown in Table IV-5, and not involve arbitrator fees. An additional 200 cases from DOC will most likely be received, but again will not consume board resources for arbitrator fees since the department pays fees from its own budget. Under this scenario then, arbitrator fees will be needed for approximately 990 cases, which, at \$382 per case totals \$378,000, or just above the amount appropriated for fees in FY 98.

Based on this analysis, the FY 98 appropriation should provide enough funding for what the board can reasonably assume it will incur in arbitrator fees over the course of this fiscal year at its current service level. The committee believes the funding level does not, however, address the backlog of pending cases in any significant way.

The board estimates its backlog to be approximately 3,000 cases. Again, it is highly unlikely all of those cases will actually go to a formal hearing. Applying the same benchmarks as used above, it can be reasonably expected that roughly 34 percent of the backlogged cases will be withdrawn before a hearing occurs and an additional 12 percent will involve DOC cases, which do not consume board arbitrator fee resources, leaving approximately 1,600 pending cases in need of hearings and ultimately incurring arbitrator fees.

The program review committee believes the 1,600 pending cases may be somewhat high, because the board has not established a standard for the administrative time necessary to process a case from when it is filed, to when it should be scheduled for a hearing. In other words, new cases are added to the backlog as soon as they are filed, not accounting for a reasonable time frame to process a case for a hearing after it is received. Without such a standard, every case filed with the board is considered part of the backlog the day it is filed, which the committee believes does not provide for a realistic calculation of the backlog. The 1,600 pending case estimate, however, is the best available without a standard in place and with the absence of definitive calculation by the board.

The arbitrator fee resources needed to close those cases were calculated over a one, three, and five-year time span based on the 1,600 case figure. As shown in Table IV-7, and using the average cost in arbitrator fees of \$382 per case opened, an estimated \$611,000 in additional arbitrator fees would be needed to eliminate the backlog over one year. The table shows what this cost looks like spread over several time spans. Again, these figures may be somewhat high depending on how the board defines its "backlog."

The above analysis does not take into account the availability of neutral arbitrators to hear cases. The board currently has 16 neutral arbitrators to hear cases. Neutral arbitrators chair each grievance hearing, and write the final awards when necessary.

As noted earlier, the board opened hearings for 1,342 cases plus another 27 for DOC cases, totaling 1,369 hearings opened. Over the course of the year, this averaged out to 26 hearings opened per week, or 1.6 hearings per neutral arbitrator.

| Table IV-7. Estimated Arbitrator Fee Resources Needed to Reduce Grievance Arbitration Case Backlog. | | |
|--|---------------------|--|
| Time Period | Cases Closed | Additional Arbitrator Fees Needed/Yr. |
| One Year | 1,600 | \$611,000 |
| Three Years | 533 | \$203,700 |
| Five Years | 320 | \$122,200 |

Note: The additional arbitrator fees needed per year are based on an average per case cost of \$382.
Source of data: Committee staff analysis.

To eliminate the backlog, the board would need to schedule and open extra hearings, in addition to maintaining its current service level. For example, if the 1,600 case backlog was eliminated over a one-year time span, the board would have to open 30 more hearings per week over the course of the year, or almost two weekly hearings per arbitrator. Over three years, an average of 10 additional hearings would be required per week, or an added .6 more hearings per arbitrator. Six additional hearings per week, or an additional .4 weekly hearings per arbitrator, would be needed to eliminate the backlog over five years. Calculating arbitrator resources is obviously based on many factors. As such, the board would need to evaluate its arbitrator resources using those factors, and on the number of years necessary to eliminate the backlog.

Based on the above analysis of the board's backlog, the program review committee finds:

- ◆ *The State Board of Mediation and Arbitration calculates its backlog of cases awaiting initial hearings at approximately 3,000.*
- ◆ *The board has not developed a standard defining a realistic time frame before grievance arbitration cases are scheduled for initial hearings from the time they are filed.*
- ◆ *The board has attempted to increase the number of hearings scheduled, but funding is not available to continue this effort. Further, the overall net effect of cases eliminated from the backlog is limited.*
- ◆ *The FY 98 appropriation for arbitrator fees will provide enough funding for what the board can reasonably assume it will incur in fees over the course of the fiscal year. The funding, however, does not allow the board to address its backlog in any significant way.*
- ◆ *The average cost in arbitrator fees per case opened for a formal hearing in FY 97 was \$382.*
- ◆ *An estimated 1,600 cases of the board's 3,000 pending cases will most likely need formal hearings at an additional cost in arbitrator fees of roughly \$611,000. This is above the funding needed to maintain current services.*

Although the analysis is helpful to illustrate the extent of the backlog and the resources necessary to eliminate it, the Legislative Program Review and Investigations Committee also finds the board and the labor department have not thoroughly analyzed the backlog or developed any type of strategic plan to address it. This is most obvious given the board does not even have a standard in place defining what it considers a backlogged case. Without such a standard, basic analysis of the backlog is difficult to achieve and any plan to eliminate it cannot be adequately

developed. Further, recent steps taken by the board, namely increasing the daily number of cases scheduled for hearings per arbitrator panel, seem to have a limited effect on decreasing the backlog, mainly due to an increase in cases received. Moreover, the board and the department seem at odds over how to close pending cases and eliminate the backlog. The board is continuing to use its revised scheduling policy, yet funding from the department is not available to support this approach.

It is clear additional resources in the form of arbitrator fees are needed if the state is committed to eliminating the backlog and decreasing the overall time it takes to schedule hearings. Analysis also shows board customers wait an average of 15 months before their cases are scheduled for hearings, except in priority and expedited cases. The overall timeliness of scheduling hearings is something that needs to be addressed by both the board and the department, and done so in a cooperative manner.

The committee also believes parties filing grievances with the board, mainly unions, need to take additional responsibility for ensuring their cases still require arbitration. Although not mentioned in the above analysis of the backlog, the board recently surveyed each union with pending grievances to see if any cases had been settled or withdrawn. The results showed approximately 150-200 cases were removed from the board's caseload because they were no longer relevant for various reasons. The board, however, was never informed, and continued to carry the cases as part of its caseload, unnecessarily adding to the backlog.

One point missing from discussion of the backlog, is the fact that parties are free to choose outside arbitration services if they are not satisfied with the overall level of service provided by the board. This does not excuse the board from becoming as efficient as possible. It simply means customers have alternatives if they are dissatisfied with the amount of time necessary before their hearings are scheduled. The committee believes, however, most parties are probably unwilling to pay the additional costs associated with going to outside arbitration services and prefer the state-subsidized service.

Lastly, it has been state public policy to heavily subsidize grievance arbitration services since the board began over a hundred years ago. A large portion of this subsidy supports the tripartite panel system, which consists of arbitrators who advocate for management and labor parties involved in grievances. Use of two advocate arbitrators for each tripartite panel currently adds a minimum of \$300 to every case the board opens for a hearing, since each arbitrator is paid \$150 once a case opens. Some say the tripartite system is needed because the advocate arbitrators act as additional resources for parties to use to help settle their grievances. Others say the system, from a cost savings perspective, is not necessary and is used on a limited basis by other grievance arbitration services, such as the American Arbitration Association.

In light of the state's current public policy for providing grievance arbitration services, the program review committee makes the following recommendations regarding the board's backlog:

1. The State Board of Mediation and Arbitration shall adopt a standard for the length of time it deems necessary for normal administrative processing of grievance arbitration cases from when a case is filed to when it should be scheduled for a hearing.

2. Once a realistic standard is defined, the board and the labor department shall work cooperatively to develop a strategic plan for eliminating the backlog of grievance cases. The strategic plan should include a time frame for achieving the plan, in accordance with the standard recommended above, and the resources necessary to eliminate the backlog and increase the overall timeliness of scheduling hearings.

3. After a strategic plan is developed, the labor department shall request from the legislature any additional resources necessary to achieve the plan.

4. The strategic plan shall be developed no later than January 1, 1999.

The committee believes additional resources in the form of arbitrator fees are necessary to eliminate the board's current backlog, based on the above analysis. Before resources are committed, however, the board and the department clearly need to identify the magnitude of the backlog and think strategically about how best to eliminate it, which has not been fully undertaken to date. The board and the department lack an overall strategic, if not unified, plan of how to solve the backlog and increase the overall efficiency of the grievance arbitration hearing process. The above recommendations should help achieve this goal.

Board Operations

During this study, several issues surfaced relating to the overall operation of the State Board of Mediation and Arbitration. The program review committee examined those issues, their impact on the board, and how they affect the parties using the board's services. The committee's findings and recommendations for board operations focus on selected areas, including policies and procedures, performance standards and measures, filing fees, and management controls.

Overall, board operations need to improve and become more formalized. The board currently operates using informal processes and procedures in certain areas. These need to be strengthened for the board to begin functioning in a more efficient and effective manner.

Policies and Procedures

The procedures of the State Board of Mediation and Arbitration are delineated primarily in state statutes and regulations. The board has also assembled a set of policies and procedures to guide board staff, arbitrators, and customers through the various requirements necessary to use the state's grievance arbitration process.

A review of the board's regulations for grievance arbitration, adopted in 1981, clearly shows they are outdated in many areas. For example, requirements for the expedited hearing process are outlined in regulation, yet the board has added a new requirement impacting the use of such hearings. The change specifies arbitrability cannot be claimed under the expedited process. The measure is a substantive change to the expedited method for hearing grievances, and could potentially influence parties' continued use of expedited hearings.

Several other examples of how the board's regulations do not conform with current practice relate to fact finding and postponements. The regulations detail an entire process for the use of fact finding, yet fact finding was repealed in statute in 1992. Further, as mentioned earlier, the board's regulations specify the panel chairperson decides whether to grant or deny requests for postponements. The board's current practice, however, is different indicating the regulations need to be modified.

The board has also developed a set of guidelines referenced as a policies and procedures "manual." While most of the guidelines augment what is already specified in regulation, while others differ from regulatory requirements. Further, the manual is a collection of the board's current practices in several broad categories as developed at a recent meeting of all arbitrators, and is not formally designated as the board's policies and procedures manual.

Given the State Board of Mediation and Arbitration has procedures running contrary to its regulations indicates they were adopted outside the requirements of the Uniform Administrative Procedures Act. The end effect is the public, namely those most directly affected by the changes, did not have proper input into the development of the procedures.

During interviews with individuals who represent parties before the board, several were unaware the board either had a formal manual of policies and procedures, or that an updated version existed from what was obtained in the past. This indicates the board's manual is not made available or distributed in any uniform manner. As a result, parties coming before the board do so under different interpretations and knowledge of the board's most current policies and procedures.

With respect to the board of mediation and arbitration's policies and procedures, the committee finds:

- ◆ *The board's current regulations are outdated, and need revision in several key areas to better reflect current practice.*
- ◆ *To compensate for the outdated regulations, an informal set of policies and procedures has been developed, some of which run contrary to board regulations. Further, the board's policies and procedures are not widely dispersed to customers, meaning parties use the board's services under different interpretations of current requirements.*

Based on the review of the board's current regulations, policies, and procedures, the program review committee recommends:

The State Board of Mediation and Arbitration shall revise and update its regulations in accordance with the Uniform Administrative Procedures Act to better reflect current practice and procedures. The board shall complete the internal process for updating its regulations, and forward revisions to the attorney general's office for review, no later than July 1, 1998.

A standardized manual of the board's current policies and procedures shall also be developed. Practitioners before the board should be made aware such a manual exists, and given copies upon request.

The committee believes revised and updated regulations, and a widely available policies and procedures manual outlining what is not in regulation, will have an overall positive impact on the board's operations. Customers using the board's services will have a common understanding as to what is expected of them procedurally. The recommendations should also increase the level of public input into the board's regulation/procedure making process.

Performance Standards and Measurement

It is important for any organization to determine how it is performing. Proper performance monitoring first requires collection of reliable data for key components and phases of an organization's procedural processes. Once accomplished, the information must be matched against a set of relevant standards for proper performance measurement.

The board has only recently begun to compile meaningful data relating to its overall performance. The information is limited, however, to a few basic outputs, such as number of cases received and by whom, the number of cases closed, and how the cases were closed (i.e.,

award or withdrawal). No complete performance information is available about overall caseflow timeliness, for example, beyond broad approximations as to how long each phase of the process takes to complete.

Although the general output information tracked by the board is important, it is virtually useless as a way of measuring performance if not compared against a basic set of standards. The board does not have such standards in many areas.

A prime example of this is how the board determines the extent of its backlog. As mentioned above, the board has not developed an internal standard as to how much time should realistically pass before a case is processed for an initial hearing after it is received. Consequently, cases filed for grievance arbitration hearings are added to the backlog as soon as they are filed, not taking into account necessary processing time to schedule hearings. As a result, a distorted and inaccurate calculation of the backlog of cases exists, and actually works to the board's detriment regarding public perception of how long it takes before hearings are scheduled. If the board had a realistic standard in place regarding the amount of time necessary for case processing, its present backlog could be decreased, depending on the standard used.

Although the board lacks proper standards in the area just described, it has standards in place for other parts of its process. However, solid information needed to measure performance against the standards is not readily collected by the board. For example, executive sessions must be held within three weeks following the conclusion of the hearing, yet the board does not track the executive session dates. As a result, the standard in place is moot because proper information is not maintained to measure performance against that standard.

The examples highlighted above indicate additional work needs to be done by the board in developing standards and measuring performance. The program review committee, therefore, recommends:

The board of mediation and arbitration develop a set of realistic standards to be used in evaluating the overall performance of the board. These standards should cover all key components and phases of the board's process. Further, the board shall begin measuring its performance on an annual basis. Included in the evaluation shall be written assessments of the board's performance solicited from parties actually using the grievance arbitration service. Relevant performance information shall be included in the Annual Report to the Governor as presented in the Connecticut Administrative Reports, and provided to the legislative committee of cognizance. Such evaluation reports shall also include a discussion of any improvements made to the board's mediation services.

The committee believes the overall lack of adequate lack performance measures and standards is, in large part, due to the absence of an automated case management system, as

discussed later. Having the proper information for analysis purposes is crucial in developing standards and measuring actual performance against those standards.

Despite the lack of automated data, the board is still responsible for developing realistic performance standards and collecting adequate data for measuring its overall performance. The development of proper standards will also work in the board's favor by providing parties with realistic expectations as to the level of service provided. This is particularly true with respect to a minimum length of time the board deems appropriate before a hearing is scheduled for grievance arbitration cases.

The program review committee also believes the board would greatly benefit by providing its customers with an opportunity to evaluate the board's performance. For this reason, the committee is recommending the board seek written comments from customers using the board's services within a given year. The comments should be evaluated by the board as part of measuring its overall performance.

Filing Fee

State law requires a \$25 fee accompany grievances filed for arbitration before the board. Each party to a grievance, labor and management, is required to file the fee. A case is not considered opened until the board receives the fee from the party filing the grievance; all fees received go to the state's General Fund.

As mentioned earlier, the cost of grievance arbitration administered by the board of mediation and arbitration is almost wholly borne by the state. The only financial cost to the parties using the board's service is the initial \$25 filing fee. Aside from what is generated by filing fees, the state subsidizes the rest of the board's operation. The vast majority of the subsidized costs are attributed to personal services and arbitrators' fees.

According to the board's FY 97 case log, fees were required for 1,592 grievance cases. Unions filing the cases submitted \$39,800, while 1,237 employers submitted \$30,925. The board makes subsequent attempts to collect unpaid fees.

The filing fee, and whether it should be adjusted, has been discussed throughout the study and at the public hearing held by the committee. Comments made during interviews conducted with management and labor groups, as well as the public hearing, generally acknowledge an adjustment in the fee is necessary, if for no other reason than to adjust with the rate of increase in administrative costs, as long as it does not limit access to the board's services. The fee has remained unchanged since it was first initiated in 1979.

The committee reviewed the overall increase in staff salary expenditures associated with administering board operations, comparing FY 79 to actual FY97 expenses. This was done to get a sense of the increase the board has incurred in basic administrative costs since the filing fee was implemented.

Information obtained from the Department of Labor shows \$171,000 spent on staff salaries in FY 79. The expense rose to \$713,600 by FY 97, representing an overall increase of 317 percent. In other words, the administrative costs, just in staff salaries, of providing board services has increased by more than four times the amount expended from when the filing fee was put into place.

The American Arbitration Association, a not-for-profit organization providing arbitration services throughout the country, also requires a filing fee from both parties involved in a case filed for grievance arbitration. The association's current filing fee is \$150. The fee required by AAA is used to help offset the costs associated with administering grievance cases.

AAA recently increased its filing fee to account for increased operating costs. The present \$150 fee was raised from the previous \$100 fee -- a 50 percent increase. The prior \$100 filing fee had been in place since the early 1980s.

The board of mediation and arbitration has also recognized an increase in the filing fee is warranted, and recently addressed the issue. The board, which consists of neutral, labor, and management representatives, submitted a letter in January 1997 to the labor commissioner requesting the fee be raised and the labor commissioner pursue the appropriate legislative changes for increasing the fee. The board's reasoning behind recommending the increase is to have parties pay a more equitable fee based on the increased cost of doing business. The board, however, did not specify an amount for the new fee. To date, no change in the fee has been made.

The program review committee makes the following findings regarding the filing fee required for grievance arbitration cases:

- ◆ *The filing fee has remained unchanged for almost 20 years.*
- ◆ *The board of mediation and arbitration, which represents a cross-section of the labor relations community, agrees the filing fee needs to be raised.*
- ◆ *The current fee, viewed as helping to offset a portion of the board's administrative costs, has not increased at the same rate as the board's basic administrative costs.*

-
- ◆ *The American Arbitration Association, a national not-for-profit organization offering grievance arbitration services, recently increased its filing fee by 50 percent, from \$100 to \$150 to help offset higher administrative costs.*

The committee believes an increase in the filing fee does not change the state's overall policy of providing grievance arbitration services to the state's employees and employers. Any increase allows parties to pay a fee more in line with the increased administrative costs from when the fee was implemented 19 years ago.

Current policy continues having the state fund arbitrators' fees for grievance cases before the board, along with the costs not offset by the filing fee. As mentioned earlier, parties are not required to use the board's services, and do so voluntarily. Most parties choosing the board to arbitrate its grievances are very reluctant to use an alternative service, such as AAA, because they would be responsible for paying much higher costs, including filing fees and an outside practitioner's daily per diem to arbitrate the case. Rates for such arbitrators can be as high as \$900 per day.

The program review committee believes any increase in the filing fee is simply a way to help the state offset a portion of the total costs associated with providing grievance arbitration services. Therefore, the committee recommends:

C.G.S. Sec. 31-97 should be amended to increase the filing fee for grievance arbitration services before the State Board of Mediation and Arbitration to \$100.

Any amount designated for the filing fee is subjective. The committee based the revised fee on a similar rate of increase as the board's administrative salary costs from when the original fee was implemented. Even with the increase, the fee continues to be one-third less than the filing fee currently charged by AAA. The total cost to parties using the board's services also remains minimal in comparison with the costs of alternative arbitration services, representing considerable savings to the parties using the State Board of Mediation and Arbitration.

The committee has been told on several occasions that one of the main deterrents to decreasing the backlog is the filing fee. It costs both parties to a grievance \$25 each to have the board arbitrate a case -- the same fee as first initiated in 1979. Given the relatively modest fee, many individuals having contact with the board believe there is no financial "incentive" to settle grievances at the local level. In other words, the assertion is made that if the costs to file a grievance with the board were greater, more burden would be put on the parties to settle their cases before taking them to the board, thus decreasing the number of cases filed.

Management Controls

Organizational structure. According to state law, the State Board of Mediation and Arbitration is within the Department of Labor. Budget and staff resources for the board are provided by the department.

Although the board receives its funding from the labor department, it is responsible for establishing its own internal guidelines. The board's director is an employee of the labor department and, as such, is responsible for developing the board's budget and overseeing staff. At the same time, however, the director is accountable to the board and charged with implementing the board's policies and procedures.

The current organizational structure places the board's director simultaneously responsible to two different authorities. For management of budget and staff resources, the director is accountable to the department. Concurrently, the same person is responsible to the board for administering its operating guidelines. Short of making the board a separate governmental entity for budgeting and management purposes to eliminate the multiple reporting authority, the committee believes the present organizational structure is appropriate.

Data collection and management. Proper management control is highly related to the type of information collected, how it is collected, and how such information is analyzed. As mentioned throughout this report, the board of mediation and arbitration is limited in many of these areas.

There is a strong need for the board to collect additional information related to its overall process. Several examples, as cited earlier, include collecting information on original hearing dates and dates panels hold their executive sessions. The program review committee believes this information is important to the overall evaluation of the board's services. Without it, adequate attention to the board's overall process is lacking.

One step recently taken by the board to upgrade the type of information collected relates to the board's prehearing form. The form, required by regulation, must be submitted by the parties involved in grievance cases filed with the board. It is supposed to include certain information about the grievance, including a statement of the grievance and the parties' positions. The form's purpose is to provide the panel member(s) assigned to the case, and the opposing party, with a general outline of the grievance. This is important because it gives the board standardized information to analyze, while helping the parties further refine details of their grievance information.

The board had not used a standardized prehearing form for over 10 years, although a new form was developed several months ago. Until the recent change, grievances were submitted

with various degrees of descriptive information. From a broad management control perspective, the committee believes the lack of a standardized prehearing form limited the board's ability to gather uniform information about grievances.

The overall efficiency of the board also suffers from the absence of an automated case management system. Most of the record keeping system is paper-driven. Given the state of the board's case management system, any information used for statistical analysis purposes is obtained manually. As a result, such information relates to a few basic outputs, limiting overall management analysis of the board's process.

The lack of an automated case management system was also noted in an April 1997 study of the board conducted by a review team within the labor department. The study noted several deficiencies in the board's level of automation. The primary recommendation from the report focused on developing an automated case management system.

The board's current automation capabilities are limited to word processing. No database management software exists, thus grievance arbitration cases are either manually tracked or done so using the word processing system. The board's staff, however, has developed a limited "case management" system using its word processing system. Although the system uses and maximizes the available software resources, it is a highly inefficient method of managing vast database information.

The committee has been informed that the labor department is beginning to evaluate the board's automation needs. There seems to be agreement to allow the board to purchase a general database management software program. Such a system should help mitigate the board's case management problems. The committee believes, however, the system, once operational, needs to be monitored to ensure it meets the board's automation needs.

Summary. Based on the above analysis regarding management controls, program review committee finds:

- ◆ *The organizational structure and management of the board of mediation and arbitration is divided between the Department of Labor and the board.*
- ◆ *Data collection and analysis need to significantly improve in certain areas, although the board uses its current computer resources to their fullest capacity.*
- ◆ *A lack of basic automation for case management purposes exists. The board's current software is inadequate to support its overall function, increasing the continued use of manual processes, while decreasing overall effectiveness and efficiency.*

-
- ◆ *Limited management analysis is conducted, mainly due to the absence of a fully integrated case management system. The department, however, is starting to give the board's automation problems some attention.*

As mentioned earlier, the board only recently began compiling meaningful data relating to its overall performance. The information is restricted to a few basic outputs, such as number of cases received and by whom, the number of cases closed, and how cases are closed (i.e., award or withdrawal.) The board, however, also needs to collect information in several other key areas to properly monitor and evaluate its overall process from a management control perspective.

The program review committee believes the limitations resulting from a lack of an automated case management system hamper the overall efficiency and effectiveness of providing grievance arbitration services. This results in a highly manual system for maintaining and analyzing caseload information. For these reasons, the committee recommends:

The board of mediation and arbitration continue to identify relevant information sources necessary for management analysis purposes, and compare such information with board-established performance standards. In addition to information currently collected, the board should begin collecting initial hearing dates and executive session dates to be used as performance indicators.

The Department of Labor should provide the necessary automation resources, established in conjunction with the board, and continue to evaluate and upgrade the board's overall case management automation capabilities.

It is essential to collect, maintain, and analyze accurate information for management purposes. The above recommendations should allow the board to successfully complete all three of those phases. Further, the department seems to now recognize the importance of an automated case management system after much delay. The department, nevertheless, needs to monitor the board's automation resources on a regular basis to ensure the maximum efficiency through such resources.

APPENDIX A

BOARD MEMBERSHIP

CONNECTICUT STATE BOARD OF MEDIATION AND ARBITRATION

Regular Public Members

Peter R. Blum, Esq.
Chairman
Hartford, CT

Laurie G. Cain, Esq.
Deputy Chairman
Simsbury, CT

Regular Labor Members

Michael J. Ferrucci
North Haven, CT

Raymond Shea
West Hartford, CT

Regular Management Members

Donald Bardot, Esq.
West Cornwall, CT

David A. Ryan
Milford, CT

Alternate Public Members

David A. Dee, Esq.
Hartford, CT

Susan Halperin, Esq.
West Hartford, CT

Rev. Daniel Johnson
Wallingford, CT

Donna Lin, Esq.
Newington, CT

Susan R. Meredith, Esq.
New Haven, CT

Robin E. Miller
Stonington, CT

Rocco Orlando, Ph.D.
Bethany, CT

Joseph A. Parker, Ph.D.
West Haven, CT

Louis Pittocco, Esq.
Greenwich, CT

Edward L. Ryan
Southington, CT

Thomas J. Staley, Esq.
New Haven, CT

Amalia M. Toro, Esq.
Wethersfield, CT

Gerald T. Weiner, Esq.
Woodbridge, CT

Ted Yudain, Esq.
Stamford, CT

Alternate Management Members

Joseph E. Arborio
Wethersfield, CT

J. Stuart Boldry
East Woodstock, CT

CONNECTICUT STATE BOARD OF MEDIATION AND ARBITRATION (cont.)

Daniel A. Camilliere
Wethersfield, CT

Robert V. Canning
North Branford, CT

James B. Curtin, Esq.
North Haven, CT

David J. Dunn
Stratford, CT

William Goggin
Naugatuck, CT

Frank H. Livingston
Manchester, CT

John B. Margenot, Jr.
Cos Cob, CT

Tanya J. Malse
Southington, CT

Robert A. Massa
Wethersfield, CT

Russell J. Melita
Newton, CT

Angelo Monitto
Kensington, CT

Paul J. Morganti
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Torrington, CT

Richard A. Podurgiel
Norwich, CT

John N. Romanow, Esq.
New Haven, CT

Betty H. Rosania
Wethersfoeld, CT

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Fredrick T. Sullivan
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Alternate Labor Members

Frank J. Avallone
New Haven, CT

John P. Colangelo
West Hartford, CT

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CONNECTICUT STATE BOARD OF MEDIATION AND ARBITRATION (cont.)

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Anthony Truini
Trumbull, CT

Lionel Williams
Essex, CT

APPENDIX B

**GRIEVANCE ARBITRATION SERVICES
NEW ENGLAND STATES**

GRIEVANCE ARBITRATION SERVICES NEW ENGLAND STATES

One of the areas outlined for review in the scope of this study was an examination of how grievance arbitration is handled in other states. Five other New England states were contacted to determine whether they had publicly supported systems for arbitrating workplace grievances and, if so, how those systems were structured. A summary of each of the state is provided below.

Maine

The Maine State Board of Arbitration and Conciliation provides arbitration and mediation services for public and private employers relating to workplace grievances. Organizationally, the board is within the state's labor department for administrative purposes.

Board members are appointed by the governor. There are currently three members, one representing labor, one representing management, and one neutral member.

Each member is entitled to a \$75 stipend for each day spent hearing a grievance case. This stipend is detailed within the board's enabling statute. Members are also reimbursed for their daily expenses, including travel and meals, which the board has determined to average just under \$36 per day. In addition, the neutral board member who drafts the arbitration decision receives a payment equal to one day's regular stipend, or an additional \$75.

The Maine Board of Arbitration and Conciliation recognizes the statutory per diem stipend it receives is well below the fair market value of comparable services provided by private practitioners. Service on the board, therefore, is considered a matter of public service.

The arbitration process begins with the grieving party submitting a standardized filing form to the board. Once the grievance is received, the board sends a letter to the parties involved requesting payment of a filing fee. The total cost of the proceedings is shared equally by the parties, and a grievance hearing will be scheduled once one party submits its share of the costs.

The filing fee mechanism for the Maine Board of Arbitration and Conciliation is based on estimated costs. The board first determines how many hearing days are required to settle the case. From there, an estimated total cost of the proceedings is calculated and charged to the parties involved in the grievance. For example, if the board decides a grievance will take one hearing day, the filing fee is estimated to be \$407 -- \$225 for each board member's stipend (the board uses a tripartite panel process to hearing grievances), plus \$107 for additional expenses and \$75 for drafting the decision. Upon conclusion of the case, adjustments may be made with the parties if there is a difference between the estimated and actual costs.

Filing fees are kept in a special fund and used for the proceedings. Under this method, the system is self-supported except for administrative costs. The board estimates it hears an average of 30-35 cases per year.

Massachusetts

The Massachusetts Board of Conciliation and Arbitration provides grievance mediation and arbitration services to public and private employers. The board, which has two regional offices, is within the state's labor department for administrative purposes. Arbitrators are state employees, and responsible for handling their own caseloads, including scheduling grievance arbitration hearings.

A filing fee of \$400 is charged for the grievance arbitration process. The fee is statutorily based, and is equally divided between the two parties involved in the grievance. The board uses a single panel approach when grievance arbitration hearings are conducted.

New Hampshire

New Hampshire has a limited state supported system for arbitrating workplace grievances. The state's Personnel Appeals Board will hear grievances brought by state employees belonging to collective bargaining units. The grievances must relate to matters set forth in the applicable rules adopted by the state's personnel director for promotion, selection, classification, certification, or discipline. Arbitration for grievances dealing with other areas under the terms of collective bargaining agreements follow the grievance procedures set forth in those contracts (e.g.; arbitration is conducted mainly by a private arbitrator).

The Personnel Appeals Board consists of five members -- three regular and two alternate members. The members are appointed by the governor. The board hears roughly 75 cases per year using a hearing format that allows witnesses, evidence, and briefs.

For employees not covered under the Personnel Appeals Board, the New Hampshire Public Employee Labor Relations Board maintains a roster of approximately 50 names of qualified individuals who provide arbitration, fact finding, and mediation services. The list is made available to any party upon request. Once the list is provided to the parties, they are responsible for working out the logistics of having their grievance brought before an arbitrator.

Rhode Island

Rhode Island does not have a state supported system in place to provide grievance arbitration for public or private employees. Collective bargaining contracts for organized state employees indicate if a grievance goes to arbitration, it goes to the American Arbitration Association. Grievance arbitration for municipal employees is provided by private practitioners, rather than the state.

Vermont

Vermont offers grievance arbitration services only to state employees covered under the state employees labor relations act. Municipal and private employees/employers are responsible for finding outside practitioners to provide grievance arbitration services.

The Vermont Labor Relations Board is the state entity supporting the grievance arbitration process for state employees. It is a five-member board appointed by the governor and approved by the state senate. Terms for board members are six years.

Board members receive a statutorily-set stipend of \$75 per day, plus additional expenses including travel and meals. The chairman of the board receives a stipend of \$125. The board is also responsible for handling unfair labor practice claims brought by municipal, state, and private parties.

There is no fee for filing a grievance arbitration case. Once a grievance is filed and the employer answers the grievance, the staff works with the parties to define or refine the issues of the grievance. Grievance arbitration cases are heard by a tripartite panel, allow examination of witnesses, and include written briefs if requested by the parties. Written decisions from the board are required. The average time for decisions is approximately 50 days following the hearing. The board receives between 30-40 cases annually.

APPENDIX C

AGENCY RESPONSE

Connecticut Department of Labor

Working with you for a better future.

Board of Mediation and Arbitration

February 20, 1998

Mr. Michael L. Nauer
Director, Legislative Program
Review and Investigations Committee
State Capitol - Room 506
Hartford, CT 06106

Dear Mr. Nauer:

This letter is the response of the State Board of Mediation and Arbitration [Board] to the final draft of your Committee's study of the Board.

Before proceeding to the substance of this response we would be remiss in not expressing our appreciation at the professional conduct of Mr. Brian Beisel of your staff in this study. As you will note there is a great amount of agreement with your findings.

In addressing our responses we will note them in their order of appearance in the draft.

Page 30

Payment of arbitrators after a signed award and official closing of a case.

The Board does not agree. The Board believes the present system of payment is more equitable and administratively simpler. That is the payment of the non-neutral members at the close of records.

Tracking of executive sessions dates and enforcing the Board's late award policy.

We agree.

Page 40,41.

It is fully recognized that the caseload issue is an ongoing one. It's analysis will only be able to be made after the upgrading the the data collection abilities. We agree that efforts made to date are only part of the solution of this question.

Page 43 Rec. # 1 Adoption of a standard of time for grievance arbitration from filing to hearing.

We agree.

Rec. # 2. After adoption of such standard, development of a strategic plan for the elimination of grievance backlog including necessary resources.

We agree.

Rec. # 3. After development of the strategic plan requesting additional resources from the Legislature.

B-1

We agree.

The Board adds that it believes it is essential that additional funding to move cases and upgrade administrative capabilities should be provided in the short term also.

Re. # 4. The strategic plan be developed no later than 1-01-99.

We agree.

Page 44.

The Board would like to note that in the formulation of policy changes the parties and the practitioners were notified and given the opportunity to comment. The Board agrees in general with the comments made on this page.

Page 45.

Rec. Re: Revision and updating of regulations and forwarding to the Attorney General's office no later than 7-01-98.

We agree.

Rec. Re: Standardization of Board manual of policies and procedures, making practitioners aware of the manual, and providing them copies.

We agree.

Performance standards and measurement

We agree that the data presently available to the Board needs to be expanded. To this end we agree that the data collection ability of the Board should be significantly upgraded. Only when more complete data is available for analysis will the Board be able to set more accurate standards for performance measurement.

Page 46.

Rec. Re: Development of realistic standards, annual measurement of performance, solicitation of assessments from parties using the Board and inclusion of relevant information in the Board's annual report to the Governor.

We agree.

Page 49.

Rec. Re: Increase of Board filing fee to one hundred dollars from twenty five dollars.

The Board is on record for a fee increase but strongly requests that if any increase is made that those increased dollars be dedicated to the funding of Board functions, moving the caseload and upgrading administrative capabilities.

Page 52.

Rec. Re: Board identification of relevant information necessary for management analysis and the collection of initial hearing dates and executive session dates.

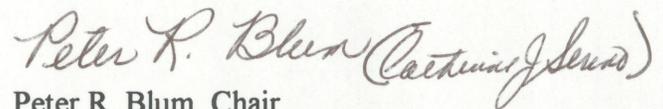
We agree.

B-2

Rec. Re: Provision by the department of necessary automation resources, established in conjunction with the Board and continuance of evaluation and upgrading of Board case management automation capabilities.

We agree.

Sincerely,

A handwritten signature in cursive script that reads "Peter R. Blum (Chairman)".

Peter R. Blum, Chair
State Board of Mediation
& Arbitration

Connecticut Department of Labor

Working with you for a better future.

James P. Butler
Commissioner

February 20, 1998

Mr. Michael L. Nauer, Director
Legislative Program Review and Investigations Committee
State Capitol - Room 506
Hartford, CT 06106

Dear Mr. Nauer:

I appreciate the opportunity to review and comment on the Committee's draft final report concerning the State Board of Mediation and Arbitration.

At the outset I want to commend your Committee for a thoughtful and thorough analysis of the challenges and opportunities confronting the Board of Mediation and Arbitration. Notwithstanding the suggestions which follow, we support the intent of all of the Committee's recommendations.

The Department of Labor's comments concerning each of the recommendations are outlined below. I would be happy to answer any questions, or discuss any of these issues in greater detail, if necessary.

Recommendation: Amend Section 31-98 to require payment to arbitrators only after a signed award is submitted and the case is closed.

Comments: For reasons detailed in the Committee's report, the Department of Labor supports this recommendation.

Recommendation: The Board should begin tracking executive session dates, use those dates when calculating the timeliness of awards, and continue the Board's policy of not issuing new cases to neutral arbitrators with late awards.

Comments: Since the timeliness of the executive session is an important performance measure, the Board should begin tracking that data. However, we have reservations about using the executive session date to compute the timeliness of an award. We are concerned that a delay in holding the executive session would result in a distorted picture of the timeliness of awards.

A case decided last fall illustrates the danger. In that case the hearing was held on October 3, but the executive sessions did not take place until the following August.

B-4

Mr. Nauer
February 20, 1998
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The award was issued September 23. If the executive session was used as the start date for a timeliness analysis, it would appear the award was issued in a little over a month when, in fact, the parties waited for almost one year for an award.

Finally, we agree that the Board should continue its current policy of not issuing new cases to neutral arbitrators with late awards.

Recommendation: The State Board of Mediation and Arbitration should begin strictly enforcing its current postponement policy and review it to determine if revisions are necessary. The review should conclude by July 1, 1998.

Comments: The Department of Labor supports this recommendation.

Recommendation: The State Board of Mediation and Arbitration should adopt a standard of time necessary "for normal administrative processing of grievance arbitration cases from when a case is filed to when it is scheduled for hearing".

Comments: We agree with the need to set a target for hearing and deciding cases. However, since the data concerning the time required to process a case is, in most cases, non-existent, the determination of the time required "for normal administrative processing" is highly subjective. Also, we believe that the calculation of the backlog include cases which have been heard, or scheduled for hearing, but not decided since it may be months before the case is actually heard or decided.

Recommendation: By January 1, 1999 the Board and the Department of Labor should develop a strategic plan for addressing the case backlog.

Comments: The Department of Labor supports this recommendation. Our fiscal, performance measurement and strategic planning staffs will be made available to assist with this task.

Recommendation: After the strategic plan is developed, the Department of Labor should request that the Legislature provide any additional funds necessary to achieve the plan.

Comments: The Department of Labor supports this recommendation.

Recommendation: By July 1, 1998 the State Board of Mediation and Arbitration shall revise and update its regulations "to better reflect current practice and procedure".

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Comments: The Department of Labor supports this recommendation.

Recommendation: A standard manual of the Board's current policies and procedures shall be developed. Practitioners before the Board should be made aware such a manual exists and given copies upon request.

Comments: The Department of Labor supports this recommendation.

Recommendation: A set of realistic standards to be used in evaluating the overall performance of the Board should be developed. These standards should cover all key components and phases of the Board's process. The Board shall begin measuring its performance on an annual basis. Included in the evaluation shall be written assessments of the Board's performance solicited from the parties actually using the grievance arbitration service. Relevant performance information shall be included in the Annual Report to the Governor as presented in the Connecticut Administrative Reports.

Comments: The Department of Labor supports the establishment of standards to be used to evaluate the overall performance of the Board. As an aid to data collection as recommended by the Committee and for future reporting to the Legislature and the Governor, we believe the Department should have oversight as the Administrator in the development of realistic standards of evaluation of the Board's performance. We also believe that customer satisfaction (as a key component) is paramount to the outcome of any developed performance standard. Our Performance Measurement Unit has extensive experience developing both performance measurements and customer satisfaction.

Recommendation: Section 31-97 should be amended to increase the filing fee for grievance arbitration to \$100.

Comments: The Department of Labor strongly supports this recommendation. The Department recognizes the comparative cost of processing grievances from time of filing to finish has increased 371 percent from FY79 to FY97 as stated in the report.

Recommendation: The Board of Mediation and Arbitration should continue to identify relevant information sources necessary for management analysis purposes, and compare such information with Board-established performance standards. In addition to information currently collected, the Board shall begin collecting initial hearing dates and executive session dates to be used as performance indicators.

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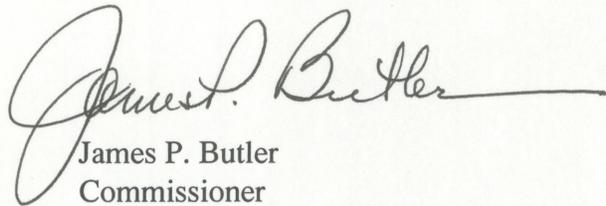
Comments: The Department of Labor supports this recommendation. However, as previously noted, we question the validity of the timeliness of the executive session date. We believe that more research must be completed to determine what pertinent performance indicators should be.

Recommendation: The Department of Labor should provide necessary automation resources and should continue to evaluate and upgrade the Board's case management automation capabilities.

Comments: The Department of Labor supports this recommendation. Funds have been allocated to develop a case management system similar to that utilized by the State Board of Labor Relations. Future automation efforts will depend on a number of factors, including the Board's streamlining of its internal processes; the development of performance measures discussed in the Committee's report; and legislative support for the necessary appropriations.

Again, thank you for the opportunity to comment on these recommendations. We look forward to working with your Committee in the weeks ahead.

Sincerely,



James P. Butler
Commissioner

cc: Governor John G. Rowland
Board of Mediation and Arbitration